A DIGEST OF INDIAN LAW CASES:

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

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IN SIX VOLUMES.

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CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1901.

Price Twelve Rupees.
English Price Eighteen Shillings.

s *for the sale of Books published by the Superintendent of Government Printing, India, Calcutta.*

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1. SUITS FOR DAMAGES—*continued.*

paid R500 as earnest-money at the date of the contract, and the remainder of the purchase-money was to be paid on the execution of the conveyance. In October, November, and December, the plaintiff's solicitors applied to the defendant for the title-deeds, in order that the conveyance might be prepared; and on the 6th December, the defendant through her solicitors replied that she was ready and willing to execute the conveyance, but could not find the title-deeds. The plaintiff's solicitors then requested to be furnished with an abstract of title, or a statement of the defendant's title to the house, and then they would consider what could be done. No reply to this letter being received, they wrote again on the 10th December 1884, stating that the time for completing the contract had expired; and giving formal notice that, if the defendant did not send the abstract or statement of title within two days, proceedings would be taken to compel specific performance and to recover damages. In reply to this letter, the defendant's solicitors wrote on the 11th December 1884, stating that the defendant had searched for the title-deeds, but had been unable to find them, but that, as soon as they were found, they would be handed over. In the meantime, they were instructed to state that the property was mortgaged to *M* (of whose will the defendant was executrix) and one *K*; that *K* had agreed to convey the property in question to the defendant; and that the deed of conveyance was being prepared. They further stated that, if the plaintiff wished to accept a conveyance without the old title-deeds, the defendant was willing to indemnify him against all claims to the property; but if he was not prepared to do so, the defendant was willing to pay back the earnest-money to him and to rescind the contract. On the 13th December 1884, the plaintiff's solicitors wrote that they could not advise the plaintiff to take the mere conveyance offered, but if the defendant would deposit the purchase-money in a bank in the joint names of the plaintiff and defendant until the title-deeds were found, the plaintiff would complete the purchase at once. They further stated that the plaintiff declined to rescind the contract, and would hold the defendant responsible for loss and costs incurred by the delay. Further correspondence ensued, and a suit was filed on the 20th February 1885, praying for specific performance and R500 damages, or that the defendant should pay to the plaintiff the sum of R2,500 damages, and refund the R500 earnest-money. It subsequently transpired that the title-deeds were with *K*, the co-mortgagee, and they were set forth in the defendant's affidavit of documents filed in July 1885. The defendant, after the suit was filed, sold the property to one *J*, and *K*, the co-mortgagee, joined in the conveyance to him. *Held* that the case was governed by *Flureau* v. *Thornhill, 2 W. Bl., 1070,* and *Bain* v. *Fothergill, 7 Eng. & Ir., Ap., 268,* and that the plaintiff could not recover damages for the loss of his bargain. The defendant had offered to do all that lay in her power to carry out her contract, and the case of *Engell* v. *Fitch, L. R., 4 Q. B., 659,* did not apply. PITAMBER SUNDARJI *v.* CASSIBAI

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32. ——— **Defamation of character**—*Dismissal of mooktear, Ground for.*—In an action to recover damages for defamation of character brought by the late mooktear and manager of a parda-nashin Mahomedan lady who had in a petition to the Munsif represented that she had discharged the plaintiff from her service, because he had not managed her properties honestly, and had been guilty of misappropriation, it appeared that the plaintiff had rendered no accounts, and had allowed a year to pass before resenting the libel,—*Held* by KEMP, J. (GLOVER, J., dissenting), that the defendant had reasonable grounds for making the statement, and that, in the absence of evidence of malice, the suit was rightly dismissed. AMEENOODDEEN AHMED *v.* KHYROONISSA [20 W. R., 60

EKBAL BAHADOOR *v.* SOLANO . 2 W. R., 164

33. ——— **Destruction of indigo plants in execution of award**—*Costs.*—A suit will not lie for damages sustained in consequence of the destruction of indigo plants in execution of an award under s. 15, Act XIV of 1859; nor for damages in the shape of the value of kolai crop, recovered by the decree of a competent Court; nor for costs awarded by a competent Court in a possessory suit under the same action. KENNY *v.* KOLUM MUNDLE [5 W. R., S. C. C. Ref., 1

34. ——— **Injury caused in execution of decree**—*Omission to act legally by decree-holder.*—If a decree-holder has omitted to do what he is legally bound to do, and has thereby caused injury, the party injured may claim damages. RUZNUDEEN HOSSEIN *v.* FUZALUN . 3 W. R., 120

35. ——— *Execution of decree without jurisdiction—Liability of applicant for execution.*—Where a Court attempts to execute a decree without having jurisdiction to do so, the person applying for that execution would be liable

DAMAGES—*continued.*

1 SUITS FOR DAMAGES—*continued*

to be sued for damages DOYLE *v* DWARKANATH CHATTERJEE . . . . . 8 W. R., 89

See JOYKALEE DOSSEE *v* CHAND MALLA [19 W. R., 133

36. ——— Refusal to deliver idol for worship—*Right to turn of worship of idol—Cause of action*—A refusal to deliver up an idol,

LICK . . . . I. L. R., 3 Calc., 390

37.——— Intrusion on office—*Suit for fees by vatandar joshi against intruder*—The vatandar joshi of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him RAJA VALAD SHIVAPA *v* KRISHNABHAT [I. L. R., 3 Bom., 232

38. ——— Infringement of right—

KRISHNA SHIDESHVAR . . . . 9 Bom., 413

39. ——— Sale of minor's property—*Fraud and collusion between vendors and purchasers—Suit by purchasers against vendors when sale is set aside*—It is not for the public benefit that, where two parties knowingly deal with the sale and purchase of property of infants who have not by law the power of sale, one of the parties (the purchasers) who obtain possession of the property in a manner calculated to injure the infants should be able to sue the other party (the vendors) for damages The Privy Council even refused to give costs to either party, considering them both *in pari delicto* BHOOPNARAIN CHOWBEY *v* RUGHUNATH GOBIND ROY . . . . 18 W. R., 230

40. ——— Leaving boats in such a position that they are useless until river rises.—A party who wrongfully takes possession of another's boats and places them in such a position that without any neglect on the part of the owner they become unserviceable until the ensuing rainy season is responsible for the consequences of his own act, and is not in any way discharged because the police make over the boats to the owner at a time when there is no water in the river and the boats cannot be moved NUDIAR CHAND SHAHA *v* PRAN NATH SHAHA . . . . 21 W. R., 8

41 ——— Legal ejectment of tenant after he has sown crops—*Trespass—Right to possession*—*F* accepted a lease from *N* of certain land and sowed it with indigo. *B* then sued *F* and *N*, claiming to be maintained in possession of the land and the cancelment of the lease, and obtained a

DAMAGES—*continued*

1. SUITS FOR DAMAGES—*continued.*

was still in possession, sued to recover damages for

occupation of the land under his decree, he had no claim on the latter for damages. BASUNT KAWAL *v* FORTH . . . . 7 N. W., 47

42 ——— Suit for damages for removal of crop—*Defendant entitled to possession under decree of a competent Court of revenue—Plaintiff in actual possession under an illegal decree of a Civil Court—Trespass*—*A* held a decree of a competent Court of revenue for possession of certain land as against *B*, and obtained under that decree formal possession of that land *B*, however, was allowed to remain in such necessary possession of the land as was requisite to enable him to remove a crop which was on the land *B* removed his crop, and thereafter sued in a Civil Court for a declaration that he was *A*'s tenant of the land in question holding occupancy rights *A* did not defend the suit, and the Civil Court passed a declaratory decree in favour of the plaintiff, and further proceeded to execute that declaratory decree by putting *B* in possession Subsequently *B* sued *A* for damages in respect of the alleged removal by *A* of a second crop, which he asserted that he (*B*) had sown upon the said land *Held* that *B* had no cause of action, and that, even if in fact he had sown the crop in respect of which damages were claimed he did so at his own peril and as a trespasser UDIT NARAIN SINGH *v.* SHIB RAI . . I. L. R., 20 All, 198

43 ——— Injury done by raising

that the plaintiffs, on whom the burden of proof of injury lay, had failed to sustain it by proving specific loss *Held* that they were, therefore, not entitled to a decree *Held* also that the precedents quoted, in which decrees for substantial damages had been given on proof of malicious trespass, although specific injury had not been established, were inapplicable to suits like the present, in which the essence of the plaint was a demand for compensation for losses actually incurred, and in which no hint was thrown out of any malice in the alleged act of trespass JUGGUT LALL CHOWDHRY *v* TASUDDUCK ALI [25 W. R., 548

44. ——— Omission of witness to appear—*Suit for damages against defaulting witness*—Before a plaintiff is entitled to recover any

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

damages from a defaulting witness in a former suit, he must prove that he was endamaged by the omission of the defendant to appear. The mere failure of the defendant to appear as a witness is not, *per se*, a sufficient proof of his liability to damages. DWARKANATH KOOREE *v.* ANUNDO CHUNDER SANNEL . . . 5 W. R., S. C. C. Ref., 18

45. ——— Cause of action—*Suit for damages caused by false statement of witness in a suit.*—No action will lie against a witness for making a false statement in the course of a judicial proceeding. CHIDAMBARA *v.* THIRUMANI [I. L. R., 10 Mad., 87

46. ——— Infringement of right—*Damnum sine injuriâ.*—A plaintiff whose right has been invaded is entitled to some remedy, whether damage has accrued to him or not. RAMPHUL SAHOO *v.* MISREE LALL . . . . 24 W. R., 97

47. ——— *Actual loss, Proof of.*—Proof of infringement of a right, without proof of actual loss, does not necessarily entitle a plaintiff in this country to a verdict for nominal damages. NABAKRISHNA MOOKERJEE *v.* COLLECTOR OF HOOGHLY . . 2 B. L. R., A. C., 276

48. ——— *Proof of consequent injury.*—In order to maintain an action for damages for the infringement of a right, it is not necessary to show that there has been any subsequent injury consequent on such infringement. RAM CHAND CHUCKERBUTTY *v.* NUDDIAR CHAND GHOSE [23 W. R., 230

49. ——— *Failure to prove injury.*—Where defendants infringed plaintiff's legal right, and the lower Court dismissed the suit with costs, on the ground that plaintiff had given no evidence that he had sustained substantial damage,—*Held* that the plaintiff was entitled at least to a decree without damages and costs. KALLIAPPA KAUNDAN *v.* VAYAPURI KAUNDAN . 2 Mad., 442

50. ——— *Interest in land—Right of suit.*—*A* erected an embankment across a river, in consequence of which lands let by *B* to raiyats were overflowed, and the crops lost. The raiyats paid rent to *B* only when crops were reaped from the lands. *Held* that *B* had such an interest as to entitle him to sue *A* for damages. RAM CHANDRA JANA *v.* JIBAN CHANDRA JANA [1 B. L. R., A. C., 203

51. ——— *Erection of buildings—Right to such buildings.*—Parties are at liberty to build what structures they please on their own lands, but if by doing so they interfere with the free enjoyment of their neighbours' property, they are liable to damages. KASSIM ALI KHAN *v.* BIRJ KISSORE . . . . 2 N. W., 182

RAM ROOCH CHOWDREE *v.* DEOKEE NUNDUN [7 W. R., 169

KADER BUKSH BISWAS *v.* RAM NAG CHOWDHRY [7 W. R., 448

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

52. ——— *Trespass—Building on plaintiff's land—Mandatory injunction—Suit for further damages for alleged disobedience of mandatory injunction—Cause of action—Right of suit—Execution of decree—Suit to enforce decree.*—The defendant having built a wall on the plaintiff's land, the plaintiff brought a suit in which he asked for damages for the trespass and an injunction, and a decree was passed for damages and for a mandatory injunction, directing the defendant within two months to remove the wall, and to restore the plaintiff's premises to their former condition. Two years subsequently the plaintiff brought another suit for damages, alleging his cause of action to be the defendant's disobedience of the mandatory injunction, and proving as damages that people were deterred from becoming his tenants by fearing that, owing to the defendant's previous action, the hillside on which the plaintiff's premises were situate was likely to fall. There was no structural or other damage done to the plaintiff's property other than that which was done prior to the commencement of the previous suit. *Held* that the suit would not lie for damages for non-compliance with the mandatory injunction, to compel the performance of which the plaintiff had his remedy in execution. *Mitchell* v. *Darley Main Colliery Company, L. R., 11 Ap. Cas., 127*, distinguished. JAWITRI *v.* EMILE [I. L. R., 13 All., 98

53. ——— *Suit for injury done to land by former proprietor.*—An action for damages will not lie against a present proprietor for injury done to the land during the time of the former proprietor. COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE [W. R., F. B., 17: 1 Ind. Jur., O. S., 101

54. ——— *Cutting timber.*—Where one acquires, by license, an exclusive right to cut, and to authorize others to cut, timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others. SNADDEN *v.* MAHWINE . 2 B. L. R., A. C., 292

55. ——— *Obstruction to free use of light and air.*—A person is entitled to the free use of his ancient light and air. When any person wilfully and intentionally obstructs that light and air, he is liable for the removal of the obstruction. Money damages will be no compensation for the injury. MAHOMED HOSSEIN *v.* JAFAR ALI [4 W. R., 23

PURAN MUDDUCK *v.* OODAY CHAND MULLICK [3 W. R., 29

56. ——— *Injury to land by bursting of bund.*—Suit for damages caused to the plaintiff's land by the bursting of the defendant's bund. *Held* that the plaintiff was not entitled to damages if the bund was made in a lawful manner,

DAMAGES—*continued*

1 SUITS FOR DAMAGES—*continued*

and if the breach was owing to no fault of the defendant GOOROO CHURN MULLICK v RAM DUTT [2 W. R, 43

57 —————— *Stoppage of flow of water—Prescriptive right*—A suit will lie to establish a prescriptive claim to irrigation from a

58. —————— *Obstruction in exercise of right over water—Question to decide at trial of suit—Civil Procedure Code, 1859, s 197*—A suit may lie for damages for obstruction in the exercise of a right of *usucapio* over water, etc, although no property in the tank, etc, be asserted. And s 197 of the Code of Civil Procedure does not apply to suits for damages of this nature, and consequently the question of the amount of damages must be determined at the trial and cannot be reserved for determination in execution of the decree RAMTUHUL LALL v SHEO NATH SINGH [1 N. W., 24. Ed. 1873, 24

59. —————— *Cause of action—Right to use of water*—In a suit for damages for the demolition of a singha or embankment intended to keep in surface water, if the embankment was

60

plaintiff's right to recover depended upon whether or not the special damage claimed had accrued at the time of the bringing of the suit VISWAMBARA RAJENDRA DEVEE GARU v SARADHI CHARANA SAMANTARAYA GARU . 3 Mad, 111

61 —————— *Use of water rights—Injury to neighbouring land*—The defendant closed up the outlets of a bank upon his own land, whereby the surface drainage water had immemorially flowed from the plaintiff's land into and over the defendant's land, and so escaped By reason of the closing of these outlets the water was unable to escape, and the plaintiff's land became flooded and the crops therein damaged. *Held* that the plaintiff was entitled to maintain a suit to recover from the defendant the

were spoiled was sufficient damage ANUNDMOYE DASSEE v HAMEEDONISSA [Marsh, 85 1 Hay, 152

DAMAGES—*continued*

1 SUITS FOR DAMAGES—*continued.*

HAMEEDONISSA v ANUNDMOYEE DOSSEE [W. R., F B, 22

62 —————— *Use of water-rights—Injury to neighbouring land*—A suit for

CHOWDHRY v PUHUBNATH JHA [2 B. L. R., Ap, 53

63 —————— **Abuse or threatening words**—*Special damage*—Damages cannot be claimed for mere abuse or threatening language. PHOOLBASSEE KOER v PARJUN SINGH [12 W. R, 369

CHUNDURNATH DHUR v ISSUREE DOSSEE [18 W. R., 531

64. —————— **Abuse and defamation**—*Malice—Estimation of damages*—If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that

For further authorities on this point,—

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE, DEFAMATION, AND SLANDER

See CASES UNDER SLANDER.

65 —————— **Injury to reputation**—*Malicious prosecution*—Damages may be recovered for injury to one's reputation RAMJEEBUN MOOKERJEE v WOOMA CHURN HAJRAH 7 W R., 117

66 —————— *False charge*—Where a false charge led to a party being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation for which an award of R20 as damages was not unreasonable MADHUB CHUNDER SIRCAR v BANEE MADHUB ROY . 15 W. R., 85

67 —————— *Difficulty of assessing damages—Injury short of loss of caste*—The difficulty of assessing the amount of the damages or the risk of numerous actions of the kind in the

plained of BHYRAU PERSHAUD v ISHAREE [3 N W, 313

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

68. ——— *Public exhibition of effigy of person—Suit for damages for defamation of character.*—Making and publicly exhibiting an effigy of a person, calling it by the person's name, and beating it with shoes, are acts amounting to defamation of character for which a suit for recovery of damages will lie. PITUMBAR DASS *v.* DWARKA PERSHAD . **2 W. R., 435**

69. ——— *Injury to personal honour and character.*—A party whose conviction before a Criminal Court is reversed on appeal, and he himself released from confinement, cannot maintain a suit against the complainant for damages to his personal honour, unless he can prove that the complainant had no reasonable and probable cause for making the complaint and charge. KOIBATOOLLAH *v.* MOTEE PESHAKUR . **13 W. R., 276**

70. ——— **Wrongful attachment**—*Trespass—Bonâ fides.*—A judgment-creditor who attaches property which does not belong to his judgment-debtor commits a trespass, for which he is responsible in damages, even though he may have acted without malice and mistakenly. DAMODHAR TULJARAM *v.* LALLU KHUSALDAS . **8 Bom., A. C., 177**

71. ——— *Liability of decree-holder for wrongful execution.*—Without proof of *mala fides*, the judgment-creditor is responsible in damages to any person whose property he wrongfully causes to be attached in execution of his decree. RUGNOR *v.* SUNJHEER SINGH . . **5 N. W., 211**

KANAI PROSAD BOSE *v.* HIRA CHAND MANU [**5 B. L. R., Ap., 71**

SUBJAN BIBEE *v.* SARIUTULLA [**3 B. L. R., A. C., 413**

72. ——— *Cases reviewed.*—Cases which decide that a person whose property has been wrongfully seized by the Court, or wrongfully seized and sold at a Court's sale, as that of the judgment-debtor, is entitled to recover damages from the execution-creditor at whose instigation the property has been so seized or so seized and sold, reviewed. KALU BIN VISAJI *v.* DAMODHAR GOVIND [**9 Bom., 92**

73. ——— *Attachment of property of third person—Liability of execution-creditor for wrongful seizure in execution of decree.*—There is not any universal rule that a judgment-creditor is, or that he is not, liable in suit for a wrongful seizure, or for injury to the goods while under seizure. His liability must depend upon the circumstances of the case, *i.e.*, upon the fact whether the wrongful seizure or the injury is the result of his own conduct; for instance, if the judgment-creditor personally, or his authorized agent (*ex. gr.*, his pleader), apply, under s. 214 of the Civil Procedure Code, for the attachment of property which is specially designated in that application, and if the Court grant its warrant for the seizure of that particular property, and the officer of the Court execute the warrant, and the property be not that of the judgment-debtor, the judgment-creditor would certainly be liable for that wrongful seizure, and the officer of the Court could justify under the warrant, and would not be liable so long as he kept within the duty expressly prescribed for him by it. But if the application of the judgment-creditor were for a general attachment under s. 218 of the Code, and the Court took no such security from him as it might take under that section, and if the Court granted a general warrant for the attachment of the moveable property of the judgment-debtor, and the officer of the Court, without any suggestion to that effect from the judgment-creditor or his agent, beyond a general direction to execute the warrant, were to seize property not belonging to the judgment-debtor, the judgment-creditor would not be responsible. *Quære*—Whether, under such circumstances as those last mentioned, the officer of the Court would be responsible. VANA JAGANNATHJI *v.* HATA DIPAJI . **11 Bom., 46**

74. ——— *Penalty—Compensation—Proof of malice.*—Certain hundees, which *V A & Co.* had discounted for *P*, having been dishonoured by the drawers, *V A & Co.* sued *P* for the value of the bills, and applied, under s. 81, Code of Criminal Procedure, to have certain property attached before judgment as belonging to *P*. An attachment having been ordered, *M* and *J* objected by petition that the property belonged to them, and not to *P*, upon which *V A & Co.* applied to have them made co-defendants in the regular suit which had been brought against *P*, on the ground that they (*M* and *J*) and *P* were partners in trade. The decision in the suit released the property on the ground that there was no such partnership, and that the property belonged exclusively to *M* and *J*. *M* and *J* then sued *V A & Co.* to recover damages sustained by their goods under the above attachment and profits foregone during the stoppage of their trade by the tortious acts of the defendants. *Held* that, as *V A & Co.* had made the attachment most carelessly and recklessly, and without sufficient or reasonable ground for assuming *M* and *J* to be partners of *P*, they were rightly amerced in damages. *Held* also that their act, having been one done without a probable cause, was such as to evince a malicious motive on their part, and that damages in such a case should be in the nature of a penalty as well as of a compensation. *Held* further that plaintiffs were not bound to release their property, and it was no defence to their claim for damages to say that they might have done so by giving security, nor could their declining to do so shift the responsibility of the illegal acts of the defendants. VALAET ALI KHAN *v.* MATADEEN RAM . . . . **13 W. R., 3**

75. ——— *Attachment before judgment without sufficient cause.*—Where a Court orders attachment of a defendant's property after it is satisfied that he is about to remove or dispose of it with intent to obstruct or delay the execution of the decree, it must be presumed that there was good and sufficient cause for the plaintiff having moved the Court to do so, even though the suit resulted unsuccessfully; and unless the contrary can

DAMAGES—*continued*

1 SUITS FOR DAMAGES—*continued*

be established, damages cannot be claimed. DHURMO NARAIN SAHU *v* SREEMUTTY DASSEE [18 W R., 440

76 ———— *Attachment made contrary to order*—When a proper application for process has been made and a proper order granted the officer of Court cannot be considered to be the agent of the person for whose benefit the process of the Court has issued Nor is such person responsible for the mistake or misconduct of the officer unless he or his servants have personally interfered and directed the action of the officer Where, in a suit for damages for wrongful attachment, it appeared that

to take a cargo to Calcutta, and they were wrongly attached under s 233 by actual seizure and detention, during which one of them sank and was lost —*Held* that, unless it could be shown that the defendant or his servants personally interfered and caused the officer of Court to attach the boats by actual seizure he was not liable for damages DOOLAR CHAND SAHOO *v* RAM SAHOY BHUGGUT 24 W. R, 139

77. ———— *Attachment of property of third person under general warrant of execution.*—Where *A* seizes property in attachment of a decree which had been obtained by his own judgment debtor and there is nothing to show that that decree was sold to *B*, and *A* is not proved to have acted maliciously or without probable cause, *A* is not liable to *B* in a suit for damages The seizure, moreover, having been made under the order of the Court the defendant was not liable for what was done under the Court's order *Semble*—Whether, if a judgment creditor applies for a general warrant of attachment of all the defendant's property under s 214 and under it causes property of a third person to be seized as property of the defendant, he is not liable to such third person. JOYKALEE DASSEE *v* CHANDMALLA . . . 9 W. R, 133

78. ———— *Warrant of execution* —A party is not liable to damages in respect of an attachment under a warrant issued by a Court RAJBULLUB GOPE *v* ISHAN CHANDRA HAZRAH [7 W R., 355

79 ———— *Permission to use property attached—Principles in action of tort* —The proposition that a man whose possession was

cluded from recovering ordinary damages by reason

DAMAGES—*continued*

1 SUITS FOR DAMAGES—*continued*

80. ———— *Omission to claim compensation under Civil Procedure Code, 1859 s 88*—The omission to apply for compensation under s 88 Act VIII of 1859 (assuming

stances the attachment being needless and unjustifiable and without due authority of law the award of damages was fair and unquestionable DANIEL *v* MOHUN BIBEE 1 Agra, 104

81. ———— **Transfer of decree**—*Subsequent attachment in execution against transferor—Right to compensation* —*A* transferred a decree to *B* who recovered part of the amount due under it, and was prevented from recovering the rest by an attachment of the decree in execution proceedings against *A* *Held* that *A* was liable to pay compensation to *B* PUTHIANDI MAMMED *v* AVALIL MOIDIN [I. L R, 20 Mad., 157

82 ———— **Wrongful injunction**—*Civil Procedure Code, 1859, s 96 (1877-82 s 497)—Compensation for injunction* —S 96 of the Civil Procedure Code, 1859 (s 497 of 1877 82), allowed the power of bringing a suit for damages leaving that remedy to those who did not wish to take advantage of the remedy provided by that section WILSON *v* KANHYA SAHOO . 11 W R, 143

83 ———— *Civil Procedure Code, 1859 ss 92, 96—Suit for compensation—Cause of action* —*A*, having brought a suit against *B*, obtained and issued on the 24th July 1868 an injunction against him under s 92 Act VIII of 1859 The suit was on the 18th of August 1868, dismissed, but no compensation was awarded to *B*, under s 96 of Act VIII of 1859, in respect of the injunction which had been issued against him

the Small Cause Court for damages in consequence of the injunction which *A* had caused to issue against him in his suit *Held* that *B* was not debarred, by s 96 of Act VIII of 1859 from instituting a suit against *A* for damages there not having been an award of compensation under that section The cause of action accrued from the time at which the plaintiff was first damaged by the wrongful injunction, continued as long as the injunction remained in force, and

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

purveyor at that station. The ice machine turned out eventually a quantity much less than 100 seers a day. *Held* that the plaintiff was entitled as damages to the amount paid for the machine, the expenses of ascertaining whether it would turn out 100 seers a day, and reasonable interest on the whole; the defendants to be at liberty to take back the machine. LAMOUROUX *v.* EVILLE . **1 Ind. Jur., N. S., 274**

96. ——— Suit for breach of contract to admit into partnership—*Partnership for specified time.*—In a suit brought for damages for breach of a contract to admit the plaintiff into partnership,—*Held* that the damages to be awarded, although they should be estimated with reference to the profits which the plaintiff might ultimately have derived from the partnership, ought not to have been assessed at such a sum as would place the plaintiff in the position which he might have held at the conclusion of the partnership. Where the partnership was to endure for two years,—*Held* that one year's profits would be a fair award of damages. LEWIN *v.* MORRISON . . . **2 Agra, Pt. II, 151**

97. ——— Failure to pay calls on shares—*Agreement to forfeit shares.*—Where a party takes shares in a trading company, agreeing to forfeit his shares if he does not pay calls upon them at certain stated intervals, the penalty of forfeiture should be enforced against him if the calls are not paid according to agreement. The damages should not be measured by the amount of the call. ACHUMBIT SHAHA *v.* ROHIMOONISSA *alias* BIBEE NOOR JAN **[24 W. R., 358**

98. ——— Breach of contract to register document—*Nature of suit.*—A pottah granting an ijara and a kabuliat in similar terms having been executed respectively by and exchanged between the plaintiffs and the defendant, when the parties went to register the pottah the defendant refused to allow it to be registered, alleging that the plaintiffs had not performed certain conditions which were incumbent on them before they were entitled to the ijara. In a suit for a refund of the deposit money and for damages,—*Held* that, the suit was brought, not on the pottah and kabuliat, but on an implied contract by the defendant to do that which was necessary to give effect to his own pottah, *viz.*, to allow it to be registered, and that the real question was whether the plaintiffs had done all that they were required to do to entitle them to the assent of the defendant to registration. As the pottah had been executed and handed over, if it specified no pre-requisite conditions, the natural presumption was that no such conditions existed, although that presumption might be rebutted by sufficient evidence. Damages for a breach of a contract of this kind, though not necessarily the same as for keeping a person out of possession, would yet be the loss occasioned to the plaintiff by the contract not having been performed. *Held* further that, although the amount the refund of which was sued for was in fact in deposit for the rents of the old lease which had not yet expired, yet, as the defendant had abandoned that lease and entered into a new arrangement as regarded the deposit, he could not now fall back on the old contract once abandoned, nor could he retain the money under the new contract which he had wrongfully refused to carry out. MONOMOTHONATH DEY *v.* SREENATH GHOSE . . **20 W. R., 107**

99. ——— Breach of contract to convey immoveable property.—Where a vendor, having agreed to convey, without any reasonable excuse conveys the property to a third party in order to obtain a higher price, the vendee is entitled by way of damages to the additional price obtained by the sale. TRILOKHYA NATH BISWAS *v.* JOY KALI CHOWDHRAIN . . . . **11 C. L. R., 454**

100. ——— Refusal to execute lease as agreed—*Amount of rent agreed on.*—Under an indenture of lease, *A* and *B* covenanted to give *C* and *D* possession of premises comprised therein. The lease was executed by *A*, *C*, and *D*, and *B*'s assent was comprised therein, but he refused to execute. On breach by *A*, in an action for damages against *A* and *B*,—*Held B* was not liable; but as against *A*, there being no allegation of special damage, the measure of damages would be the difference between the rack rent and the rent that was agreed to be paid. GOBERDHONE DASS *v.* NITTANUND MULLICK **[1 Ind. Jur., N. S., 41**

101. ——— Refusal to give lease as agreed—*Nominal damages.*—A party who took from certain proprietors of an estate a lease of their interest therein without advance or premium, not having been put in possession and finding another party in possession with an adverse title, commenced a suit against him, which was unsuccessful. He then sued the lessors and their representatives for damages to recover the expenses of the litigation, and the whole of the profits he had expected from the lease. *Held* that the plaintiff had no right to recover from the lessors the expenses of the litigation, and as it was not contended that the lessors had wilfully misrepresented things, he was entitled only to nominal damages. MAHOMED ESA KHAN *v.* KESHUB LAL **[14 W. R., 382**

102. ——— Breach of clause in lease—*Rent suit*—*Substantial damage*—*Nominal damage.*—*B* obtained a lease of certain lands from *A*, agreeing thereunder to pay to *A* a certain rental for the land, and also a sum of R183-6-3 yearly to *A*'s superior landlord, obtaining a receipt therefor. *A* sued *B* for the rent due to himself and for the sum due to his superior landlord. *Held* that *A* was entitled to recover the sum due to his superior landlord as damages for breach of the contract, and that the amount of such damages ought not to be taken as nominal, but should be assessed on the footing of the sum for which *A* might become liable to his superior landlord. RUTNESSUR BISWAS *v.* HURISH CHUNDER BOSE . **I. L. R., 11 Calc., 221**

See BASANTA KUMARI DEBYA *v.* ASHUTOSH CHUCKERBUTTY **[I. L. R., 27 Calc., 67: 4 C. W. N., 3**

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

103. ———— **Contract assigning mortgage rights**—*Interest—Guarantee of loss*—Defendants assigned their mortgage rights under two

indigo land was an appurtenance to the factory, by ousting the plaintiff from the factory all benefit derivable from chur lands fit only for indigo was lost by her, and that the sum which represented that loss had been rightly included in the calculation of damages to which plaintiff was entitled HURISH CHUNDER KOONDOO *v.* BAMA KALEE DEBIA **5 W. R., 194**

104. ———— **Suit for damages for being kept out of indigo factory**—*Calculation of damages.*—Suit for damages sustained by plaintiff

106. ———— *Mode of performance—First failure to sow*—In a suit for

one set of damages for one breach of contract alone

involved a liability to pay once, and once only, the stipulated damages, and that the contract ceased and determined therewith (SHUMBOO NATH PUNDIT, *J*, dissenting) MOTEE SAHOO *v* FORBES **6 W. R., 278**

107 ———— *Bengal Regulation VI of 1823, s 5, cl 2*—*Held* that the limit of damages recoverable under cl 4, Regulation VI of 1823, was three times the sum advanced, and that the amount of advance itself could not be included or considered, except as the mode of measuring the damages ZYN OOD-DEEN *v* WRIGHT **[3 Agra, 77**

108 ———— *Bengal Regulation VI of 1823, s 5, cl 4*—When a breach of contract to sow indigo arises, not from accident, but presumably from dishonesty, the case no longer falls within cl 4, s 5, Regulation VI of 1823, which limited the amount of penalty to three times the sum advanced, but the plaintiffs were entitled to recover an amount of damages not exceeding the sum which the defendant stipulated to pay on failure by him to perform his contract. LAL MAHOMED BISWAS *v.* WATSON **[4 W. R., 62: 1 Ind. Jur, N S, 3**

109. ———— *Bengal Regulation VI of 1823—Fraud*—It is not imperative

fraudulent, the penalty should be adjudged with reference to the extent of the injury sustained, but not exceed three times the sum advanced Where the breach is fraudulent, the extent of the injury sustained is, without any restriction whatever, the standard for regulating the amount awardable DALEEP SINGH *v* SEITH ROSHUM LALL **1 Agra, 69**

110. ———— *Liquidated*

bigha" *Held* that the stipulation for the payment by the defendant of twelve sicca rupees per bigha, in

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

the breach of that stipulation, although loss to a greater extent may have been sustained. MACRAE *v.* JHOOMUCK MISSER . [Marsh., 386: 2 Hay, 391

111. ———— *Measure of damages.*—In estimating the measure of damages to be paid for breach of contract to cultivate indigo, the period of the breach should be taken as the time for estimating the damages. Generally, the natural and immediate consequence of the breach of contract should alone be looked to, and not some possible remote result. Supposed profits ought not to be given as part of the damages, unless under special and extraordinary circumstances. ZEENUTTUNISSA *v.* TOMBS . . . . . W. R., 1864, 251

112. ———— *Act X of 1836, s. 3.*—When there has been a breach of contract to sow and cultivate indigo, both liquidated damages and the amount advanced to the cultivators cannot be recovered under s. 3, Act X of 1836. MAHOMED KASEM CHOWDHRY *v.* FORBES . 5 W. R., 277

MAHOMED KASEM *v.* FORBES . 8 W. R., 257

113. ———— Suit on breach of contract to cultivate and deliver indigo for recovery of the amount specified in the contract. *Held* that, unless it was clear that the intention of the parties to the agreement was to treat the sum mentioned not as a penalty, but as liquidated damages, behind which the Court should not look, the Court could not award damages beyond the amount of injury actually sustained. DOYLE *v.* MUNDAREE MUNDUL [5 W. R., S. C. C. Ref., 10

HINGUN SOWDAGAR *v.* BOISTUM CHURN OJAH [6 W. R., Cir. Ref., 5

114. ———— *Liquidated damages.*—In a suit to recover damages under a kabuliat, in which defendant had engaged to sow and cultivate indigo, and in case of failure to pay as damages a specified sum for every year,—*Held* that the amount agreed to be paid should be treated as liquidated damages, and not as a penalty. LEDLIE *v.* BHADOO PORAMANICK . . . 11 W. R., 558

115. ———— The sum agreed to be paid by a raiyat as damages for breach of contract in respect to the sowing of certain lands with indigo must be regarded as liquidated damages, and not as a penalty. TALIM MUNDUL *v.* WATSON & Co. [17 W. R., 94

116. ———— *Sum agreed on by parties.*—Where the contracting parties have agreed at what sum the amount of damages for breach of a contract shall be estimated, it is not necessary to prove the amount of loss sustained. PALMER *v.* SECRETARY OF STATE FOR INDIA . 2 Agra, 194

117. ———— **Breach of contract**—*Liquidated damages—Penalty—Pleading.*—Where the parties to a contract stipulate for the payment of a specified sum for any breach of it, and the damages resulting from any such breach are uncertain and incapable of accurate valuation, the sum agreed to be paid will be treated as liquidated damages, and not as penalty. In a suit for breach of contract it is open to the defendant to plead in that suit (without being obliged to bring a fresh suit) that the plaintiff, being the first to break the agreement, cannot now sue for damages for something subsequently done by the defendant in contravention of it. ASHRUFUNISSA BEGUM *v.* STEWART . . . 7 W. R., 303

118. ———— **Breach of contract in selling fish**—*Liquidated damages.*—In a suit for damages on the ground that the defendants, after executing an agreement by which they stipulated to sell fish every day in the plaintiff's bazar, and to pay a fee per diem, and bound themselves to pay damages to a specified extent in the event of their leaving his bazar and resorting to another bazar, had left his bazar where they were selling fish,—*Held* that the sum stipulated to be paid was merely a penalty, and that plaintiff was not entitled to recover as damages anything beyond the damages he had actually sustained. MADHUB CHUNDER ROY *v.* LUCKEE JELANEE . . . . . 9 W. R., 212

119. ———— **Compensation for breach of contract**—*Contract Act, s. 74.*—Where a kobala is not executed within the stipulated date, an intending purchaser is not entitled to compensation under the Contract Act, s. 74, unless he can show that he tendered the purchase-money and the bond, together with a draft of the kobala, to the opposite party, who then refused to execute. FUKEER AHMED *v.* ISSUR CHUNDER DAS . . . 20 W. R., 481

120. ———— *Liquidated damages—Penalty—Measure of damages—Act IX of 1872 (Contract Act), s. 74.*—Under s. 74 of the Contract Act, 1872, the Courts are not bound, even in cases where the parties to a contract have, in anticipation of a breach, expressly determined by agreement what shall be the sum payable as damages for the breach, to award such sum for a breach, but may award for the same "reasonable compensation" not exceeding such sum. As a general principle, compensation must be commensurate with the injury sustained. Acting upon this principle, when the injury consists of a breach of contract, the Court would assess damages with a view of restoring to the injured party such advantages as he might reasonably be expected to have derived from the contract had the breach not occurred. *Held* therefore, where the parties to a contract to deliver a certain quantity of raw indigo on a certain day agreed that a certain sum should be paid as compensation in case such indigo was not delivered as agreed, that the method of assessing damages in case of a breach of the contract would be to ascertain the quantity of indigo which could have been pressed out of the stipulated amount of indigo plant, to ascertain the price at which the indigo might have been fairly sold in the market during the season to which the contract related, and to deduct from such price the ordinary charges of producing and selling the quantity of indigo in question, and that more than the amount so ascertained ought

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

not equitably to be awarded, such amount being "reasonable compensation" for a breach of the contract *Srigopal Pal Chowdhry* v *Bengal Indigo Company, W R, 1864, p 354* is presumably overruled by the cases under the Contract Act, s 74 NAIT RAM v SHIB DAT . I. L. R, 5 All, 238

121. ——————— *Breach of a contract to pay various sums—Agreement to pay enhanced rent in event of breach—Liquidated damages*

rent agreed upon The interest and the rent having fallen into arrears, and a suit having been brought to recover rent at the enhanced rate,—*Held* that plaintiff was entitled to recover the additional amount as liquidated damages BALKURAYA v. SANKAMMA [I. L R, 22 Mad, 453

122 ——————— *Contract Act, ss 73 74—Interest—Agreement to lend money—Damages recoverable by lender for breach of such agreement*—The plaintiff, a money lender, by a written agreement agreed to lend the defendant the sum of R20 000 at 7½ per cent per annum for three years on the security of certain lands From the evidence it appeared that the loan was to have been advanced on the 1st March 1887, and that the plaintiff's attorneys had prepared necessary deeds, which were ready on that day for execution by the defendant The plaintiff had on that day withdrawn R20 000 from his bankers, where it had been lying in deposit, bearing interest at 6 per cent per annum, and his munim took it to the attorney's office for payment to the defendant The defendant, however, did not attend, and on the following day the money was paid in again to the plaintiff s bankers at the same rate of interest as before The defendant failed to take the loan, and the plaintiff sued him for breach of the agreement He claimed as damages interest on the R20 000 at 1½ per cent per annum for the three years for which under the agreement the loan was to be made *Held* that he was not entitled to interest for three years, but only to interest for such period as might reasonably

123 ——————— *Contract which had become impossible to perform—Further and other relief—Damages—Contract Act (IX of 1872), s 56—Novation*—Money having been advanced, a contract was made to secure repayment of it by a usufructuary mortgage, with possession to be given to the lender, of land which, however, had then already been attached under a decree, and had been taken under the Collector's management under s 326 of the Code of Civil Procedure To perform the contract by delivery of possession of the land having thus become impossible, it was *held* that the lender of the money was entitled to compensation, the damages being the amount of the advance, together with interest from the date when, had performance been possible, the land should have been made over to him SETH JAIDAYAL v RAM SAHAE [I. L. R, 17 Calc, 432

124. ——————— *Contract Act*

entered into an agreement by which they bound themselves not to cut down any tree in the forest for the next ten years and in case of any breach committed by anyone of them to pay a penalty of R500 The principal defendant having cut down certain trees in violation of the agreement, the plaintiff brought this suit for the recovery of compensation for the trees so cut down and also his share of R 00, the stipulated penalty for the breach of the agreement The lower

cannot be regarded as a measure for assessing the damages The lower Court should have fixed some reasonable sum, not exceeding R500 the amount stipulated, as would be likely to prevent any future breach *Nait Ram* v *Shib Dat, I L R, 5 All, 238,* distinguished *Brahmaputra Tea Co* v *Scarth, I L R, 11 Calc, 545,* referred to. DILBAR SARKAR v JOYSRI KURMI . 3 C W. N., 43

125 ——————— *Breach of covenant for title—Vendor and purchaser—Mortgagor and mortgagee—Value of prospective profits*—A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction Though in ordinary cases a mortgagee, when deprived of his security, can only recover his mortgage-money as the damages for breach of the covenant for quiet enjoyment, yet, where the mortgage deed contains a covenant on the part of the mortgagor not to pay off the mortgage for a term of years, the mortgagee

SAUBHAGYADAS v AHMEDKHAN [I L R, 21 Bom, 175

126. ——————— *Appropriation by vendor—Passing of property—Power of re sale—Contract Act (IX of 1872), s 107—Changing*

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

shape of claim—Amendment of plaint.—The plaintiffs under several contracts with the defendant produced by manufacture goods answering to the description of the contracts and appropriated them to the several contracts. On notice of the production of the goods being given to the defendant, he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions. The plaintiffs carried out these instructions, but the goods could not be shipped, as the vessels in which they were to be shipped were not available at their usual place. *Held* the ownership in the goods was transferred to the defendant, and the plaintiffs became entitled under s. 107 of the Contract Act, after due notice to resell them on the defendant's refusal to take delivery and to recover as damages the difference between the contract price of the goods and the price at which they were resold. *Semble*—The proper course to be adopted, when it is sought to shape a claim for damages differently from what appears in the plaint, is to amend the plaint and add a claim for damages on the basis of that amendment. Then at the trial evidence may be given in support of the amended statement. But that course ought not to be allowed to be adopted after the plaintiffs have once closed their case and the defendants have been called on to meet the claim as originally framed in the plaint. *Yule & Co.* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* followed. CLIVE JUTE MILLS CO. *v.* EBRAHIM ARAB [I. L. R., 24 Calc., 177

YULE & CO. *v.* MAHOMED HOSSAIN [I. L. R., 24 Calc., 124
1 C. W. N., 71

127. ——— *Measure of damages on breach of contract by purchaser—Power of re-sale—Contract Act (IX of 1872), s. 107—Right of re-sale to be exercised within a reasonable time of the breach of contract—Measure of damages.*—In the case of a sale, if the purchaser does not perform his part of the contract, he is liable in damages to the seller, the measure of damages being the difference between the contract price and the price which the seller could have obtained for the article at the time of the breach of contract. If a vendor, on breach of contract by non-payment of the purchase-money, elects to exercise the right of re-sale given to him by s. 107 of the Indian Contract Act, 1872, not only is the vendor bound to wait a reasonable time after giving notice to the vendee of his intention to re-sell before actually re-selling, but he is also bound to exercise his right of re-sale within a reasonable time after the date of the breach. PRAG NARAIN *v.* MUL CHAND . . I. L. R., 19 All., 535

128. ——— *Principal and agent—Consignment of goods for sale—Unauthorized sale by agent below limit.*—The measure of damages, in a case where an agent has in breach of his duty sold goods of his principal below the limit placed upon them by the principal, is the loss which the principal has sustained, and if he has sustained no loss, he can only ask for nominal damages. MANCHUBHAI NAVALCHAND *v.* TOD [I. L. R., 20 Bom., 633

129. ——— *Sale of unascertained goods—Breach of contract—Power of re-sale—Contract Act (IX of 1872), s. 107.*—The plaintiffs sold to the defendant under an "Indent" contract ten cases of tobacco at an agreed price. On arrival, the defendant refused to pay for and take delivery of the goods, on the ground that they were not the goods contracted for. After notice to the defendant, the plaintiffs re-sold the goods and sued to recover the expenses of the re-sale and the difference between the price realized and the contract price with interest. *Held* that cl. 1 of the Indent Contract gave the plaintiffs a right to re-sell the goods, and sue for the damages mentioned therein. S. 107 of the Contract Act had no bearing on the case. *Yule & Co.* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* dissented from. MOLL SCHUTTE & CO. *v.* LUCHMI CHAND . . . I. L. R., 25 Calc., 505

130. ——— *Breach of contract by purchaser—Re-sale—Contract Act, s. 107.*—The plaintiff sold to the defendant a certain number of cases of embroidered muslin. The defendant took delivery of some of the cases, but refused to take delivery of, or pay for, the rest. The plaintiff re-sold the goods refused by the defendant, and brought a suit against the defendant for damages. *Held* that the proper measure of damages was the difference between the contract price of the goods which the defendant had refused to accept and the price realized by the plaintiff on the re-sale. *Moll Schutte & Co.* v. *Luchmi Chand, I. L. R., 25 Calc., 505,* followed. *Yule & Co* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* dissented from. BASDEO *v.* SMIDT [I. L. R., 22 All., 55

131. ——— *Contract consisting of distinct contracts with separate parties—Misjoinder of parties as defendants—Grant of relief not prayed for—Liquidated rate of damages applicable to certain specified breaches of contract only—Form of decree—Costs.*—Seven salt manufacturers, the defendants, contracted with *A* to manufacture and store in the factory in the name of, and for the benefit of, *A* such quantities of salt as he might require them to manufacture each season for seven years, in consideration of *A*'s paying them at the rate of R11-8-0 per garce of salt, four months' credit after each delivery being allowed to *A*, and of his paying Government taxes and dues, and executing all but petty repairs in the defendants' factory. *B* was a party with *A* to the contract, though he was not expressly mentioned therein. *A* assigned his share in the contract to *C*. *B*, as first plaintiff, and *C*, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1886), and praying (1) that all the defendants be directed to deliver to the plaintiffs the salt collected during 1886 ; (2) that defendants 2, 4,

DAMAGES—*continued*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

contained seven separate and distinct contracts, each defendant having contracted with reference to his

was guilty NAMASIVAYA GURUKKAL *v.* KADIR AMMAL . I. L. R., 17 Mad., 168

132 ——————— *Agreement to discharge a debt due by debtor to a third party—No time fixed for performance—Failure to perform*

been sub let by him to defendant after the mortgage

of nearly three years, whereupon this suit was brought *Held* that the agreement was not a mere contract to indemnify, that defendant was bound to discharge the debt within a reasonable time, and that his failure to do so during three years was a breach of the con

(*b*) TORTS.

133 ——— **Assessment of damages, Practice as to**—In a suit for recovery of damages, the Court which tries the case must, before passing final decree, assess the damages, and not leave them to be assessed in execution of the decree The practice on the original side of the Court as to

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued*

assessing the amount of the damages discussed. MANIRAM *v.* BIBI MASHIHUN 4 B. L. R., Ap., 66

KRISTO MOHUN MOOKERJEE *v.* JUGGURNATH ROY JOOGEE . 11 W. R., 236

BINDA BIBI *v.* LALA RAMSARAN SINGH [1 B. L. R., S. N., 23

BINDA BIBI *v.* LALA RAMSARAN SINGH AND BHENUCK SINGH *v.* JUGGER SINGH 10 W. R., 199

134 ——— **Wrongful act**—*Injury done—Punishment*—In assessing damages caused by a wrongful act, the injury sustained should alone be considered not the punishment to be indicated BULOBHUDDUR SINGH *v.* SOLANO 5 W. R., 107

135. ——— **Nominal damages**—*Obligation of Court to award nominal damages*—*Semble*—When the Court is of opinion that the plaintiff is not entitled to any substantial damages, it is not bound to award him nominal damages FUTEEK PAROOEE *v.* MOHENDER NATH MOZOOMDAR [I. L. R., 1 Calc., 385

136 ——— **Right to damages**—*Establishment of cause of action—Assignment at too* established, His claim y the lower Appellate Court because the first Court assessed the damages at too large a sum PARESNATH SHAHA *v.* BROJOLAL GOSSAIN . 8 W. R., 44

137. ——————— *Plaintiff exaggerating his claim*—A plaintiff who comes into Court with a monstrously exaggerated statement of injury sustained is only rightly served if the Court dismiss his claim *in toto,* although some injury was found to have been sustained by him THAKOOR LULEET NARAIN DEO *v.* JUGGURNATH MISSER [8 W. R., 476

138 ——————— *Plaintiff exaggerating his claim*—A Judge in appeal was held to have done wrong in dismissing a plaintiff's case *in toto* with all costs on the ground that he had monstrously exaggerated his claim in the first instance, when there was a ground, although small, for the plaintiff's contention RAMCHUNDER CHUCKERBUTTY *v.* MARIOTT 15 W. R., 465

139. ——————— *Failure to prove special damage*—Where special damage is the gist of a plaintiff's case, and he fails to prove such damage, he is precluded from recovering ordinary damages WILSON *v.* KANHYA SAHOO [11 W. R., 143

140. ——— **Responsibility of each**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

shape of claim—Amendment of plaint.—The plaintiffs under several contracts with the defendant produced by manufacture goods answering to the description of the contracts and appropriated them to the several contracts. On notice of the production of the goods being given to the defendant, he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions. The plaintiffs carried out these instructions, but the goods could not be shipped, as the vessels in which they were to be shipped were not available at their usual place. *Held* the ownership in the goods was transferred to the defendant, and the plaintiffs became entitled under s. 107 of the Contract Act, after due notice to resell them on the defendant's refusal to take delivery and to recover as damages the difference between the contract price of the goods and the price at which they were resold. *Semble*—The proper course to be adopted, when it is sought to shape a claim for damages differently from what appears in the plaint, is to amend the plaint and add a claim for damages on the basis of that amendment. Then at the trial evidence may be given in support of the amended statement. But that course ought not to be allowed to be adopted after the plaintiffs have once closed their case and the defendants have been called on to meet the claim as originally framed in the plaint. *Yule & Co.* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* followed. CLIVE JUTE MILLS CO. *v.* EBRAHIM ARAB

[I. L. R., 24 Calc., 177

YULE & CO. *v.* MAHOMED HOSSAIN

[I. L. R., 24 Calc., 124
1 C. W. N., 71

127. ——— *Measure of damages on breach of contract by purchaser—Power of re-sale—Contract Act (IX of 1872), s. 107—Right of re-sale to be exercised within a reasonable time of the breach of contract—Measure of damages.*—In the case of a sale, if the purchaser does not perform his part of the contract, he is liable in damages to the seller, the measure of damages being the difference between the contract price and the price which the seller could have obtained for the article at the time of the breach of contract. If a vendor, on breach of contract by non-payment of the purchase-money, elects to exercise the right of re-sale given to him by s. 107 of the Indian Contract Act, 1872, not only is the vendor bound to wait a reasonable time after giving notice to the vendee of his intention to re-sell before actually re-selling, but he is also bound to exercise his right of re-sale within a reasonable time after the date of the breach. PRAG NARAIN *v.* MUL CHAND . . **I. L. R., 19 All., 535**

128. ——— *Principal and agent—Consignment of goods for sale—Unauthorized sale by agent below limit.*—The measure of damages, in a case where an agent has in breach of his duty sold goods of his principal below the limit placed upon them by the principal, is the loss which the principal has sustained, and if he has sustained no loss, he can only ask for nominal damages. MANCHUBHAI NAVALCHAND *v.* TOD

[I. L. R., 20 Bom., 633

129. ——— *Sale of unascertained goods—Breach of contract—Power of re-sale—Contract Act (IX of 1872), s. 107.*—The plaintiffs sold to the defendant under an "Indent" contract ten cases of tobacco at an agreed price. On arrival, the defendant refused to pay for and take delivery of the goods, on the ground that they were not the goods contracted for. After notice to the defendant, the plaintiffs re-sold the goods and sued to recover the expenses of the re-sale and the difference between the price realized and the contract price with interest. *Held* that cl. 1 of the Indent Contract gave the plaintiffs a right to re-sell the goods, and sue for the damages mentioned therein. S. 107 of the Contract Act had no bearing on the case. *Yule & Co.* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* dissented from. MOLL SCHUTTE & CO. *v.* LUCHMI CHAND . . . **I. L. R., 25 Calc., 505**

130. ——— *Breach of contract by purchaser—Re-sale—Contract Act, s. 107.*—The plaintiff sold to the defendant a certain number of cases of embroidered muslin. The defendant took delivery of some of the cases, but refused to take delivery of, or pay for, the rest. The plaintiff re-sold the goods refused by the defendant, and brought a suit against the defendant for damages. *Held* that the proper measure of damages was the difference between the contract price of the goods which the defendant had refused to accept and the price realized by the plaintiff on the re-sale. *Moll Schutte & Co.* v. *Luchmi Chand, I. L. R., 25 Calc., 505,* followed. *Yule & Co* v. *Mahomed Hossain, I. L. R., 24 Calc., 124,* dissented from. BASDEO *v.* SMIDT

[I. L. R., 22 All., 55

131. ——— *Contract consisting of distinct contracts with separate parties—Misjoinder of parties as defendants—Grant of relief not prayed for—Liquidated rate of damages applicable to certain specified breaches of contract only—Form of decree—Costs.*—Seven salt manufacturers, the defendants, contracted with *A* to manufacture and store in the factory in the name of, and for the benefit of, *A* such quantities of salt as he might require them to manufacture each season for seven years, in consideration of *A*'s paying them at the rate of R11-8-0 per garce of salt, four months' credit after each delivery being allowed to *A*, and of his paying Government taxes and dues, and executing all but petty repairs in the defendants' factory. *B* was a party with *A* to the contract, though he was not expressly mentioned therein. *A* assigned his share in the contract to *C*. *B*, as first plaintiff, and *C*, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1886), and praying (1) that all the defendants be directed to deliver to the plaintiffs the salt collected during 1886; (2) that defendants 2, 4,

DAMAGES—*continued*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued*

defendant having contracted with reference to his

distinct contract, should be decided on its own merits, that the decrees of the lower Courts were bad in making all the defendants jointly and severally liable for costs, and for damages for other years than the year 1886, and in not ascertaining the amount of damages payable by each defendant, that the measure of damages was what the plaintiffs had lost by the breach of contract, but that the lower Appellate Court was wrong in applying the rate fixed on this principle to each defendant without ascertaining the particular nature of the breach of which each defendant was guilty NAMASIVAYA GURUKKAL *v* KADIR AMMAL . I. L. R., 17 Mad, 168

132 ——— *Agreement to discharge a debt due by debtor to a third party—No time fixed for performance—Failure to perform within a reasonable time—Cause of action*—Defendant agreed to discharge a debt due by plaintiff to a third party, secured by a mortgage of a village which was held by plaintiff on lease and which had been sub let by him to defendant after the mortgage

of nearly three years, whereupon this suit was brought *Held* that the agreement was not a mere contract to indemnify, that defendant was bound to discharge the debt within a reasonable time, and that his failure to do so during three years was a breach of the con-

(*b*) TORTS.

133 ——— **Assessment of damages, Practice as to**—In a suit for recovery of damages, the Court which tries the case must, before passing final decree, assess the damages, and not leave them to be assessed in execution of the decree The practice on the original side of the Court as to

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued*

assessing the amount of the damages discussed. MANIRAM *v* BIBI MASHIHUN 4 B. L. R, Ap, 66

KRISTO MOHUN MOOKERJEE *v* JUGGURNATH ROY JOOGEE . 11 W. R., 236

BINDA BIBI *v* LALA RAMSARAN SINGH [1 B. L. R., S. N, 23

BINDA BIBI *v*. LALA RAMSARAN SINGH AND BHENUCK SINGH *v*. JUGGER SINGH 10 W. R., 199

134 ——— **Wrongful act**—*Injury done—Punishment*—In assessing damages caused by a wrongful act, the injury sustained should alone be considered not the punishment to be indicated BULOBHUDDUR SINGH *v* SOLANO 5 W. R., 107

135 ——— **Nominal damages**—*Obligation of Court to award nominal damages.—Semble*—When the Court is of opinion that the plaintiff is not entitled to any substantial damages, it is not bound to award him nominal damages FUTEEK PAROOEE *v* MOHENDER NATH MOZOOMDAR [I L R., 1 Calc, 385

136. ——— **Right to damages**—*Establishment of cause of action—Assignment at too large a sum*—Where a cause of action is established, the plaintiff is entitled to some damages His claim ought not to be dismissed altogether by the lower Appellate Court because the first Court assessed the damages at too large a sum PARUSNATH SHAHA *v* BROJOLAL GOSSAIN . 8 W. R., 44

137 ——— *Plaintiff exaggerating his claim*—A plaintiff who comes into Court with a monstrously exaggerated statement of injury sustained is only rightly served if the Court dismiss his claim *in toto*, although some injury was found to have been sustained by him THAKOOR LULEET NARAIN DEO *v* JUGGURNATH MISSER [8 W. R, 476

138 ———

when there was a ground, although small, for the plaintiff's contention RAMCHUNDER CHUCKERBUTTY *v* MARIOTT 15 W. R., 465

139. ——— *Failure to prove special damage*—Where special damage is the gist of a plaintiff's case, and he fails to prove such damage, he is precluded from recovering ordinary damages WILSON *v* KANHYA SAHOO [11 W. R., 143

140. ——— **Responsibility of each**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

damage done by him. Coercion to form a member of the assembly, or bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. GANESH SINGH *v.* RAM RAJA [3 B. L. R., P. C., 44 : 12 W. R., P. C., 38

141. ——— **Mental anxiety**—*Damage arising from tort.*—Damages are not usually awardable under the express head of "mental anxiety," but in all cases in which damage arises from a tort, as distinguished from a breach of contract, the Courts in awarding damages are not compelled to estimate the damage too precisely, but are at liberty to give damages which may effectually protect the injured party from a repetition of the wrong. FUROOKH HOSSEIN *v.* FUZUL HOSSEIN [1 N. W., 209 : Ed. 1873, 292

142. ——— **Abuse and assault**—*Position in life of plaintiff.*—In a suit for damages occasioned by abuse and assault, the plaintiff's position should be considered for the purpose of seeing how far the compensation awarded is commensurate with the injury inflicted, but not for giving a decree against the defendant beyond any possibility of his ever satisfying it, simply because the plaintiff is a man of a somewhat high position in life. JOYPAL ROY *v.* MUKHOOND ROY . . 17 W. R., 280

143. ——— **Assault without provocation.**—In a suit for damages for an assault made without provocation, the damages given should be commensurate to the injury and annoyance caused, even though there has been no serious personal injury sustained. RAMJOY MUZOOMDAR *v.* RUSSELL [W. R., 1864, 370

144. ——— **Injury done by cattle trespassing**—*Striking average.*—Striking an average on the amounts stated by several witnesses is not a proper mode of assessing the amount of damages sustained by the plaintiff in respect of injury done to his crops by the defendant's cattle. SURIUTOLLAH CHOWDHRY *v.* MADUR BUX CHOWDHRY [W. R., 1864, 363

145. ——— **Loss of cultivation by cutting embankment.**—In a suit for damages for loss of cultivation by the cutting of a bank, the plaintiff is entitled not merely to the rent of the land, but also to the profits of cultivation. PUNNUN SINGH *v.* MEHER ALI . . . . W. R., 1864, 365

146. ——— **Defamation**—*Conviction and fine by Criminal Court.*—A Civil Court is not bound to give damages for defamation after the defendant has been convicted and fined for the offence in the Criminal Court where plaintiff has suffered no actual damage. OOMA CHURN *alias* GOPAL CHUNDER ROY MOZOOMDAR *v.* GIRISH CHUNDER BANERJEE [25 W. R., 22

147. ——— **Compensation for land taken by Railway Company under Act VI of 1857**—*Compensation—Probable damages to adjoining lands.*—When land is taken up for a railway company under Act VI of 1857, the owner should claim for all damages likely to be caused to his adjoining lands by the works of the company; and no suit will lie for damages so caused if they could reasonably have been foreseen at the time of the fixing of compensation. Whether such damages could reasonably have been foreseen or not is a question of fact to be determined by the lower Court. TAPIDAS GOBINDBHAI *v.* B., B. AND C. I. RAILWAY COMPANY. B., B. AND C. I. RAILWAY CO. *v.* TAPIDAS GOBINDBHAI . . . 6 Bom., A. C., 116

148. ——— **Malicious prosecution**—*Injury to feelings.*—In estimating damages for a malicious prosecution, a Civil Court is not necessarily wrong in taking into consideration the plaintiff's feelings. HURO LALL BISWAS *v.* HURO CHUNDER ROY [12 W. R., 89

149. ——— *Compensation.*—In a suit for malicious prosecution on a false charge of dacoity, a Civil Court in awarding damages is not limited to the amount mentioned in s. 270 of the Code of Criminal Procedure. SHAMACHURN HALDER *v.* BEHARI LALL KOILAY . . 14 W. R. 443

150. ——— *Injury to feelings—Reimbursement of legitimate expenses.*—In a suit for damages for malicious prosecution, damages are given on two grounds—*first,* on the ground of a solatium for injury to the feelings of the party prosecuted; *secondly,* as a reimbursement for legitimate expenses incurred by him in his defence. Ordinarily speaking, the plaintiff, in a successful action for malicious prosecution, is entitled to recover all costs necessarily incurred by him in his defence in the previous prosecution, but each case must be governed by its own circumstances. *Hicks* v. *Faulkner, L. R., 8 Q. B. D., 167, Mitchell* v. *Jenkins, 5 B. and Ad., 595,* referred to. RAI JUNG BAHADUR *v.* RAI GUDOR SAHOY 1 C. W. N., 537

151. ——— **Wrongful distraint**—*Actual loss.*—In a suit for damages for excessive distress, the Judge awarded to the plaintiff damages equivalent only to the actual loss sustained. *Held* that he had a discretion with respect to the amount of the damages, and that there was no ground for interfering with his assessment. TEEKARAM KYBUTT *v.* RAJKISHEN ROY . . . . Marsh., 495

152. ——— **Wrongful act**—*Suit for possession of property.—Prospective loss.*—Damages should be awarded according to the loss caused to plaintiff by the wrongful act of the defendant; and, where such act renders it probable that plaintiff will be a loser in future time, the award should embrace prospective loss. KOOMAREE DASSEE *v.* BAMA SOONDEREE DASSEE . . . . 10 W. R., 202

153. ——— **Suit for negligence**—*Mode of assessment—Practice—Fresh issues—Civil Procedure Code (Act X of 1877), s. 566.*—In a suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued*

to whichever view the Court may adopt and if the evidence produced is applicable to one view only the Court cannot give the plaintiff a re trial and allow him to remodel his case with fresh evidence under s 566 of the Civil Procedure Code That section is intended to provide for cases where some point has come to light in the Appellate Court which has not been raised or the importance of which has not occurred to the parties or to the Judge in the Court below ANUNDO LALL DASS v BOIKAUNT RAM ROY [I L R., 5 Calc, 283 4 C L R., 473

154. ———— Wrongful conversion—

155 ———————— *Conveyance of timber—Price at place of destination*—In an act on for the wrongful conversion of certain timber the plaintiff claimed to recover as damages the market value of the timber at the town of Rangoon to which it was being conveyed at the time of the conversion *Held* that the cost of carriage to Rangoon from the place where the wrongful conversion occurred must be deducted. BOMBAY BURMAH TRADING CORPORATION v MAHOMED ALLY I L R, 4 Calc., 116

156 ———————— *Moveable property—Non existent moveables—Contract to assign after acquired chattels—Completion of assignment on property coming into existence—Transferee with notice of hypothecation—Suit against transferee for damages for wrongful conversion*—*Held* upon principles of equity that a hypothecation of certain future indigo produce was a valid contract to assign

out notice *Joseph* v *Lyons L R 15 Q B D 280* and *Hallas* v *Robinson L R, 15 Q B D 288* referred to In a suit against such a transferee with notice who had sold the produce for damages for

Misri Lal v *Mozhar Hossain I L R 13 Calc 262* referred to BANSIDHAR v SANT LALL [I.L. R, 10 All., 133

157 ———— Injury to indigo crop—*Gross negligence*—In a suit in which it is proved that defendants maliciously and from gross negligence allowed their cows to trespass on plaintiff's lands and to destroy the indigo plants thereon, knowing the

DAMAGES—*continued*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued*

value of the crops to the plaintiff it was held that the case was one of tort in which the wrong being deliberate and malicious the plaintiff was entitled by way of damages not to the mere value of the growing plants destroyed as the actual loss sustained but to substantial damages sufficient to compensate the plaintiff for the loss of profits which would have been obtained from the indigo plant SREEHUREE ROY v HILL . 9 W R., 156

158 ———— Suit for value of trees cut down—*Person with some claim of right*—Suit for damages in respect of the value of trees cut down by the defendant not as a wrong doer but as one having some claim of right to justify him *Held*

[1 W R., 238

159 ———— Suit for illegal ejectment—*Surety of lessee*—Explanation of the principle of assessing damages in a suit by a surety of the lessee who has afterwards become his partner for damages for illegal ejectment of the lessee before the expiration of the lease BURRODA KANT ROY v PAM TUNNOO BOSE 7 W R, P C, 51

S C BURDAKANTH ROY v ALUK MUNJOOREE DASSIAH . 4 Moore's I A., 321

160 ———— False representation—

161. ———— Actions for compensation

LYELL v GANGA DAI I. L R., 1 All., 60

SORABJI RATANJI v GREAT INDIAN PENINSULA RAILWAY COMPANY 7 Bom, O C, 119 note

RATANBAI v GREAT INDIAN PENINSULA RAILWAY COMPANY 7 Bom., O C., 120 note

And, on appeal RATANBAI v GREAT INDIAN PENINSULA RAILWAY COMPANY 8 Bom, O C, 130

162 ———— Suit against Collector for acting illegally at sale—In a suit against the

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

Collector personally for damages on account of loss sustained by illegally selling to the second highest bidder, the difference between the two bids is the proper measure of the plaintiff's loss, and not the actual or probable value of the estate. CORNELL *v.* OODY TARA CHOWDHRAIN . . 8 W. R., 372

163. ———— **Action of trespass**—*Damage to property by alteration of neighbouring house—Injunction.*—Plaintiff and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The lower Appellate Court found that, in consequence of this alteration, the rain from defendants' house descended upon plaintiff's verandah and caused damage to plaintiff, and decreed that defendants should restore the wall to its former height, and remove the beams placed on it. *Held,* on special appeal, that taking the finding to be that the alteration created "stillicidium," where it did not exist before, or that it rendered more burdensome an existent "servitus stillicidii," it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess; that in the present case the damages should be assessed and awarded, and the injunction to remove the roof of the house and reduce the wall be made conditional upon the defendants not removing the cause of the nuisance. In such a case, the measure of damages is the amount which will induce the defendants to abate the nuisance. AKILANDAMMAL *v.* VENKATA CHALA MUDALI

[6 Mad., 112

164. ———— *Trespass to immoveable property—Quarrying stone without leave.*—Where the defendants without leave quarried on the land of the plaintiff and removed a large quantity of stone therefrom, it was held that the plaintiff was entitled to recover by way of damages the value of the stone after it was quarried, and that the defendants were not entitled to a deduction therefrom of the cost they had incurred in quarrying the stone. DALJIBA ANANDRAV *v.* BOMBAY, BARODA AND CENTRAL INDIA RAILWAY COMPANY . 6 Bom., A. C., 235

165. ———— **Infringement of trade mark**—*Damage caused to plaintiffs by way of enhancement of loss, and not by loss of profit.*—Where the infringement of the plaintiffs' trade mark by the defendants caused a loss of profit to the plaintiffs, not by diminishing the amount of goods sold by the plaintiffs, by taking away their customers or ousting them from their usual market, but by causing the goods actually sold by the plaintiffs to be sold at a diminished price,—*Held* that the defendants were liable for the loss sustained by the plaintiffs; and that the amount of the reduction in the price of the goods sold was the measure of damages. The plaintiffs sued the defendants for the infringement of a trade mark used by the plaintiffs upon bundles of yarn sold by them, and known as "No. 20 red tie" yarn. They alleged that the defendants introduced into the Madras market a quantity of yarn bearing similar marks to those upon the plaintiffs' yarn, but of very inferior quality; and that, in consequence of this action of the defendants, the selling price of the plaintiff's yarn was, during the months of April and May 1885, depreciated beyond the amount of depreciation attributable to the natural fall of market prices in those months; and they contended that such depreciation was the natural and reasonable result of the defendants' wrongful act. The plaintiffs calculated the damages sustained by them at R6,000. It appeared that during the months in question the plaintiffs' mill was not working at a profit, and would have made no profits even if the plaintiffs had obtained for their yarn the ruling market price. The damage, therefore (if any), caused to the plaintiffs by the action of the defendants was not in form of profits, but in the form of enhancement of loss. *Held,* upon the evidence, that the extra fall in the price of the plaintiffs' yarn beyond the general market depression was due, not simply to the introduction of the defendants' yarn into the Madras market, but to its introduction with the trade mark similar to that of the plaintiffs. The Court found that the said wrongful act of the defendants prejudicially affected the sale of the plaintiffs' yarn to the extent of about two annas per bundle; that the damage thus sustained by the plaintiffs was the reasonable and probable result of the defendants' action; and that the plaintiffs were entitled to recover such damage from the defendants. MANOCKJI PETIT MANUFACTURING COMPANY *v.* MAHALAXMI SPINNING AND WEAVING COMPANY

[I. L. R., 10 Bom., 617

166. ———— **Wrongful execution of decree**—*Execution of decree after sale of decree.*—The defendant, being the holder of a decree, whereby a certain sum was declared due as a lien on two mouzahs therein mentioned, sold his decree to the plaintiff in the present suit, who had purchased the proprietary right in the mouzahs subject to the lien. Subsequently the defendant, who retained possession of the decree, sued out execution and realized the amount due under it, together with subsequent interest thereon. *Held* that the [illegible] to recover back the money paid [illegible] deration for the sale, together with damages proportionate to the loss sustained by reason of the subsequent improper execution of the decree, *viz.,* the amount of subsequent interest. GOOR SAHAI *v.* HUR SAHAI . . . . 3 Agra, 202

167. ———— **Wrongful attachment**—*Death of cattle seized.*—In execution of a decree against his judgment-debtor, the defendant caused the cattle of the plaintiff, a stranger, to be seized and taken. The plaintiff filed his claim under s. 246, Act VIII of 1859, which was allowed. Subsequently to the admission of the claim, but before the order for release of the cattle, three of the bullocks died. The plaintiff sued for damages consequent on the seizure of the cattle, and for the value of the three bullocks

DAMAGES—*continued.*

2 MEASURE AND ASSESSMENT OF DAMAGES—*continued*

which had died during the time they were in the custody of the officer of the Court *Held* that the defendant was liable to the plaintiff for damages sustained by him in consequence of the seizure and detention of the cattle,—*i e*, for a sum sufficient to cover what would have been plaintiff's expenses for hiring bullocks to cultivate his land SUBJAN BIBI *v.* SARIATULLA

[3 B. L. R, A. C., 413 : 12 W. R., 329

168. ———— *Liability of execution-creditor in damages for wrongful seizure —Attachment of stranger's property*—Certain unthreshed rice belonging to the plaintiff was wrongfully attached by the defendants under a money-decree obtained by them against a third party. The attachment had been made under a warrant which specified the rice in question, and which had been issued upon a darkhast presented by the defendants, in which they prayed for the attachment of this particular rice as their judgment debtor's property The rice, while in the custody of a bailiff of the Court nazir in the place where it had been attached, was clandestinely threshed and carried off by thieves, who left the straw In a suit brought by the plaintiff to recover the value of the unthreshed rice from the defendants,—*Held* the measure of damages should be the value of the rice as it stood at the time of the wrongful attachment made at the instance of the defendants If, however, the plaintiff accepted the straw left by the thieves, the value of the straw as it stood at the time of such acceptance should be deducted from the value of the straw and rice when unsevered from each other GOMA MAHAD PATIL *v.* GOKALDAS KHIMJI I. L. R., 3 Bom, 74

169. ———— *Loss of timber*

which the Cholam forest was, but not adjoining it

had their crops attached In June 1869 he procured an order from the Deputy Magistrate whereby the Gudalur Sub Magistrate was ordered to attach certain land ... and ... nd an ... case ... who, after holding an enquiry as to possession, passed the order (A), cancellation whereof was prayed in the plaint. The District Judge found that down to the interference of the Magistrate in 1868 plaintiff was in possession as owner, and he further decreed that

DAMAGES—*continued*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued*

defendant should pay plaintiff R14 000 on account of the timber which had been carried off, by whom it did not appear On appeal, the High Court confirmed the decision of the District Judge on the question of title, but reversed it as to the value of the timber carried off, because there was no causal connection between its loss and a wrongful act of the defendant which was needed to justify the award of that sum as damages There was no evidence of the mode of the loss The occasion for it was given by an order of a Magistrate, and the mere preferring of the complaint which gave birth to that order did not render the defendant responsible in the circumstances of the case IRVINE *v.* THACHARAKAVIL MANA VIKRAVEN TIRAMELPAD OF NILAMBUR

[7 Mad., 235

170. ———— **Wrongful detention of property**—The proper measure of damages for wrongful detention of property is the difference between the value of the property when seized and its value when restored NUNDEERAM SINGH *v.* INDERCHUND DOGARE Cor, 89

S C in Court below INDERCHUND DOGARE *v.* NUNDEERAM SINGH . Cor, 3

171. ———— *Interest on value of goods*—In a suit for damages for detention

[18 W. R, 337

172. ———— **Suit for damages for taking and detaining coffee estate and properties and for destruction of crop**—*Profits of estate*—The plaintiff brought a suit against the defendant to recover damages for the wrongful taking and detention by the defendant of a coffee estate and certain moveable property belonging to the plaintiff, and for the loss sustained, partly by

... injury, ... plaintiff ... ming and ... *d* that the defendant should not ... d to pay more than the value of the profits of the estate, and of any property removed from the estate, and compensation for any injury caused to the estate by the acts or neglect of the defendant or his agents. MCIVOR *v.* STAINBANK . 5 Mad., 70

173. ———— **Suit for plundered property**— *Misappropriation — Presumption*—In a

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*concluded.*

suit to recover the value of plundered property, when a question arose as to the amount of the property misappropriated, it was ruled that, unless the defendant produced the property and showed it not to be of the value stated by plaintiff, the strongest presumption should be made against him, and the highest value assumed. SOONDUR MONEE CHOWDHRAIN v. BHOOBUN MOHUN CHOWDRY [11 W. R., 536

3. REMOTENESS OF DAMAGES.

174. ———— Suit for trespass—*Expenses of criminal proceedings—Loss of income.*—The plaintiffs, describing themselves as the agent and gomastah of the hereditary durmakurtah of the Trivellore Pagoda, brought a suit for damages against the defendant, the committee of the district, appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and retention of the property. The plaint stated that the defendants were punished criminally for the trespass by the Magistrate, who, after enquiry under ss. 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were the value of jewels, cash, records, and accounts not restored; the expense incurred by the durmakurtah in the purification of the pagoda; the amount of counsel's and vakil's fees in the criminal proceedings; and the amount of income received by the defendants during their possession during a festival held at the pagoda. *Held* that the plaint was brought by the plaintiff personally, and not on behalf of the plaintiffs by the durmakurtah through his recognized agents; that the plaintiffs were entitled to recover a moderate amount of damages for the wrong done to them in ejecting them from the pagoda; that the expenses incurred in the criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and its natural and necessary consequences; that the amount of income received by the defendants during the festival was a loss sustained by the durmakurtah and not by the plaintiff personally; and that the plaintiff had failed to make out the loss of property alleged. VENKATASA NAIKER v. SRINIVASSA CHARYAR [4 Mad., 410

175. ———— Invasion of right of private ferry—*Damages for trespass to lands.*—In a suit to maintain the old boundaries of a ferry, the plaintiffs did not assert that they enjoyed a right of private ferry which had been invaded by an order of the Magistrate extending the boundaries of a public ferry, but only that they had theretofore, without charging toll, transported, in their own boats, or in boats hired by them, their labourers and cultivators and implements of husbandry; and that, in the exercise of this right, the order of the Magistrate was injurious to them.

DAMAGES—*continued.*

3. REMOTENESS OF DAMAGES—*continued.*

Held that such damage was much too remote to entitle them to relief. *Held* also that the damage done to the plaintiffs by passengers and carriers trespassing on their lands on their way to the ferry was too remote to entitle them to maintain the suit. RAM GOVIND SINGH v. MAGISTRATE OF GHAZEEPORE . . . . . 4 N. W., 146

176. ———— Expected custody of idols—*Uncertain damages—Anticipated profits.*—A claim for damages for being prevented from receiving certain sums which the plaintiffs might have received if they had had the custody of certain idols retained by the defendants was not allowed. RAMESSUR MOOKERJEE v. ISHAN CHUNDER MOOKERJEE . . . . 10 W. R., 457

177. ———— Anticipated profits from turn of worship—*Right of suit—A suit for wasilat in respect of profits derived from a turn of worship, whether maintainable.*—A suit for wasilat, in respect of profits derived from a turn of worship, which are in their nature uncertain and voluntary, is not maintainable. *Ramessur Mookerjee v. Ishan Chunder Mookerjee, 10 W. R., 457,* followed. KASHI CHANDRA CHUCKERBUTTY v. KAILASH CHANDRA BANDOPADHYA [I. L. R., 26 Calc., 356
3 C. W. N., 279

See DINO NATH CHUCKERBUTTY v. PROTAP CHANDRA GOSWAMI . I. L. R., 27 Calc., 30 [4 C. W. N., 79

178. ———— Charter-party—*Unseaworthiness of ship—Expense of renewing bills—Delay—Loss by exchange.*—The plaintiffs chartered a ship of the defendant, and by the charter-party it was stipulated that the said ship, being tight, staunch, and strong, should receive from the plaintiffs a full cargo of rice or grain, and being so loaded should therewith proceed to St. Denis, the freight to be paid there on right delivery of cargo. The penalty for non-performance of the charter-party was to be the estimated amount of freight. The plaintiffs began to load on May 3rd, and continued doing so until June 10th, having then shipped very nearly the full cargo; they then stopped loading in consequence of a notice from the defendant that the ship was leaking. In consequence of the leakage, the cargo had to be shifted, and a portion of it found to be damaged had to be replaced after the leak was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay occurred in consequence of the leak, and the loading was not completed until the end of July. On May 28th, when the plaintiffs had loaded a portion of the cargo and had obtained bills of lading, they drew a bill of exchange at sixty days for the value of the cargo covered by the bills of lading on their agent at St. Denis, which they sold to the Comptoir d' Escompte de Paris, hypothecating the cargo for the amount of their draft. Other similar drafts were subsequently drawn and sold. When the plaintiffs received notice of the leakage, they, in anticipation of the delay which

DAMAGES—*continued.*

3 REMOTENESS OF DAMAGES—*continued*

would occur in consequence, arranged with the Comptoir d' Escompte that the bills should not be forwarded forthwith, but should be held by the Comptoir d' Escompte and renewed by the plaintiffs on the completion of the loading, the plaintiffs paying interest on the bills in the meantime at 9 per cent per annum On renewing the bills, the plaintiffs in consequence of the difference in the rate of exchange, were out of pocket R403 In an action against the owner for breach of the charter party in not supplying a ship tight, staunch, and strong, as stipulated the plaintiffs sought to recover, as damages arising out of such breach of the charter-party, the interest paid by them on the drafts in pursuance of their arrangement with the Comptoir d' Escompte, the sum they had to pay on renewing the bills a further sum for interest on bills they could not negotiate in consequence of not being able to obtain bills of lading from the defendant, and the value of the stamps on the bills which had been cancelled in pursuance of the plaintiffs' arrangement with the Comptoir d' Escompte *Held* that such damages were too remote ROBERT AND CHARRIOL *v* ISAAC . . 6 B. L R, Ap, 20

179 ———— Breach of covenant in not giving lessee possession—*Expenses of litigation for possession* —In a lease for a period of nine years, without payment of salami, entered into between *A* and *B*, *A* bound himself by the following covenant ' In the event of *B* not being put in possession of the leased premises *A* will have to make good anything in the shape of khisara or nuksan (loss) to which *B* may be put in consequence " On *A* failing to put *B* in possession of the premises mentioned in the lease, *B* brought a suit against the party in possession, but failed to recover possession

plaintiff was entitled to recover only nominal damages MAHOMED ISA KHAN *v* KISHO LAL [6 B L R, Ap, 44

180 ———— Suit for damages against lessor, including costs—*Costs of litigation—Cause of action* —In 1883, *A*, the trustee of a certain charity, executed in favour of X and Y an agricultural lease for nine years and delivered over possession of the lands comprised in it, being part of the trust property The lease contained a provision that it should be cancelled on default being made in payment of the rent and kist, and it contained no express covenant for quiet enjoyment In 1867 default was made in payment of the rent and kist *A* thereupon cancelled the lease, and sued X and Y, and obtained a decree for the arrears In a suit by Y for damages

the plaint disclosed a good cause of action against the lessor and that, even if the plaintiff had substantiated his allegations against his lessor, he would not have been entitled to recover the cost of civil and criminal proceedings against the raiyats who had evicted him *Mahomed Isa Khan v Kisto Lal, 6 B L R, Ap, 44* referred to VITHILINGA PADAYACHI *v* VITHILINGA MUDALI [I L R, 15 Mad, 111

181 ———— Loss of profits from non-cultivation—*Magistrate's order as to possession —Disputed possession—Non cultivation—Criminal Procedure Code, 1872 s 531* —A dispute having arisen regarding the possession of certain land, an order was passed under s 531 of the Code of Criminal Procedure forbidding both plaintiff and defendant to interfere with the land until either established his title in a Civil Court The land, in consequence of this order, was not cultivated in the following year The plaintiff sued for damages for the loss of profits resulting from non cultivation of the land *Held* that the damages were not the probable result of the defendant's act, being the consequence of the order of the Magistrate AMMANI AMMAL *v* SELLAYI AMMAL I. L R, 6 Mad, 426

182 ———— Breach of condition in lease—*Speculative damages* —Where it was stipulated in a lease that if the tenant did not cultivate, the landlord might enter and cultivate a portion of the land demised —*Held* that on breach of the condition by the tenant the landlord might be entitled to recover any damage directly consequent on the breach of contract but he was not entitled to claim speculative profits which he might have derived from the most hazardous crops ABDOOL GHUNNEE *v* GOODREE RAI 2 Agra, Pt II, 192

4 RENT SUITS, DAMAGES IN

183 ———— Bengal Rent Act VIII of 1869, s 44—Beng Act VI of 1862, s 2— [illegible] *Court* —The [illegible], Bengal Act [illegible] ot imperative [illegible] Court, in the [illegible] the condition of the parties and the particular hardship inflicted on the landlord by the omission of the undertenant to pay his rents RAMBUDDUN SINGH *v* SREE KOONWAR . W R, 1864, Act X, 23

DHEERAJ MAHTAB CHUND *v* DEBENDER NATH THAKOOR W. R, 1864, Act X, 68

GOPAL LAL THAKOOR *v* MAHOMED KADIR [W R., 1864, Act X, 73

BOLYECHAND DUTT *v* PUNCHANUN CHOBAY [W R, 1864, Act X, 64

JAMEEROODINNISSA KHANUM *v* PHILLIPS [1 W. R, 290

184 ———— Beng Act VI of 1862, s 2—*Additional damages—Interest under s 20, Act XI of 1859—Construction of statute* —Damages under s 2, Bengal Act VI of 1862, were awardable

DAMAGES—*concluded.*

4. RENT SUITS, DAMAGES IN—*concluded.*

in addition only to rent and costs, and were to be regarded as in substitution for, not in addition to, the interest awardable under s. 20, Act XI of 1859. Retrospective effect was not to be given to the penal provision of s. 2, Bengal Act VI of 1862. NOBOKANTH DEY *v.* BORADAKUNTH ROY 1 W. R., 100

185. ———— *Facts justifying award of damages.*—Before awarding damages for arrears of rent under s. 2, Act VI of 1862, the Court should find whether, when the rent was demanded, it was withheld without just reason or not. MOHANUND CHOWDHRY *v.* EGLINTON [1 W. R., 343

186. ———— *Damages when not awardable.*—Damages were not awardable under s. 2, Bengal Act VI of 1862, in a suit for rent in which the plaintiff's allegations as to the rate of rent had been disbelieved and a decree given him at the rates admitted by the defendant. BECKWITH *v.* NOORJUMMA . . . 2 W. R., Act X, 11

187. ———— Bengal Rent Act, 1869, s. 44—*Beng. Act X of 1871, s. 25.*—Tenants are liable in damages for neglect to pay road and public works cesses. SARODA PROSAD GANGOOLY *v.* PROSONNO COOMAR SANDIAL [I. L. R., 8 Calc., 290

188. ———— Withholding receipt on payment of rent—*Act X of 1859, s 10—Injuria sine damno.*—Where money is actually paid as rent and the necessary receipt is withheld, the case is not one of *injuria sine damno*, but one in which the law (s. 10, Act X of 1859) gives the Court discretion to award any sum as damages not exceeding double the amount for which the receipt is withheld. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . . . 13 W. R., 391

DAMDUPAT, RULE OF—

See CASES UNDER HINDU LAW—USURY.

DANCING GIRLS.

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See CASES UNDER EXECUTION OF DECREE.

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

1. ——— Gift by judgment-debtor.—If a judgment-debtor has sufficient other property to satisfy a decree against him, it cannot be said that, in point of law, every gift of any part of his property is void on the ground that the whole was hypothecated for the payment of the decree. KRIPANATH SURMA *v.* NRITOKALEE DABEE . **12 W. R., 137**

2. ——— *Voluntary gift by husband to wife.*—A voluntary gift by a husband to his wife is not void against the husband's creditors if at the time of the gift the husband was solvent, and the wife was put in possession under the gift, especially if the plaintiff became a creditor of the husband long after the gift. ENAET ALI *v.* RAMPREAH KOONWAR . . . . . **1 W. R., 21**

3. ——— *Conveyance by husband to wife in fraud of creditors—Voluntary deed.*—If a man largely indebted executes a conveyance of property to his wife, as in satisfaction of dower, the conveyance is void as against his creditors, if executed for the fraudulent purpose of keeping the property in his own hands out of the reach of the creditors. So also a conveyance by a man in such circumstances to his wife is fraudulent and void if no dower is due, and the conveyance is voluntary, and not made in satisfaction of any debt due to him. MAHOMED BUSSEEROOLLAH CHOWDHRY *v.* ABEMOONISSA . . . . . . **7 W. R., 513**

4. ——— *Voluntary transfer—Boná fide gift—Gift not to defraud creditors.*—A voluntary transfer of property by way of gift if made *boná fide,* and not with the intention of defrauding creditors, is valid as against creditors. The Hindu and English law on the subject discussed. GANUBHAI *v.* SRINIVASA PILLAI . **4 Mad., 84**

5. ——— Transfer of property by judgment-debtor.—It is not illegal for a judgment-debtor to dispose of all his property before attachment, provided the transaction is an actual conveyance and not merely nominal. DIGUMBUREE DASSEE *v.* BANEY MADHUB GHOSE . **15 W. R., 155**

CHUNDER MADHUB DOSS *v.* AMEER ALI [**25 W. R., 119**

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6. ——— *Sale made pending suit against vendors for debt—Sale to prevent land being taken in execution.*—A sale made of immoveable property pending a suit against the vendors to recover a debt is valid, although the motive of the vendors may have been to prevent the land being attached and sold in execution. PULLEN CHETTY *v.* RAMALINGA CHETTY . . . **5 Mad., 368**

7. ——— *Fraudulent assignment—Suit by creditor to set aside transfer.*—When a person being in debt transfers his property, with a view to defeat and defraud any of his creditors, any creditor, after he has established his right as

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a judgment-creditor, may maintain a suit to set aside the alienation, notwithstanding that the transfer was made before he sued for his debt, or that the debt was unsecured. SUJUN KOONWER *v.* PIRBHOO LALL [**2 Agra, Pt. II, 211**

8. ——— *Assignment in fraud of creditors—Possession of property sold remaining in vendor.*—Where a person purchases for one who is in failing circumstances and has decrees against him in execution, and allows the vendor (being his relative) to remain in possession of the goods sold, as well as the profits thereof, he may perhaps purchase in good faith; but the Courts are not justified in declaring the validity of such a transfer without there being the clearest proof that the purchaser has bought, and paid the consideration, and some sufficient explanation of the apparently suspicious circumstances attending the purchase. KALLYAN *v.* DOULUTA . . . . **1 Agra, 79**

9. ——— Deed, Execution of, by judgment-debtor—*Deed executed in fraud of creditors.*—Where a mortgagor executes a deed of sale for the purpose of defrauding and defeating his creditors, it is void against any of the creditors who may obtain a decree against him, although the deed may have been executed before execution was taken out on the decree. RADHA MOHUN DUTT *v.* BISSESSUR BUNDOPADHAYA . . . . **6 W. R., 90**

10. ——— Deed executed by judgment-debtor—*Assignment to defeat creditors—Consideration—Validity of transaction for valuable consideration defeating execution.*—Plaintiffs sued for certain lands under an agreement executed to their elder brother, *S*, by defendants in the following terms: "You have this day received a loan of R1,345-4-4 from *D* and from me, *B*, for the purpose of remitting to the Court, in satisfaction of the warrant amount, in the matter of the suit No. 26 of 1835 on the file of the Provincial Court between your father, the late *U*, appellant, and *M*, respondent. You have, owing to the encumbrances consequent on a few more suits against you, caused all the property which you own in Vegayammapetta to be attached for the said (warrant) amount, and caused six puttis of land, houses, back-yards, and certain moveable property out of the same, to be knocked down in auction in our names and some other personal property in the names of others; and have therefore proposed to us to execute a kararnama (to you) engaging (ourselves) to carry and pay the above-mentioned (R1,345-4-4) into the Court; to obtain receipts for the amount and certificates in our names for the real property; to allow the tiled house, back-yard having fruit trees and moveable property, to be held by you as hitherto; *V* and myself, *B*, to enjoy the produce of the six puttis of land for twenty years from Saruari to Sittadhri, on account of the said loan and interest thereon; and to restore the land, together with the certificates (to be) issued by the Court in our names. We have accordingly agreed to your proposal," etc. The Principal Sudder Ameen considered that the agreement was invalid on the ground that it appeared to have been executed with a view to defraud

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creditors of *S* *Held* on appeal that the real nature of the transaction was that *S* borrowed money from defendants to enable him to buy in his own land that defendants purchased only for and on behalf of *S* taking from him an assignment of part of the property for twenty years in order to repay themselves the money lent, that there was, therefore abundant consideration for the defendants' promise to give up possession at the end of twenty years *Held* also following the English law, that where there is a real transaction between the parties for valuable consideration whether it be by way of sale or mortgage the transaction is valid even as against a creditor though the object may have been to defeat an expected execution SANKARAPPA *v* KAMAYYA [3 Mad , 231

11 ——————— *Assignment of property by debtor—Stat 13 Eliz c 5*—An assignment made *bonâ fide* and for valuable consideration before execution put in, and without notice of claim of execution creditor, held not to be void under the Stat 13 Eliz, c 5 TARRUCKNATH PAULIT *v* GLADSTONE 1 Hyde, 178

12 ——————— *Voluntary as*

13 ——————— Assignments set aside as not being *bonâ fide* BHAWAN LAL *v* AKEEDUN . 1 W R., 319

JOTENDRO MOHUN TAGORE *v* BROJOSOONDUREE DABEE . 1 W R., 462

14 ——————— *Fraudulent assignment—Action of trespass—Want of possession—Stat 13 Eliz c 5*—In an action of trespass

shortly before such conveyance was the owner of the same —*Held* that the plaintiff was not entitled to recover The doctrine of a fraudulent conveyance being void as against creditors held to be a principle of Hindu as it is of English law SHAM KISSORE SHAW *v* COWIE 2 Ind Jur, O S, 7

15 ——————— *Fraudulent assignment—Stat 13 Eliz c 5—Hibba—Equity and good conscience*—Whether or not the Stat 13

common law for avoiding fraudulent conveyances have received effect in the Indian Courts, and have properly guided the decisions of the Courts in administering law according to justice, equity, and good conscience A hibba having been found on the evidence to have been made not *bonâ fide*, nor on any good consideration and by it creditors being delayed in their just rights the maker having intended to protect his property thereby from those who at the time were his creditors —*Held* that the hibba was void according to equity and good conscience ABDUL HYE *v* MAHOMED MOZAFFAR HOSSEIN [I L R, 10 Calc, 616 L R, 11 I A, 10

16 ——————— *Fraudulent preference—Stat 13 Eliz c 5—Transfer of property by insolvent in consideration of debt barred by limitation—Fraud—Conveyance in trust for payment of creditors—Hindu widow Duty of, to pay husband's creditors equally—Purchaser from Hindu widow—Contract Act (IX of 1872)*

property by a person in insolvent circumstances and known to be so by the disponee will be set aside if impeached by creditors except where the transferee has simply pressed a valid claim or made a purchase in good faith The plaintiff *G* obtained a decree against *M* on the 30th September 1878 *M* died in April 1879 leaving *A* a childless widow, him surviving At his death *M* was in insolvent circumstances On the 7th June 1879, *A* conveyed by a deed of sale (exhibit 98) the whole of his property consisting of a house and a garden to the defendants who were his separated brothers in consideration of two time-barred debts due to them by her deceased husband At the same time she executed in their favour a rent note (exhibit 99) by which she agreed to pay them a nominal rent for her occupation of the house but no rent was ever claimed or paid On the same day the defendants passed an agreement in writing (exhibit No 114) to the widow by which they undertook to settle the claims

evidence that it did not form any part of the consideration for the sale deed (exhibit 98) In 1881 the plaintiff *G*, in execution of his decree against *M*, attached the house conveyed by the sale deed. The attachment was raised at the instance of the defendants who claimed the house under the sale-deed (exhibit 98) Thereupon the plaintiff *G* brought the present suit to establish his right to attach and sell the house as the property of his judgment debtor *M*, in execution of his decree The defendants relied upon the deed of sale executed by the widow (exhibit 98) *Held* that the alleged sale to the defendants (exhibit 98) was not a real transaction supported by good consideration and must be set aside in so far as it interfered with the execution of the plaintiff's decree The transferees were not purchasers for money, or even creditors diligent in pressing an enforceable right They were members of the vendor's family and the consideration they gave consisted of old and barred claims that could not be enforced Payment of such debts by a transfer of the insolvent's whole estate, to the disappointment of creditors whose claims were not barred was in itself a fraud Being made to near relatives

DEBTOR AND CREDITOR—*continued.*

acquainted with the facts, it would not be regarded as a real and practical transaction. *Held* also that the character of the transaction was not altered by the agreement (exhibit 114) of the defendants to settle the claims of *M*'s creditors. That agreement was not communicated to the creditors, and it could be suppressed at any moment by the concurrence of the parties to it. If that agreement was independent of the conveyance (exhibit 98) of the property to the defendants, the latter had no consideration to support it, except, merely the moral consideration to pay a barred debt, which could not prevail against the obligation to satisfy a decree about to be executed. If, on the other hand, the agreement (exhibit 114) was connected with the conveyance (exhibit 98), the exclusion of its terms from that document and the secrecy observed about it stamped the transaction with fraud, whether the transfer was real or only fraudulent. There was no honest trust for distribution which could defeat the plaintiff's execution. *M* might have preferred one creditor to another having an equal right, and the fact that the creditor was his brother did not make such a preference improper. But although *M* might have preferred one creditor to another, his widow could not do so. She took her husband's estate as an aggregate, assets and debts together. She was in some degree a trustee and at any rate under a legal obligation to pay her deceased husband's debts, and to pay them as far as she could equally. She was not at liberty to deal capriciously with the estate, which she could alienate at all only for special purposes indicated by the law. She ought not, in performing the duty cast upon her, to prefer one valid claim to another, as her husband might have done. This advantage a creditor might have obtained from her husband by his diligence, but on her no pressure could be exercised except through the estate which she was bound, pressure or no pressure, to distribute among the creditors. A purchaser from a Hindu widow must see that she exercised her power of sale strictly, or at least satisfy himself that a sufficient cause for alienation exists. If the defendants told the widow that the claims, in consideration of which she made the conveyance to them, were barred by limitation, then clearly she had joined with them in a scheme for depriving the judgment-creditors of their due. If they did not tell her, they deceived her by their silence when, as near relatives getting an advantage, they were bound, in dealing with an ignorant woman, to put her in possession of all the material facts. Contract Act (IX of 1872), ss. 15 and 17. RANGILBHAI KALYANDAS *v.* VINAYAK VISHNU

[I. L. R., 11 Bom., 666

17. ——————— *Fraudulent conveyance—Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud.*—In June 1875, *A*, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. *B*, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale, the first defendant, by means of false representation, became the purchaser at an inadequate price. In July 1879, *A* applied to have the sale set aside, on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B*'s decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiffs' claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by *A* when he was in pecuniary difficulties, and included all *A*'s property. It was, therefore, void as against his then existing creditors, of whom *B* was one. *B* was, therefore, entitled to sell the property in execution of his decree. HORMUSJI *v.* COWASJI

[I. L. R., 13 Bom., 297

18. ——————— *Sale to creditor for old debt and new advance on debtor's bankruptcy—Intent to delay and defeat creditors—Bonâ fides of purchaser—Fraudulent preference—Stat. 13 Eliz., c. 5.*—On the 27th February 1886, the firm of Ranchhod Jamna, a family firm, was on the point of failing, being heavily indebted. On that day, the managing member of the firm executed four sale-deeds, comprising all the property of the firm, in favour of four different creditors of the firm, of whom the plaintiff was one. The deed executed in favour of the plaintiff was in consideration of a then existing long-standing debt and a fresh advance of R3,400 made by him to the firm. The next day the firm stopped payment. The defendant was one of the creditors of the firm, and sought to attach and sell the property conveyed to the plaintiff in execution of a decree which the defendant had obtained against the firm. The plaintiff's objection to the attachment by the defendant having been disallowed, he brought the present suit against the defendant, to establish his right to the property attached under his sale-deed. The defendant contended (*inter alia*) that the sale to the plaintiff, having been effected in order to delay and defeat the creditors and to give undue preference to the plaintiff, was void. *Held* on the evidence that the sale to the plaintiff was, on the part of the plaintiff at least, a *bonâ fide* sale in consideration of a debt still due, and for payment of which the plaintiff had been pressing, and R3,400 in cash; and that there were no circumstances in the case which showed that the plaintiff in entering into it was a party to any scheme to delay the general body of the creditors. That being the case, the sale was not impeachable at the instance of the defendant; although, having regard to the fact of its having been negotiated on the eve of the failure of the firm, it might possibly be regarded as a sale by which the plaintiff obtained an unfair preference, and as such perhaps be impeachable at the suit of the whole body of creditors. *In re Johnson: Golden* v. *Gillam, L. R., 20 Ch. D., 389*, referred to and followed. MOTILAL RAVICHAND *v.* UTAM JAGJIVANDAS

[I. L. R., 13 Bom., 434

DEBTOR AND CREDITOR—*continued*

deed it being understood that all the creditors should refrain from suing the fir until the expiration of a certain period. Notwithstanding this two creditors named in the deed immediately sued for their debts and obtained decrees Other creditors named in the deed afterwards bringing the present suit to enforce their rights under the mortgage it appeared that the intention and agreement was that the deed should not take effect unless all the creditors came in and were bound by it *Held* that the suits above mentioned having been brought before the expiration of the period agreed upon the consideration for the mortgage had failed, and the creditors could not sue the firm on the mortgage deed AJUDHIA PRASAD *v* SIDH GOPAL I L R., 9 All., 330

20 ———— *Time fixed for payment of debt—Intention of parties* The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. BHAGWAT DAS *v* PARSHAD SINGH [I L R, 10 All, 602

21. ———— **Debtor giving priority to one creditor before attachment.**—A debtor may prior to attachment, give priority to one creditor over another, notwithstanding judgment may have been obtained against him. DOORGA TEWAREE *v* NAIPAL AHEER 2 N W, 224

[I N W, 23 · Ed 1873, 21

23 ———— **Deposit with creditor by debtor when in insolvent circumstances to protect his property**—*Sale in execution under decree by creditor—Purchaser, Right of*—A member of a firm of native bankers which had become insolvent with a view to protect his property from the general body of his creditors in March 1870 deposited property to the value of R30 000 with the appellants another firm of bankers to whom he owed R1 500 In April 1871, the appellants brought an action against him for R500 the balance of that debt and obtained a decree in execution of which the property was put up for sale and purchased by the respondent *Held* by the Privy Council (affirming the decision of the High Court of the North Western Provinces) that the respondent was entitled to the property DWARKA DASS *v* RAI SITA RAM 5 C L R., 430

24 ———— Equitable assignment ...

DEBTOR AND CREDITOR—*continued*

prior assignment but in respect to prior assignments stands in no better position than his judgment debtor An assignment prior to attachment that is good against the judgment debtor is also as a general rule, good against his attaching creditor Notice to the holder of funds is not necessary to complete as against the assignor an equitable assignment of such funds In August 1 70 *R J* signed and gave to *F S & Co* a letter addressed to *E L & Co* by which he "requested them to pay over to *F S & Co* any surplus proceeds of his consignment of one hundred bales per *Aurora* after recovery from the underwriters of the amount due under a policy of insurance" (which had been effected on the hundred bales) after making certain deductions This letter was given to *F S & Co* in consideration of a pre existing debt On the 8th of August 1870 *F S & Co* sent the letter to *E L & Co* with a request that they should act upon it The surplus proceeds of the insurance of the one hundred bales reached *E L & Co* on the 26th of June 1871, and were attached in their hands by a judgment creditor of *R J* before they were paid over to *F S & Co* *Held* that *R J* had validly assigned the surplus proceeds of

MEGJI HANSRAJ *v* RAMJI JOITA [8 Bom, O C, 169

the 7th April 1869 *T* obtained a money-decree against *D*, and on the 3rd July 1869 attached the lands as belonging to *D* *Held* that if the razinama were a real transaction made for a valuable consideration although entered into with the intention of defeating the execution of the money decree, the title of plaintiff under that razinama would prevail A sale or mortgage, if real, though made for the purpose of defeating an intended or probable execution, is valid against the execution creditor But if it be only a colourable transaction not intended to confer upon the vendee or mortgagee any beneficial

TILLAKCHAND HINDUMAL *v* JITAMAL SUDARAM [10 Bom, 206

26 ———— **Fraudulent transfer**—*Burden of proof—Mahomedan law—Sale of immoveable property by Mahomedan in satisfaction of wife's dower—Consideration—Deferred debt*—A genuine sale made for good and valid consideration to one creditor, even if effected to delay and defeat another, apart from cases in which either insolvency

DEBTOR AND CREDITOR—*continued.*

acquainted with the facts, it would not be regarded as a real and practical transaction. *Held* also that the character of the transaction was not altered by the agreement (exhibit 114) of the defendants to settle the claims of *M*'s creditors. That agreement was not communicated to the creditors, and it could be suppressed at any moment by the concurrence of the parties to it. If that agreement was independent of the conveyance (exhibit 98) of the property to the defendants, the latter had no consideration to support it, except merely the moral consideration to pay a barred debt, which could not prevail against the obligation to satisfy a decree about to be executed. If, on the other hand, the agreement (exhibit 114) was connected with the conveyance (exhibit 98), the exclusion of its terms from that document and the secrecy observed about it stamped the transaction with fraud, whether the transfer was real or only fraudulent. There was no honest trust for distribution which could defeat the plaintiff's execution. *M* might have preferred one creditor to another having an equal right, and the fact that the creditor was his brother did not make such a preference improper. But although *M* might have preferred one creditor to another, his widow could not do so. She took her husband's estate as an aggregate, assets and debts together. She was in some degree a trustee and at any rate under a legal obligation to pay her deceased husband's debts, and to pay them as far as she could equally. She was not at liberty to deal capriciously with the estate, which she could alienate at all only for special purposes indicated by the law. She ought not, in performing the duty cast upon her, to prefer one valid claim to another, as her husband might have done. This advantage a creditor might have obtained from her husband by his diligence, but on her no pressure could be exercised except through the estate which she was bound, pressure or no pressure, to distribute among the creditors. A purchaser from a Hindu widow must see that she exercised her power of sale strictly, or at least satisfy himself that a sufficient cause for alienation exists. If the defendants told the widow that the claims, in consideration of which she made the conveyance to them, were barred by limitation, then clearly she had joined with them in a scheme for depriving the judgment-creditors of their due. If they did not tell her, they deceived her by their silence when, as near relatives getting an advantage, they were bound, in dealing with an ignorant woman, to put her in possession of all the material facts. Contract Act (IX of 1872), ss. 15 and 17. RANGILBHAI KALYANDAS *v.* VINAYAK VISHNU

[I. L. R., 11 Bom., 666

17. ——————— *Fraudulent conveyance—Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud.*—In June 1875, *A*, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. *B*, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale, the first defendant, by means of false representation, became the purchaser at an inadequate price. In July 1879, *A* applied to have the sale set aside, on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B*'s decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiffs' claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by *A* when he was in pecuniary difficulties, and included all *A*'s property. It was, therefore, void as against his then existing creditors, of whom *B* was one. *B* was, therefore, entitled to sell the property in execution of his decree. HORMUSJI *v.* COWASJI

[I. L. R., 13 Bom., 297

18. ——————— *Sale to creditor for old debt and new advance on debtor's bankruptcy—Intent to delay and defeat creditors—Boná fide of purchaser—Fraudulent preference—Stat. 13 Eliz., c. 5.*—On the 27th February 1886, the firm of Ranchhod Jamna, a family firm, was on the point of failing, being heavily indebted. On that day, the managing member of the firm executed four sale-deeds, comprising all the property of the firm, in favour of four different creditors of the firm, of whom the plaintiff was one. The deed executed in favour of the plaintiff was in consideration of a then existing long-standing debt and a fresh advance of R3,400 made by him to the firm. The next day the firm stopped payment. The defendant was one of the creditors of the firm, and sought to attach and sell the property conveyed to the plaintiff in execution of a decree which the defendant had obtained against the firm. The plaintiff's objection to the attachment by the defendant having been disallowed, he brought the present suit against the defendant, to establish his right to the property attached under his sale-deed. The defendant contended (*inter alia*) that the sale to the plaintiff, having been effected in order to delay and defeat the creditors and to give undue preference to the plaintiff, was void. *Held* on the evidence that the sale to the plaintiff was, on the part of the plaintiff at least, a *boná fide* sale in consideration of a debt still due, and for payment of which the plaintiff had been pressing, and R3,400 in cash; and that there were no circumstances in the case which showed that the plaintiff in entering into it was a party to any scheme to delay the general body of the creditors. That being the case, the sale was not impeachable at the instance of the defendant; although, having regard to the fact of its having been negotiated on the eve of the failure of the firm, it might possibly be regarded as a sale by which the plaintiff obtained an unfair preference, and as such perhaps be impeachable at the suit of the whole body of creditors. *In re Johnson : Goden* v. *Gillam, L. R., 20 Ch. D., 389*, referred to and followed. MOTILAL RAVICHAND *v.* UTAM JAGJIVANDAS

[I. L. R., 13 Bom., 434

DEBTOR AND CREDITOR—*continued*

19. ——— *Arrangement*

tors named in the deed immediately sued for their debts, and obtained decrees Other creditors named in the deed afterwards bringing the present suit to enforce their rights under the mortgage, it appeared that the intention and agreement was that the deed should not take effect, unless all the creditors came in and were bound by it *Held* that, the suits above mentioned having been brought before the expiration of the period agreed upon, the consideration for the mortgage had failed, and the creditors could not sue the firm on the mortgage-deed AJUDHIA PRASAD *v* SIDH GOPAL . I. L. R., 9 All, 330

20. ——— *Time fixed for payment of debt—Intention of parties* The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. BHAGWAT DAS *v* PARSHAD SINGH [I. L. R., 10 All, 602

21. ——— **Debtor giving priority to one creditor before attachment**—A debtor may, prior to attachment, give priority to one creditor over another, notwithstanding judgment may have been obtained against him DOORGA TEWAREE *v* NAIPAL AHEER . . 2 N. W., 224

22.

among his creditors, are not in force in these provinces BULDEO DASS *v* NOONNA LALL [1 N. W., 23: Ed. 1873, 21

23. ——— **Deposit with creditor by debtor when in insolvent circumstances to protect his property**—*Sale in execution under decree by creditor—Purchaser, Right of*—A member of a firm of native bankers which had become insolvent, with a view to protect his property from the general body of his creditors, in March 1870, deposited property to the value of R30 000 with the appellants, another firm of bankers, to whom he owed R1,500 In April 1871, the appellants brought an action against him for R500 the balance of that debt, and obtained a decree, in execution of which the property was put up for sale and purchased by the respondent *Held* by the Privy Council (affirming the decision of the High Court of the North-Western Provinces) that the respondent was entitled to the property DWARKA DASS *v* RAI SITA RAM . . 5 C. L. R., 430

24. ——— **Equitable assignment prior** to attachment

DEBTOR AND CREDITOR—*continued*

prior assignment, but in respect to prior assignments stands in no better position than his judgment-debtor. An assignment prior to attachment that is good *against the judgment debtor is also, as a general rule*, good against his attaching creditor Notice to the holder of funds is not necessary to complete, as against the assignor, an equitable assignment of such funds In August 1870 *R J* signed and gave to *F S & Co* a letter addressed to *E L & Co*., by which he "requested them to pay over to *F S & Co* any surplus proceeds of his consignment of one hundred bales per *Aurora*, after recovery from the underwriters of the amount due under a policy of insurance" (which had been effected on the hundred bales), after making certain deductions This letter was given to *F S & Co* in consideration of a pre-existing debt On the 8th of August 1870, *F S & Co* sent the letter to *E L & Co* with a request that they should act upon it The surplus proceeds of the insurance of the one hundred bales reached *F L & Co* on the 26th of June 1871, and were attached in their hands by a judgment-creditor of *R J* before they were paid over to *F S & Co* *Held* that *R J* had validly assigned the surplus proceeds of the hundred bales to *F S & Co* and that such assignment was valid as against subsequent attaching creditors *Semble*—That an attachment upon such surplus proceeds before they reached the hands of *E L & Co* from the underwriters, would have been invalid MEGJI HANSRAJ *v* RAMJI JOITA [8 Bom., O. C., 169

25.

the 7th April 1869, *T* obtained a money-decree against *D*, and on the 3rd July 1869 attached the lands as belonging to *D* *Held* that, if the razinama were a real transaction made for a valuable consideration, although entered into with the intention of defeating the execution of the money-decree, the title of plaintiff under that razinama would prevail. A sale or mortgage, if real, though made for the purpose of defeating an intended or probable execution, is valid against the execution-creditor But if it be only a colourable transaction, not intended to confer upon the vendee or mortgagee any beneficial

TILLAKCHAND HINDUMAL *v* JITAMAL SUDARAM [10 Bom., 206

26. ——— **Fraudulent transfer**—*Burden of proof—Mahomedan law—Sale of immoveable property by Mahomedan in satisfaction of wife's dower—Consideration—Deferred debt*—A genuine sale made for good and valid consideration to one creditor, even if effected to delay and defeat another, apart from cases in which either insolvency

DEBTOR AND CREDITOR—*continued.*

or bankruptcy is involved, is not void. If a man owes another a real debt, and in satisfaction thereof sells to his creditor an equivalent portion of his property, transferring it to the vendee, and thereby extinguishing the debt, the transaction cannot be assailed, though the effect of it is to give the selected creditor a preference. *Wood* v. *Dixie*, 7 *Q. B.*, 892, *Chowne* v. *Baylis*, 31 *L. J. Ch.*, 757, and the authorities collected in the notes to *Twyne's case*, 1 *Smith's L. C.*, 12, referred to. Pending a suit for recovery of a debt, the defendant, who was a Mahomedan, executed a deed of sale, dated in June 1882, of a four-annas zamindari share in favour of his wife, the consideration recited therein being the amount of the vendee's deferred dower-debt. Subsequently the creditor obtained a simple money-decree against the defendant, and in execution thereof attached the four-annas share. The vendee objected to the attachment on the basis of her sale-deed, but her objection was disallowed on the ground that the instrument was collusive. She thereupon brought a suit against the judgment-creditor for a declaration of her right, and to set aside the attachment order. *Held* that, if there was in fact a subsisting debt due for dower from the husband to the wife, and he transferred and she accepted the four-annas share in satisfaction of it, the transaction was a perfectly legitimate one, and no Court had any power to disturb it. It was for the defendant, the judgment-creditor, to establish either that the deferred dower-debt did not constitute such a present consideration as would support the sale, or that the transaction was merely colourable and a fictitious one, which was never intended to have operation or effect, either as a transfer of the property or an extinguishment of the dower-debt; and that, despite what appeared in the sale-deed, the parties remained in precisely the same position as before it was executed,—the four-annas still remaining the property of the vendor, and as such liable to the attachment. *Held*, applying the general principles of the Mahomedan law as to deferred debts, that there was good consideration for the sale of June 1882, and that, in the absence of proof of fraud of the kind above indicated, the vendee was entitled to maintain it, and to succeed in the suit. SUBA BIBI *v.* BALGOBIND DASS

[I. L. R., 8 All., 178

27. ——— **Assignment in fraud of creditors**—*Deed of trust—Voluntary conveyance.*—*A* by a deed of trust charged real estate to secure, among other things, a debt alleged to be due by him to his grandfather's estate on account of sums received by him from a debtor to that estate. *A* at that time was in a state of indebtedness which occasioned his afterwards becoming an insolvent. Such deed in the circumstances held, so far as related to *A*'s alleged debt, fraudulent and void as against his creditors. TAREENY CHURN BONNERJEE *v.* MAITLAND . . . . 11 Moore's I. A., 317

28. ——— **Assignment to trustees for benefit of creditors**—*Power of insolvent debtor—Insolvency—Retirement of trustees.*—*P*, a trader in insolvent circumstances, on the 1st December 1866, executed two deeds conveying his moveable and immoveable property to trustees to hold on certain trusts in favour of such of his creditors as should assent to the said deeds within three calendar months. The deeds contained powers directing the trustees, after dividing the trust-moneys rateably among the assenting creditors, to pay "the residue, if any, after answering the several purposes aforesaid and also the debts or dividends upon the debts of all such creditors as shall decline to come in and execute or assent" to the said *P*; powers authorizing them to return to the debtor or permit him to retain such part of his household furniture, linen, and china as they might think fit; and powers authorizing them to carry on the debtor's business and employ him therein and in winding up his affairs. *Held* in the lower Court (TREVOR, *J.*) that an insolvent debtor in the mofussil may assign all his property to trustees for the benefit of the creditors who may assent to the conditions of the assignment; and such an assignment will be valid, although it may operate to defeat an expected execution, if it be the intention of the assignor to confer on the assenting creditors a substantial interest in the property assigned, and not merely to defeat or hinder a judgment-creditor. Such an assignment may be made to trustees, but it is not requisite that it should be made to trustees; and it is not requisite that it should be made directly to the assenting creditors. It will confer on the trustees a title to the property assigned superior to that of a judgment-creditor, who has obtained an order for attachment subsequently to the assignment. It is not invalid if made subject to a condition requiring assenting creditors to execute a release of the debtor, nor is it invalid if it declares a resulting trust in favour of the debtor; but *semble*—that the Court might order such resulting trust to be executed for the benefit of judgment-creditors who decline to assent to the assignment. Nor is it invalid if it empowers the trustees to permit the debtor to retain such portion of his furniture, linen, etc., as they may think fit; but this power should be exercised [illegible] the other assets are insufficient to discharge [illegible]ary objects of the trust. Nor is it invalid if [illegible]ain a power for the trustees to continue the [illegible]ess, if the power so given is ancillary to winding up the business and realizing the assets of the estate; nor is it invalid if executed only by a minority of the creditors. Nor can it be invalidated by subsequent negligence on the part of trustees. The question as to the intention of the debtor in executing such an assignment is a question of fact rather than of law; and in determining this question the conditions and trust subject to which the assignment is made may be considered. *Held* on appeal (*per* ROBERTS and PEARSON, *JJ.*, MORGAN, *C.J.*, dissenting) that the deeds were good deeds. A trader in the mofussil in failing circumstances may, in the absence of any statutory provision and of a bankrupt law, make a valid assignment of his property, before liens have attached upon it, or afterwards subject to such liens, to trustees simply for the purpose of having it distributed fairly among all his creditors, although it may defeat particular decree-holders and deprive them of their execution. *Semble*—Such a trust does not become inoperative by reason of the retirement of two out of three trustees and of the inability

DEBTOR AND CREDITOR—*continued.*

of the third to charge his duties properly. STEPHENSON v. BAUMGARTNER. BAUMGARTNER v. STEPHENSON . . 3 Agra, 104 : 3 Agra, 321

29. —————— *Trust-deed to liquidate debts—Non-communication of trust-deed to creditors—Limitation Act (XV of 1877), s. 10.*—*D S* executed a trust-deed, whereby he made over his property to trustees to manage his affairs and liquidate his debts in manner therein directed. The deed contained this provision: "In order to prepare a list of my debts, the trustees shall ascertain the same by

tors, that it did not create a trust in favour of the creditors, but enured only for the benefit of the executant; that therefore the plaintiff, a creditor, was not entitled to rank as a beneficiary under it; and that it did not create a trust in favour so as to take out of the operation of the Limitation Act a claim that otherwise fell within it. FINK v. MOHARAJ BAHADUR SINGH . . I. L. R., 25 Calc., 642 [2 C. W. N., 469

30. —————— *Creditors' trust deed—Assignment of all his property by debtor to*

who traded under the name of *V J*, to recover R7,705 due on an adjusted account. On the 17th April

and three other persons as trustees in trust for the payment of his creditors. The deed was executed by the plaintiff and the other trustees both as trustees and as creditors. It contained no release and no agreement by the creditors to take less than the full amount of their debts. It conveyed all the defendant's property to the trustees, who were to collect the estate and divide it rateably among the creditors "without prejudice to the rights of the several creditors to recover"

their respective claims, these presents shall operate as fully and effectually as an order of discharge from

DEBTOR AND CREDITOR—*continued.*

proceeding against them or any of them for or in respect of the debts now due from the said debtor or the said firm of *V J* to the said creditors respectively." On the execution of this deed, the trustees took possession of defendant's books of accounts, and proceeded to recover the defendant's estate. The three months for which, as above mentioned, the suit was adjourned in April 1894, having now expired, it came on for hearing. The defendant pleaded the

with a view to the payment of his debts in full, should be harassed by one of those creditors who had accepted the trust. The conduct of the plaintiff had been such as to deprive him of the right to present payment of his debt except by the assignment made to him and the other trustees. There had been a concluded agreement, which precluded him from

assignment was exhausted. The creditors should get what they could under the assignment, and then proceed for the rest. GOKULDAS MUCCANJI v. VASSANJI JAIRAM . . I. L. R., 19 Bom., 12

31. —————— *Composition-deed between debtors and creditors—Managing member*

the firm of *S & Co*, was appointed trustee, and his firm guaranteed the payment of a dividend of 50 per

was objected that he was precluded from suing by the dissolution of his firm and the assignment away of its assets. *Held* that the plaintiff was entitled to maintain the suit. *Subbaraya* v. *Vythilinga, I. L. R., 16 Mad., 85*, referred to. SUBBARAYA PILLAI v. VAITHILINGAM . . . I. L. R., 20 Mad., 91

32. —————— *Bond given after personal discharge in respect of debt incurred*

DEBTOR AND CREDITOR—*continued.*

prove that a recital in it that all the other creditors have been settled with, was untrue. Though no creditor is bound to oppose the final discharge of an insolvent, yet a private agreement by a creditor with the insolvent, by which, in consideration of a money payment, the creditor binds himself not to oppose, is void as opposed to the policy of the Insolvent Debtor's Act and as in fraud of creditors. NAOROJI NUSSERWANJI THOONTHI *v.* SIDICK MIRZA

[I. L. R., 20 Bom., 636

33. ——————— *Order giving mesne profits not awarded by decree—Bond, Construction of—Condition in a bond unfulfilled—Admission of debt—Abandonment of non-existent claim on compromise.*—An order assumed to be made by a Court in execution, that decree-holders should have mesne profits which they had not been awarded in their decree, was without jurisdiction, and could not be regarded as taking effect. This order was afterwards reversed as having been made without jurisdiction, but was standing when the bond in suit was executed by the decree-holders, now defendants, admitting money to be due to the plaintiff, and, as to a particular sum, promising payment out of the mesne profits when realized by them. The decree-holders, afterwards compromising with their judgment-debtor, abandoned the claim to mesne profits. This, however was no real concession, because the right to mesne profits had no existence. Although the unqualified admission of a debt implies a promise to pay it, yet this implication does not necessarily follow where there is an express promise to pay in a particular manner, and on a certain event happening. *Held*, on the construction of the bond, that here the admission was referable to the particular obligation agreed to be discharged only in the manner stipulated; and that therefore the payment was to be contingent on there being mesne profits. *Held* also that it had not been established that the non-occurrence of the condition had been occasioned by the conduct or default of the defendants, and that, therefore, the objection to pay the sum in question never took effect or became enforceable. KALKA SINGH *v.* PARAS RAM

[I. L. R., 22 Calc., 434
L. R., 22 I. A., 68

34. ——————— *Contract Act (IX of 1872), ss. 38, 42, 43, and 45—Joint promise—Joint creditors—Discharge of mortgage by one of two joint mortgagees.*—The sum due upon a mortgage was paid to one of the two mortgagees, and he gave an acquittance without the knowledge of the other mortgagee, who now brought this suit upon the mortgage. It appeared that there was no fraud on the part of the mortgagors, and that the mortgagee who received payment was not the agent of the plaintiff in that behalf. *Held* that the mortgage had been discharged, and the plaintiff was not entitled to sue. *Wallace* v. *Kelsall, 7 M. & W., 264,* referred to. BARBER MARAN *v.* RAMANA GOUNDAN

[I. L. R., 20 Mad., 461

35. ——————— *Collusive discharge by one of two creditors—Estoppel—Fraud.*—In 1877 the plaintiff executed a deed of hypothecation to one of two partners to secure a loan obtained from them jointly. In 1881 the plaintiff sold, *inter alia*, the hypothecated property to defendants Nos. 2 to 4, and it was arranged that the secured debt should be paid off by the vendees. They failed to do this, but in 1882 they executed a mortgage for the amount due in favour of the other of the two partners, and he thereupon gave a written discharge to the plaintiff, who was found to have been acting in collusion with him to the disadvantage of his partner, the holder of the hypothecation-bond. The latter brought a suit in 1885 upon the hypothecation-bond and obtained a personal decree against the present plaintiff, which was *ex-parte*, the amount of the decree being declared to be charged on the land in the possession of defendants Nos. 2 to 4. Meanwhile, defendant No. 1, who was the assignee of the mortgage of 1882, had obtained a decree upon it against defendant No. 4. This decree not having been executed, he subsequently sued upon the mortgage again and obtained a decree against defendants Nos. 2 to 4. The plaintiff now sued to have the last-mentioned decree set aside and recover the balance of the purchase-money from defendants Nos. 2 to 4. The Court of first instance passed a decree for the amount claimed, and declared it to be charged on the land. Defendant No. 1 preferred an appeal, in which defendants Nos. 2 to 4 were joined by the Court of first appeal, which dismissed the suit. *Held* that plaintiff, having allowed a decree to be passed against him *ex-parte* in the suit of the holder of the hypothecation-bond, and having obtained a collusive discharge from the other partner, was not entitled to recover against the defendants. KANAGAPPA *v.* SOKKALINGA

[I. L. R., 15 Mad., 362

36. ——————— *Deed of settlement—Attachment of settled property by creditors of settlor—Summons to remove attachment—Order dismissing summons, Effect of—Civil Procedure Code (XIV of 1882), ss. 280-283—Sale of settled property in execution against settlor—Purchaser, Right of—Right to set aside deed—Suit by creditors to set aside deed on ground of fraud—Limitation Act (XV of 1877), art. 95.*—On the 7th April 1877, one *N* executed a trust-deed, whereby certain immoveable property belonging to him was conveyed to trustees in trust for himself for life or until he became insolvent or attempted to alienate, assign, or incumber the same, and then for his wife and children. At the date of the deed, *N* was largely indebted, and two or three months prior to the date of the deed he had deposited the bulk of his moveable property with a friend, who endeavoured to compromise with his (*N's*) creditors, and who applied the said property in paying off a portion of his debts. About a fortnight after the trust-deed was executed, *N* filed a suit against one *H* and others. That suit was dismissed, and *N* was ordered to pay *H's* costs. In execution of that decree for costs, *H*, in July 1882, attached a house which was part of the property settled by the trust-deed of April 1877. Thereupon the trustee of the deed claimed to have the attachment removed, alleging that he was in possession as trustee. He took out a summons for that purpose, which was dismissed on the 19th December 1882, without prejudice to the rights of

DEBTOR AND CREDITOR—*continued*

the parties to file a suit in respect of the subject matter thereof No suit however, was filed by any of the parties and the house was sold in execution *H*, the execution creditor, bought it at the sale and was put into possession, which he retained until his death in December 1888 After his death his executors took possession They desired to sell it but were unable to do so in consequence of the claim put forward by *N*'s wife and children (defendants Nos 1 3, and 4) under the trust deed of 1877 They accordingly filed this suit against *N*'s wife and children (defendants Nos 1, 3 and 4) and the surviving trustee of the trust (defendant No. 2) praying for a declaration that the defendants had no right or interest present or future or contingent, in the said property, that they (the plaintiffs) as executors of *H*, were absolutely entitled to it, and that the trust-deed was fraudulent and void against the plaintiffs and other creditors of *N* It was contended that the suit was barred under art 95 of sch II of the Limitation Act XV of 1877, having

the effect of the order in December 1882 dismissing the summons which had been taken out by the trustees to having the attachment removed, was to declare the trust settlement invalid and that, as no steps

cestuis que trust under that deed It was argued

attachment to be maintainable. *Held* that there was no such order passed against the interests represented by the first, third and fourth defendants as to come under the terms of s 283 of the Civil Procedure Code *Held*, on the evidence, that the deed of settlement was fraudulent and void as against creditors It was proved that at or before the date of the settlement *N* was largely indebted Nearly the whole of his moveable property had been deposited with a friend in order that the creditors might be

But *held* also, dismissing the suit, that the plaintiffs were only entitled to an estate for the life of *N* They were the representatives of *H*, and his claim, upon which this suit was founded, arose by virtue of his having purchased the right title and interest of *N*, the settlor, and the right so purchased did not include the right to set aside his own deed *Held* also that the plaintiffs were not entitled to succeed inasmuch as this suit was not filed by them on behalf of, and for benefit of all the creditors of *N* *Semble*—A claim to set aside a deed of settlement as fraudulent and void as against creditors can only be made by creditors whose claims are not barred by limitation *Quære*—Whether the existence of creditors who were creditors at the date of the deed of settlement is necessary BURJORJI DORABJI PATEL *v* DHUNBAI **I. L. R., 16 Bom., 1**

37 ——————— *Account—Burden of proof—Presumption—Principal and agent—Restriction of principal's liability to debts proved to be just*—Fraud and undue influence having been found with the result that a decree cancelled transfers executed in favour of a creditor by a talukhdar whose manager had received in his name money forming the consideration for the transfers, an account was directed to be taken of the sums actually due and payable by the principal Directions were given for the payment not of all the money received from the creditor by the manager, but only of sums (*a*) shown to have been lent by the creditor to the principal himself personally, and of those (*b*) received by the manager on behalf of the principal in the course of a prudent management The burden of

revenue due on the estate managed by him,—*Held* that the Court below had rightly presumed that the rents should have covered the revenue due, and this presumption having to be met it was for the creditor to bring proof to overcome it PARTAB BAHADUR SINGH *v* CHITPAL SINGH

[I. L. R., 19 Calc., 174
L. R., 19 I. A., 33

38 ——————— *Bankruptcy in Mauritius—Right of suit by trustee under foreign composition deed in British India—Judgment of foreign Court—Insolvency—Stamp Act (I of 1879), s 31—Registration Act (III of 1877), s 17 (e).*

DEBTOR AND CREDITOR—*continued.*

—A debtor and the firm of which he was a member were adjudicated bankrupts in Mauritius, and a receiver was appointed by the Court. Subsequently the creditors met and resolved that, if the adjudication was annulled, a composition, payable by instalments, be accepted in full satisfaction of their debts, and that the security of the plaintiff's firm be accepted for payment of such composition, and that the bankrupts' estate be assigned to that firm, and that the plaintiff be appointed trustee to carry out such arrangement. An instrument was executed to give effect to these resolutions, and was concurred in by the receiver and approved by the Court, which annulled the adjudication, and ordered that the bankrupts' estate in Mauritius and India vest in the plaintiff, who was appointed trustee to carry out the said composition with full powers of realization. The plaintiff now sued to recover the moveable and immoveable property of the bankrupts in India. *Held* (1) that the above instrument was valid as a composition-deed, and did not require to be stamped and registered as a conveyance; and that any surplus that might remain after payment to the creditors did not belong to the plaintiff's firm, but was subject to a trust for the bankrupts; (2) that the plaintiff was entitled to a decree for the amount expended by him in payment of the creditors, together with such costs as were incurred by him in recovering debts due to the estate and could not be recovered from the debtors, and the costs of certain sales and a mortgage incurred in realization of the estate; (3) that plaintiff was entitled to a decree for possession of the immoveable property until the sum due was paid to him by the defendants or was satisfied out of the rents and profits of the property. No order made by the Court at Mauritius can operate to transfer the ownership of immoveable property in British India. So *held*, without deciding that the Court cannot compel the bankrupt when within its jurisdiction to execute in favour of the trustee such a deed as will, in accordance with the formalities of the local law, render the order of the Court effectual. SUBBARAYA *v.* VYTHILINGA

[I. L. R., 16 Mad., 85

39. ——————— *Protection of assets.*—The assignment in a trust deed by which a person assigns all his property to trustees for the benefit of his creditors protects the assets so assigned from all creditors. BAPAJ AUDITRAM *v.* UMEDBHAI HATHESING . . . 8 Bom., A. C., 245

40. ——————— *Attachment.*—A *bonâ fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor, until the trusts of the deed of assignment have been carried out. BAMANJI MANIKJI *v.* NAORAJI PALANJI . 1 Bom., 233

41. ——————— *Voluntary conveyance—Construction—Trustee for creditors—Circuity of actions—Administration suit.*—*K*, who was a relation of the plaintiff, executed a deed of conveyance by which he conveyed all his estate to the plaintiff, in consideration of his undertaking to pay all *K*'s debts. The deed stated that it was *K*'s desire that the estate should remain in his family. After *K*'s death, the plaintiff sued for an account and for redemption of some of *K*'s land which had been originally mortgaged by *K* to the defendant. It was contended in defence that the deed created a trust for the payment of *K*'s debts, and that the defendant was entitled to tack on to the mortgage debt a simple contract debt which *K* owed to him. It was found that the defendant was the only unpaid creditor, and that the property was more than sufficient to pay the debt. *Held* that the deed did not create a trust for *K*'s creditors, the object, on the contrary, being the preservation of the family property. *Held*, further, that due effect could not be given to the whole of the instrument, unless construed as a conveyance to the plaintiff, charged as between himself and *K* with the payment of *K*'s debts. *Held* also that during *K*'s life his creditors could not claim to be paid under this instrument, in the absence of any communication between them and the plaintiff, capable of being construed as an admission by him that he held the property as trustee for them, although they might possibly impeach it. On *K*'s death, however, his creditors would be entitled in an administration suit to have the charge of his debts enforced in their favour. RAGHO GOVIND *v.* BALVANT AMRIT

[I. L. R., 7 Bom., 101

42. ——————— Arrangements made between creditor and debtor—*Proof of advances—Razinamas not made decrees of Court, Effect of.*—Razinama arrangements not made decrees of Court, but irregularly acted upon as if they had been so made, do not substantiate advances alleged to have been made by creditors. PUREYASAMI *alias* KOTTAI TEVAR *v.* SALUCKAI TEVAR *alias* OYYA TEVAR

[8 Mad., 157

KOSALA RAMA PILLAI *v.* SALUCKAI TEVAR *alias* OYYA TEVAR . . . . 8 Mad., 198

See VENKATURAMANA HODAI *v.* BAPANNA RAI

[7 Mad., 103

43. ——————— Drawing hundi—*Right to credit item in account.*—The drawing of a hundi on one's own factory, and the delivery of it to another, may be evidence of indebtedness to the amount of the hundi, but it is not an item for which the drawer of a hundi is entitled to credit. SHIB RAM MUNDUL *v.* MAKHUN LALL BISWAS . 7 W. R., 179

44. ——————— Sale of goods—*Arrangement to pay for goods sold.*—Where a debtor sells goods to his creditor and requests that a portion only of the price should be appropriated to part payment of existing debts, and the remainder held against the price of goods to be afterwards purchased by the debtor from the creditor, such request is not binding on the creditor without his consent. AGUILAR *v.* WOOMESH CHUNDER SHAW . 22 W. R., 209

45. ——————— Assignment of debt—*Release of debtor—Failure to prove assignment against third parties.*—When a creditor accepts the assignment of a debt due by third parties to his debtor, and releases the latter, he has no action against

DEBTOR AND CREDITOR—*continued*

him BISHEN CHUNDER SAELAH *v* GOKOOL CHUNDER LAHATA 5 W R., 171

46 ———— Release, Construction of deed of—Construction of document holding that it could not have been intended by the parties to be a general release MALICK BAPOO MEYAN *v* HARI WALUB NAGURDAS 5 W R, P C, 112

47 ———— Arrangement between decree-holder and one of several judgment-debtors—*Effect of, as against co-debtors*—*Held* that no arrangement between the decree holder and one of the judgment debtors would affect the interest of a co judgment debtor unless by express consent BHAIRABCHANDRA MADAK *v* NADYAR CHAND PAL [3 B L. R., A. C, 357 12 W. R, 291

48 ———— Adjustment of claims—*Composition payment*—The plaintiff, a creditor of the late Rajah Chatpal Sing, accepted, from the Collector in charge of the estate, a composition payment in adjustment of his claims *Held* that he could not sue the Ranis, nor the infant son of the Rajah, on a contract or bond for payment of the balance JAYRAM GIR *v* SHIURAJ KOER [2 B L R, P C, 98 11 W R, P. C, 41

49 ———— Co contractors—*Liability of the others on death of one*—The defendants entered into a contract with the plaintiff by which in consideration of the trouble taken and money advanced

surviving co-contractors CHETU NARAYANA PILLAY *v* AYAMPERUMAL AMBALOM 4 Mad., 447

50 ———— Substitution of liability—

amount The dubash gave the plaintiff R500 in The s bill, t was ised to money being received from Mr *S* On the day following the Small Cause n he arrested, on s about to leave t "there was no of any person or fund in place of the original liability of the defendant" and gave judgment for the plaintiff for R574 5 0 and costs, which judgment, as to the principal sum, was affirmed by the High Court, but costs on the sum of R500, originally paid to and returned by the plaintiff were disallowed ALLARAKIA ALI *v* GEACH 3 Bom., O C, 150

DEBTOR AND CREDITOR—*concluded*

by fo on pa dif his debts by *K* The award compounded *K*'s debts and assigned his property to his creditors, and directed that *K* should dispose of such property for their benefit and that if he misappropriated any of the property, he should be personally liable for the loss sustained by the creditors on account of such misappropriation *C* signed the award amongst other creditors, but the award was not signed by all the creditors *C* received a dividend under the award *Held* in a suit by *C* against *K* to recover a debt which had been compounded under the award, in which suit *C* alleged that several creditors had not signed the award that some of them had sued *K* and recovered debts in spite of the award that *K* had misappropriated some of the property, and that if the plaintiff did not sue there would be no assets left to satisfy his debt, and that such suit was not maintainable LHETA MAL *v* CHUNI LAL [I L. R., 2 All, 173

52 ———— Agreement by creditors to give time—*Failure of consideration*—*Mortgage to creditors as security for payment of debts*—*Construction of instrument*—*Suit by creditor before*

by the firm, the consideration for such mortgage being a promise by all the creditors not to sue the firm for their debts for a certain time Before the expiration of such time, several of the creditors sued for their debts Subsequently several of the creditors brought separate suits against the firm to enforce the mortgage in respect of their debts. *Held* that the consideration for the contract of mortgage, *viz*, the forbearance of all the creditors not to sue for their debts for a fixed time, having failed the firm was discharged from liability on the mortgage *Held* also that, had the contract of mortgage remained in force it would not have been competent for individual creditors to come into Court and enforce the contract in respect of their separate debts SIDH GOPAL *v* AJUDHIA PRASAD I. L. R., 5 All., 392

53 ———— Sale to defeat execution of decree—*Creditor without specific lien*—A creditor without a specific lien (*e g*, a mortgage or other direct charge or incumbrance) has not any *à priori* right to debar his debtor from parting with his immoveable property until it is attached in due course of law RAJAN HARJI *v* ARDESHIR HORMASJI WADIA I. L R., 4 Bom, 70

MOONA *v* CHAND MONEE GOSSAIN [7 W R, 206

DEBUTTER PROPERTY

See CASES UNDER HINDU LAW—ENDOWMENT

DECEIT, ACTION FOR—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS. [I. L. R., 18 All., 56

DECLARATORY DECREE.

See CASES UNDER EXECUTION OF DECREE —MODE OF EXECUTION—DECLARATORY DECREES.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 13 Mad., 313

DECLARATORY DECREE, SUIT FOR—

See CASES UNDER COURT FEES ACT, s. 7, CL. 4.

See CASES UNDER COURT FEES ACT, SCH. II, ART. 17.

See DECREE—FORM OF DECREE—DECLARATORY SUIT . . . 10 W. R., 105 [12 W. R., 326

See CASES UNDER LIMITATION ACT, 1877, ART. 118 (1871, ART. 129; 1859, s. 1, CL. 16).

See CASES UNDER LIMITATION ACT, 1877, ART. 120.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[I. L. R., 8 Calc., 483, 819, 825 note
I. L. R., 1 All., 252
I. L. R., 2 All., 356
I. L. R., 12 Calc., 291
18 W. R., 202
I. L. R., 4 All., 261
I. L. R., 5 All., 345
I. L. R., 14 All., 512
I. L. R., 10 Mad., 347
I. L. R., 11 Mad., 127
I. L. R., 12 Mad., 285

See CASES UNDER VALUATION OF SUIT—SUITS.

DECLARATORY DECREE, SUIT FOR —*continued.*

1. REQUISITES FOR EXISTENCE OF RIGHT.

1. ———— **Existence of relief which can be granted**—*Civil Procedure Code, s. 15.*—No declaration of right can be made in a suit under s. 15, Act VIII of 1859, unless the plaintiff can show that there is some relief which the Court can give. BAIJ NATH CHATTERJEE *v.* LAKHI MANI DEBI [5 B. L. R., 514 note

S. C. BEEJOY NATH CHATTERJEE *v.* LUKHI MONI DEBIA . . . . . . 12 W. R., 248

2. ———— **Existence of right to consequential relief**—*Declaration of right for relief in other suit.*—A declaratory decree ought not to be made unless there is shown to be a right to some consequential relief which, if asked for, might have been given by the Court, or unless a declaration of right is required as a step to relief in some other Court. *Kattama Natchiar* v. *Dorasinga Taver, 15 B. L. R., 83,* approved. SHEO SINGH RAI *v.* DAKHO [I. L. R., 1 All., 68

ZAIBUNNISSA *v.* ELAHEE BEGUM . 19 W. R., 268

3. ———— **Hostility of defendant**—*Suit for declaration of title.*—*Held* by JACKSON, *J.*, that in a suit for declaration of title defendants must have given a cause of action by impugning it antecedently to plaint filed, even though their written statement be hostile. COLVIN COWIE *v.* ELIAS [2 B. L. R., A. C., 212 : 11 W. R., 40

4. ———— A party is not entitled to ask for a declaration of right except as against a defendant in some degree hostile to him in respect of that right. PROMOTHO NATH GHOSE *v.* JODOO NATH SEN . 1 Ind. Jur., N. S., 293

5. ———— **Suits for declarations of abstract rights**—*Civil Procedure Code, 1859, s. 15.* —S. 15 of Act VIII of 1859 refers to declarations which are binding relatively to the parties before the Court, not to declarations of abstract right or bare declarations of trust, exclusive of any practical equity. MUZHUR HOSSEIN *v.* DINOBUNDOO SEN [Bourke, O. C., 8: Cor., 94

6. ———— **Right to consequential relief** —*Question relating to third persons not parties to suit.*—The question proposed for adjudication in the suit, in which a declaratory decree was sought, being in effect one not between the plaintiff and the defendant, but between the plaintiff and third persons not parties to the suit, the suit was dismissed in reference to the ruling of the Privy Council in *Vijia Ragunadah Rani Kolandapuri Natchiar* v. *Dorasinga Taver, 15 B. L. R., 83,* dated the 10th of February 1875, that a declaratory decree is not to be made, unless there is a right to consequential relief which, although not asked for, might, if asked for, have been given. RAM BHAROSE LAL *v.* GOPI BIBI [7 N. W., 300

7. ———— **Hostile act entitling plaintiff to substantial remedy.**—A hostile act which would justify a declaration of right under Act VIII of 1859, s. 15, must be such an act as would entitle

DECLARATORY DECREE, SUIT FOR
—*continued*

1. REQUISITES FOR EXISTENCE OF RIGHT
—*continued*

the plaintiff to some substantial remedy in the way of injunction or otherwise RAM KHELAWAN SINGH v OUDH KOOER . 21 W. R., 101

8 ———— Intricate questions of law—*Principles on which Court grants relief*—The Court will not, in a declaratory suit decide intricate questions of law, where no immediate effect, and possibly no future effect, can be given to its decision, and when the postponement of the decision to a time when there may be before the Court some person entitled to immediate relief will not prejudice a plaintiff's right in any way HUNSBUTTI KERAIN v ISHRI DUTT KOER

[I L R, 5 Calc, 512 4 C L R., 511

9 ———— Remand entailing delay and expense—*Further enquiry*—Since a declaratory

suit DOORGA PERSHAD SINGH v DOORGA KOONWARI I L R., 4 Calc, 190. 3 C. L R., 31

10 ———— Suit before Specific Relief Act, 1877—A declaratory suit instituted before the

11. ———— Consequential relief—*Specific Relief Act (I of 1877), s 42—Per Cur*—The restrictions imposed under s 42 of the Specific Relief Act must be held to refer to the consequential relief properly obtainable by the plaintiff as against the defendants in the suit, and not to be extended to the case of all third parties who may possibly support some of the contentions of the defendants SUBRAMANYAN v PARAMASWARAN

[I. L R., 11 Mad, 116

12 ———— Suit to declare alienation by Hindu widow invalid—*Specific Relief Act, s 42—Amendment of plaint—Death of widow pending appeal by plaintiff—Right of appellant to proceed with appeal—Plaint not to be amended by claim for possession*—The proviso to s 42 of the Specific Relief Act, that 'no Court shall pass a declaratory decree where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so," refers to the position of plaintiff at the date of suit Where a suit was brought for a declaration that certain alienations of land made by a Hindu widow to the defendants were not binding on plaintiff her reversionary heir, and, pending appeal by the plaintiff, the widow died,—*Held* (1) that the plaintiff was entitled to proceed with his appeal (2) that plaintiff could not be permitted to amend his plaint and claim possession GOVINDA v PERUMDEVI

[I. L R, 12 Mad., 136

DECLARATORY DECREE, SUIT FOR
—*continued*

1 REQUISITES FOR EXISTENCE OF RIGHT
—*concluded*

2 SUITS CONCERNING DOCUMENTS.

13 ———— Hostile document affecting title—*Right to sue to have it declared invalid*—When a person in possession finds that a document has been set up and registered which affects his title, and which every day's delay is likely to render him less able to disprove, he is justified in coming before the Court and asking that such a deed may be declared inoperative NUFISA BANOO v MAHOMED SUFDAR 24 W. R., 336

14 ———— Suit to set aside mortgage—*Civil Procedure Code 1859, s 15—Injury not admitting specific relief*—Act VIII of 1859, s 15, did not give power to the Court to give a declaratory decree, unless the position of the parties is one of hostility to one another The plaintiff must come into Court
defendant
being afford
cannot irre
the person whom he makes defendant, bring that

chaser might be declared entitled to redeem the same *Held* that the plaint was bad upon the face of it But as
gether,
betw een
gage, the Court, to prevent further litigation, construed the plaint as having asked that the alleged mortgage might be set aside LALLAH BHUGWAN DOSS v AKBAR 1 Ind. Jur, N. S., 390

15. ———— Suit to set aside, Effect of recital in bond—*Nature of consideration*—A declaratory decree will not be given to show that a

DECLARATORY DECREE, SUIT FOR
—*continued*

2 SUITS CONCERNING DOCUMENTS
—*continued*

the party in favour of whom the document had been drawn, for a declaration that the document was not genuine, and was invalid and inoperative *Held* that the Civil Court had jurisdiction to try the genuineness of a registered document, that the registration of a document, the execution of which was obtained by improper means, affecting the property of the executant, is a good cause of action on which to ask for a declaratory decree PRASANNA KUMAR SANDYAL *v.* MATHURANATH BANERJI
[8 B. L. R., Ap., 26: 15 W. R., 487

26.

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(III of 1877), the defendant, in whose favour a

trar, when he enquired whether the document had been duly executed or not, were in no sense those of a "competent Court," but only those of an executive officer invested with *quasi*-judicial functions, and that, consequently, such a suit was maintainable *Held* also that the Specific Relief Act (I of 1877)

CHUNDER DHUR *v.* JUGUL KISHORE BHUTTACHARJI
[I. L. R., 7 Calc., 736: 9 C. L. R., 471

27.—————**Suit to cancel a void or voidable instrument**—*Specific Relief Act (I of*

of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled. *Iyyappa v Ramalakshmamma, I. L R., 13 Mad., 549*, referred to KOTRABASSAPPAYA *v* CHENVIRAPPAYA . . I. L. R., 23 Bom., 375

28.—————**Suit to set aside fraudulent deeds**—*Absence of any attempt to disturb possession*—In a suit for declaration of right of possession to certain lands and to set aside alleged fraudulent pottahs, which the plaintiff alleged had been executed by the defendant with a view to put an obstacle in the way of his attaining his right, but it was not shown that they had made any actual attempt to disturb the right of occupancy which it was found the plaintiff had,—*Held* that the plaint did not disclose a sufficient cause of action to enable the Court to make a declaratory decree in favour of the plaintiff UDAI CHANDRA MANDAL *v* AHMEDULLA
[7 B. L. R., 616 note

S. C. WOODOY CHUNDUR MUNDUL *v* AHMEDOOLLA 12 W. R., 467

29.—————*No use of deed to plaintiff's injury*—Where a petition was presented by *A* under s 84, Act X of 1866, for registration of a deed, and the deed was duly registered,

CHANDRA PAL *v* BECHARAM DEY
[8 B. L R., Ap., 28 note: 10 W R., 329

30.————**Suit for declaration that**

the cancellation of such document to relief SHIB LAL *v* HIRA LAL I. L. R., 1 All., 622

RAYANA . . . I. L. R., 12 Mad., 481

32.————**Consequential relief**—*Specific Relief Act (I of 1877), s 42*—Plaintiff, being in possession of certain land as an incumbrancer under

conveyance was not binding on him and for a specific performance of the oral agreement *Held* that the suit was not bad for want of a prayer for delivery up, and cancellation of, the conveyance KANNAN *v* KRISHNAN . . I. L. R., 13 Mad., 324

DECLARATORY DECREE, SUIT FOR *—continued.*

2. SUITS CONCERNING DOCUMENTS *—concluded.*

33. ———— Suit for cancellation of document and for possession—*Withdrawing portion of claim—Specific Relief Act, s. 42.*—Plaintiffs, members of a Malabar tarwad, sued (1) for the cancellation of a deed of gift of certain immoveable property alleged to belong to their tarwad; (2) for restoration of the property, the subject of gift, either to plaintiff No. 1 or defendant No. 1 the present karnavan, on behalf of the tarwad. The Munsif dismissed plaintiff's suit on the merits. On appeal, the Subordinate Judge allowed plaintiffs, who were unable to pay the Court-fees for recovery of the property, to withdraw that portion of the claim, and decreed for plaintiff as to the remaining portion, *viz.*, for cancellation of the document. On second appeal it was *held*, reversing the decree below, that, the prayer for restoration of the property being in the circumstances of the case maintainable, it was not competent to plaintiffs to restrict themselves to the other kind of relief sought, and that the maintenance of the suit in its maimed form would be an evasion of s. 42 of the Specific Relief Act. BIKUTTI *v.* KALENDAN **[I. L. R., 14 Mad., 267**

34. ———— Consequential relief—*Specific Relief Act (I of 1877), s. 42—Suit by a member of a tarwad for a decree declaratory of the invalidity of a kanom granted to other members by the karnavan of the tarwad—Attornment of tenants—Possession, Transfer of.*—Where a kanom of tarwad property is granted by the karnavan to members of the tarwad, and the property in question remains in the possession of the karnavan on behalf of the tarwad, all that is necessary for a junior member to do in order to prevent the possession becoming adverse to the tarwad is to obtain a declaration that the kanom which is relied on as the cause of adverse possession is invalid. But if the kanom is granted to a stranger to the family, who is in possession, possession must then be sought for as relief consequent on the declaration. An attornment of tenants to the kanomdars does not operate as a transfer of possession from the tarwad to the kanomdars. *Subramanyan* v. *Paramaswaran, I. L. R., 11 Mad., 116,* followed, and *Bikutti* v. *Kalendan, I. L. R., 14 Mad., 267, Abdulkadar* v. *Mahomed, I. L. R., 15 Mad., 15,* and *Narayana* v. *Shankunni, I. L. R., 15 Mad., 255,* distinguished. PADAMMAH *v.* THEMANA AMMAH . **I. L. R., 17 Mad., 232**

3. ADOPTIONS.

35. ———— Suit to set aside deeds giving and receiving in adoption—*Cause of action.*—A declaratory decree cannot be made, unless the plaintiff would be entitled to consequential relief if he asked for it. It is discretionary with a Court to grant a declaratory decree, and the Courts in India ought to be most careful in exercising such discretion. *A*, widow of a Hindu, sued *B* as father and guardian of *C* to have it declared that the deeds executed by *A* and *B*, one of giving *C* in adoption, the other of receiving him in adoption, were null and void, on the ground that they were agreements to give and take in adoption, and that *B* did not give his son according to agreement. *Held* (reversing the decision of the Courts below) that such suit was not maintainable. SREENARAIN MITTER *v.* KISHEN SOONDERY DASSEE **[11 B. L. R., 171: L. R., I. A., Sup. Vol., 149**

S. C. NUGGENDRO CHUNDRO MITTER *v.* KISHEN SOONDERY DASSEE . . **19 W. R., 133**

Reversing decision of High Court **[2 B. L. R., A. C., 279: 11 W. R., 196**

36. ———— Suit to have adoption declared void—*Declaratory decree not obtainable by absolute right—Discretion of Court.*—It is discretionary with a Court to grant or to refuse a declaratory decree with regard to the circumstances—*Sreenarain Mitter* v. *Kishen Soondery Dassee, 11 B. L. R., 171: L. R., I. A., Sup. Vol., 149,* referred to and followed. A talukhdar died leaving a widow; also a son, who, having succeeded as talukhdar, died childless. This son's widow, being in possession, sued for a declaration that an adoption by the father's widow, to the father, was void and ineffectual. The ground of suit was that, at some time or other after the death of the plaintiff, the person alleging himself to have been adopted might obtain the talukhdari, unless his adoption should now be negatived. With regard to all the circumstances, the refusal of such a declaration was approved by their Lordships. If the person alleged to have been adopted should sue hereafter, the question would be decided whether he was validly adopted or not. PIRTHI PAL KUNWAR *v.* GUMAN KUNWAR **I. L. R., 17 Calc., 933 [L. R., 17 I. A., 107**

37. ———— Suit by reversioner to have forged letter giving power to adopt set aside and to restrain adoption—*Specific Relief Act, s. 42.*—Under Act VIII of 1859, s. 15, a suit will not lie at the instance of the reversionary heir for a declaration that a certain letter purporting to have been written by the husband of the defendant empowering his widow to adopt a son is a forgery, and to have the same cancelled; and for an injunction restraining the adoption of a child under the letter. *Raj Coomary Dassee* v. *Nobo Coomar Mullick, 1 Bom., 137,* followed. RUN BAHADOOR SINGH *v.* LUCHO COOWAR **[4 C. L. R., 270**

38. ———— Suit to set aside invalid adoption—*Cause of action.*—A suit having been brought by a Hindu reversioner for a declaration that an adoption alleged to have been made by the mother of *K*, the owner of the estate, after the estate had vested in the widow of *K*, was invalid,—*Held* that the alleged adoption afforded a cause of action for a declaratory suit. THAYAMMAL *v.* VENKATARAMA . . . . **I. L. R., 7 Mad., 401**

DECLARATORY DECREE, SUIT FOR
—*continued*

3 ADOPTIONS—*continued*

39 ———— Suit to set aside adoption—*Civil Procedure Code, 1859 s 15—Right to declaratory decree*—In a suit brought on the ground of an existing right of inheritance for immediate possession and mesne profits by setting aside an adoption, the Court will not allow the form of action to be changed and proceed to decide whether (the claim for possession on the ground of an existing right being abandoned) a declaratory order may not issue for setting aside the adoption, but will on failure of right to immediate possession dismiss the suit According to s 15 Act VIII of 1859 declaratory orders can be issued only in suits brought to obtain such orders RAJESSUREE KOONWAR *v* INDERJEET KOONWAR 6 W R, 1

40 ———— Suit to restrain widow from adopting—Where *B* sued for a decree to declare that he should be heir to the property of the defendant, a Hindu widow, after her death and for an injunction to restrain her from adopting any other than a member of his family he being the nearest relative of her husband and the fittest subject for

[illegible]

41 ———— Suit to have adoption set aside—*Onus of proof*—A stranger having no interest in the matter, has no right even with the consent of presumptive reversionary heirs, to sue for an order declaring an adoption to be valid A plaintiff suing for a declaration that an adoption is invalid is bound to prove the invalidity BROJO KISHOREE DOSSEE *v* SREENATH BOSE
[9 W. R, 463

42 ———— Suit to have adoption declared invalid—*Adoption by widow 35 years after death of her husband*—The plaintiff was a son of a mother of the deceased husband of the first defendant The first defendant adopted a son 35

[illegible]

that the adoption was made without the husband's authority *Held* a fit case for a declaratory decree KOTAMARTI SITARAMMAYYA *v* KOTAMARTI VARDHANAMMA 7 Mad, 351

43 ———— Suit to set aside adoption—*Court Fees Act, sch II, art 17, cl 2—Limitation Act, IX of 1871, sch II, art 129*—*B* died leaving him surviving two widows *K* and *R* Some time after *B*'s death *P*, a son was born to *R* on 15th September 1848 Some time before *P*'s birth a portion of *B*'s watan lands had been made over to *K* by the revenue authorities The remaining portion of *B*'s watan lands was placed by Government under sequestration, which was not removed until 1865 Shortly after *P*'s birth *R* petitioned the revenue authorities, claiming the watan lands of *B* for *P* as *B*'s son On 15th February 1849, the revenue authorities on enquiry held that *P* was not the son of *B*, and decided that *K* was entitled to retain the watan lands of *B* On 16th March 1872, *K* adopted a son *B A* In a suit brought by *P* on 4th December 1872 for a declaration that *P* was the son of *B*, and for setting aside the adoption of *B A* by *K*,—*Held* that, under the circumstances, a suit for a declaratory decree would lie for the plaintiff, even if his claim to the property were barred as against *K*, would yet be entitled to obtain an injunction against any intervention of *B A* in performing the sradh or other ceremonies for the benefit of *B* or assuming the status of *B*'s adopted son, and, moreover the Legislature has in Act VII of 1870 and Act IX of 1871 recognized the right of a person

[illegible]

44 ———— Suit by reversioner in lifetime of widow to set aside invalid adoption—In a suit by the reversionary heir in the lifetime of the widow to have an alleged invalid adoption made by her set aside and his right to certain property declared, the Court refused to make such a declaratory decree BROMOMOYEE *v* ANAND LALL ROY 13 B L R, 225 note: 19 W R, 419

JODOO NUNDUN PERSHAD SINGH *v* NUNDO KOOER 1 W R, 219

JEONATH BHUGGUT *v* ROOPA KOONWUR
[2 W. R., 273 note

4 REVERSIONERS

45 ———— Suit against tenant for life alleging waste—*Consequential relief—Civil Procedure Code, 1859, s 15*—The words of s 15 Act [illegible] the principles [illegible] the English C[illegible] tion of 15 & 16 Vict, c 86 which is in similar terms The effect of these decisions, taken in conjunction with the decisions of the Privy Council, in construing the provisions of the Indian Act, is that [illegible]

right may be made the foundation of relief to be had in another Court The plaintiff, purporting to be the next heir, brought a suit against the life tenant of a zamindari and made another claimant to the succession to the zamindari a defendant in the suit The plaint prayed for a decree declaratory of the plaintiff's right to succeed on the death of the zamindar, and made allegations of waste in respect of which he asked relief *Held* that, even if the plaintiff had proved the alleged acts of waste, which he had not done there was not a right to consequential relief which would entitle him to a declaratory decree STRIMATHOO MOOTHOO VIGIYA RAGHOONADAH

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

RANEE KOLANDAPUREE NATCHIAR *alias* KATTAMA NATCHIAR *v.* DORASINGA TAVER . 15 B. L. R., 83 [23 W. R., 314: L. R., 2 I. A., 169

Reversing the decision of the Court below in [6 Mad., 310

46. ———— **Alienation of property in possession of widow by parties having no right to it.**—Where property to the immediate possession of which a Hindu widow is entitled is conveyed away by parties having no right to it,—*Quære*—Have not the reversionary heirs a right to ask for a declaratory decree to the effect that, as against ultimate heirs, the possession of the trespassers and others should be considered as the possession of the widow? JOY MOORUTH KOOER *v.* BALDEO SINGH . . . 21 W. R., 444

47. ———— **Fraudulent transfer by widow**—*Right of reversioner.*—Where a transfer is made by a widow in fraud of the rights of the presumptive reversioner,—*Held* that he is entitled to a declaratory decree that the widow's act is null and void, as it may affect the interests of the reversioner and for provision, if necessary, to prevent any waste of the estate by the appointment of a receiver, but not to a more extensive remedy. His reversionary interest is not accelerated by the transfer. JWALA NATH *v.* KULLO [3 Agra, 55: S. C. Agra, F. B., Ed. 1874, 138

SHIBO KOERRE *v.* JOOGUN SINGH and BOOLEE SINGH *v.* BASUNT KOERRE . 8 W. R., 155

48. ———— **Contingent right**—*Suit to declare right to succeed—Civil Procedure Code, 1859, s. 15.*—A person cannot sue for a declaration of his right unless he has an existing right. A mere contingent right which may never have existence is not sufficient to ground an action under s. 15 of Act VIII of 1859. Consequently a suit by a reversionary heir for the declaration of his right to succeed after the death of the tenant for life will not lie. PRANPUTTEE KOOER *v.* LALLA FUTTEH BAHADUR SINGH . . . . . 2 Hay, 608

BRINDA DABEE CHOWDRAIN *v.* PEARY LALL CHOWDHRY . . . . . 9 W. R., 460

49. ———— *Suit to declare right to succeed—Civil Procedure Code, 1859, s. 15—Consequential relief.*—It was held, where the plaintiff sought a decree establishing his reversionary right to property in the possession of his deceased brother's widow as her husband's heir, the alleged cause of action, as regards the defendants, being that in a former suit, in which he claimed to recover the property from the widow on the ground that she had no more than a right of maintenance, they asserted that he was entitled only to one-third of the property; that there was not a sufficient cause for bringing the suit before the widow's death; and that, if the plaintiff's sole right as reversioner were allowed, as he had not at the time any right to consequential relief of any kind, the Court was bound to dismiss the suit, under the ruling of the Privy Council in *Strimathu Muthu Vijia Ragunadah Rani Kolandapuri Natchiar v. Dorasinga Tavar.* 15 *B. L. R.*, 83, dated the 10th of February 1875, that a declaratory decree is not to be made unless there is a right to consequential relief, which, though not asked for, might, if asked for, have been given. SHALPARSHAD *v.* JAGDAT MISSER . 7 N. W., 254

50. ———— **Suit by reversioner to set aside alienation.**—Where the defendant alienated property in which he had merely a life-interest,—*Held* that the alienation was invalid as against the plaintiff, who was entitled as reversioner. *Held* also that the plaintiff was entitled to a decree declaratory of his title under s. 15 of Act VIII of 1859. Although the words of that section are nearly identical with those of s. 50 of the English Chancery Amendment Act, it does not follow that, in every case in which the latter section is held to be inapplicable by the Courts of Chancery in England, the former will be held to be equally inapplicable in India. The application of s. 15 of Act VIII of 1859 must be viewed in connection with the system of procedure to which it belongs. [illegible] *v.* VENKATARAMANAIYAN . . 2 Mad., 378

See PERIYA GAUNDAN *v.* TIRUMALA GAUNDAN [1 Mad., 206

51. ———— *Alienation by Hindu widow—Rights in widow's lifetime.*—Though a reversioner cannot obtain possession during the lifetime of a Hindu widow, yet he may be entitled to a declaration whether the alienations made by the widow are or are not valid and binding on the absolute heir. If the reversioner can prove that wilful default is about to take place, he will be entitled to such relief from the Court as will prevent the apprehended occurrence of a sale for arrears. SHURUT CHUNDRA SEIN *v.* MUTHOORA NATH PUDATICK . [7 W. R., 303

52. ———— *Alienation by Hindu widow—Reversioner.*—A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death. A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. SHEWAK RAM ROY *v.* MOHAMMED SHAMSUL HODA [3 B. L. R., A. C., 196: 12 W. R., 26

OODOY CHAND JHA *v.* DHUN MONEE DEBIA [3 W. R., 183

HARADHUN NAG *v.* ISSUR CHUNDER BOSE [6 W. R., 222

BYKUNT NATH ROY *v.* GRISH CHUNDER MOOKERJEE . . . . 15 W. R., 96

53. ———— *Cause of action.*—*A* brought a suit against *C* and *D*, alleging that he was an heir-expectant upon the death of *B*, a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate, said to have been executed

DECLARATORY DECREE, SUIT FOR —*continued*

4 REVERSIONERS—*continued*

by *C* in favour of *D*, set aside as affecting *A*'s

[7 B L R, 669 · 16 W. R, 18

54 ———— **Suit by reversioner for declaration of right**—*Cause of action*—*A*, a Hindu

and an apprehension that, if the infant should not return within twelve years, he, the plaintiff, would be barred by limitation,—*Held* there was no cause of action GURU DAS NAG *v* MATILAL NAG

[6 B L R, Ap, 16 · 14 W. R, 468

55 ———— **Waste by Hindu widow**—*Declaratory suit, Ground of—Adverse possession*—It is open to a Hindu widow to give over possession to a stranger to the extent of her interest in the estate, but actually to favour the claims of the latter and allow him to enter his name in the landlord's sherista would have the effect of setting up an adverse title as against the reversionary heirs, upon which a declaratory suit would lie RAM PERSHAD CHOWDHRY *v* JOKHOO ROY

[I. L. R., 10 Calc, 1003

56. ———— **Suit by reversioner in lifetime of Hindu widow**—*Civil Procedure Code 1859, s 15*—A suit brought during the life of a Hindu widow by the presumptive heir, entitled on her death to the possession of the property in which she held her limited estate, to have an alienation by her declared to operate only for her life, is among the exceptions to the general rule established by decision upon Act VIII of 1859, s. 15, *viz*, that except in certain cases, a declaratory decree *is not to be made unless the plaintiff shows a title to*, though he does not ask for, consequential relief—*Kattama Natchiar* v *Dorasinga Tever, L R, 2 I A, 169 S C. 15 B L R, 83* *Held* that, although to grant a declaratory decree under the above section was discretionary with a Court yet in a suit of this class known to the law, and in many cases the only practical mode of enforcing the

57. ———————— *Hindu law*—

grandfather's widow, sued for a declaration that certain alienations made by the widow were void as against him To this suit the widow and her alienee were defendants The defence was, that the plaintiff was not the reversioner, and certain parties who claimed to be the real reversioners, intervened, and were made defendants by order of the Court The plaintiff obtained a declaration of his reversionary right and the deeds of sale were, on certain conditions declared void as against him The intervenors

parties to the suit S 42 of the Specific Relief Act refers only to existing and vested rights, and not to contingent rights GREEMAN SINGH *v* WAHARI LALL SINGH

[I. L. R., 8 Calc., 12 · 9 C L R, 249

58. ———— **Suit by reversioner on death of Hindu widow**—*Right to sue—Cause of action—Specific Relief Act, 1877, s 42*—On the death of *P*, a Hindu widow who had been in possession of the estate of her deceased husband, *D*'s daughter *B* was entitled to succeed to the estate if it were *D*'s separate property *S*, however alleging that the estate was ancestral property, to which he was entitled to succeed, took possession of it Thereupon the sons of another daughter of *D* alleging that the estate of *D* was his separate property, that *B* was entitled to succeed to it, that they were the next reversioners, and that *B* was acquiescing in a possession on the part of *S* which was adverse to her and to them as next reversioners sued *B* and *S* for a declaration of their reversionary right and for possession of *D*'s estate or such relief in this respect as the Court might think fit to give *Held* that the plaint disclosed a right to sue on the part of the plaintiffs and a cause of action *Nobin Chunder Chuckerbutty* v *Guru Persad Doss, B L R, Sup Vol, 1008, Radha Mohun Dhar* v *Ram Das Dey, 3 B L R, A C 362, Gunesh Dutt* v. *Lall Muttee Kooer, 17 W R, 11*, and s 42 of the

declined to accept possession, then that *A* one of the plaintiffs, should be put in possession for her as manager on her behalf, and he should act under the orders and directions of the lower Court filing accounts in, and paying the income to her through such Court, whose receipts should be a sufficient discharge ADI DEO NARAIN SINGH *v* DUKHARAN SINGH I. L. R., 5 All., 532

59 ———————— *Joinder of plaintiffs—Suit by daughter and daughter's son against widow to declare alienations invalid*—The palayam of *C* was granted during the Mahomedan rule to a

DECLARATORY DECREE, SUIT FOR
—continued.

4. REVERSIONERS—*continued.*

Hindu on service tenure, the condition being that the grantee should maintain a body of police for the service of the paramount power. This palayam was not brought under permanent settlement under the provisions of Reg. XXV of 1802. The last male holder died in 1860, leaving him surviving a widow *K* and a daughter *C*. In 1865 the Government discontinued the service, and, in lieu thereof and of the reversionary interest of the Crown, imposed a quit-rent, and an inam pottah was issued to *K* by the Inam Commissioner, by which her title to the estate was acknowledged by the Government of Madras, and the estate was confirmed to her as her absolute property subject to the quit-rent. In 1882 *C* and her minor son *A* sued *K* and others to whom *K* had alienated portions of the estate, for a declaration that they were the reversionary heirs of *K*, and that the alienations made by *K* were good only during the lifetime of *K*. The District Judge held that, there being no collusion between *C* and the defendants, *A* was not entitled to join in the suit. *Held* that *A* was entitled to join *C* as co-plaintiff. NARAYANA *v.* CHENGALAMMA . . I. L. R., 10 Mad., 1

60. ———— *Specific Relief Act, s. 42.*—The plaintiffs, uncle's sons of *R*, a deceased Hindu, brought a suit as reversioners of *R* for a declaration that certain alienations made by *M*, the widow of *R*, were not binding beyond the lifetime of *M*. The District Judge held on the strength of *Greeman Singh* v. *Wahari Lall Singh, I. L. R., 8 Calc., 12,* that the suit would not lie under s. 42 of the Specific Relief Act. *Held* that the suit would lie. GANGAYYA *v.* MAHALAKSHMI

[I. L. R., 10 Mad., 90

61. ———— *Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representative of her deceased husband's estate—Fraud—Collusion—Right of reversioner to possession.*—The plaintiff, as the nearest heir of one *O T* who died intestate in 1873, sued to set aside a sale of certain immoveable property belonging to the estate of the deceased, which had been sold on the 3rd November 1875, in execution of a money-decree obtained by the defendant *J* against *B V*, the widow of *O T*. *B V* had married a second time in 1876, and her second husband was the brother of the purchaser at the execution-sale. The plaintiff alleged that the decree had been fraudulently and collusively obtained on a bond in *O T*'s name, which had been forged by *J*. The suit was brought on the 28th January 1878, and the plaintiff prayed that the sale might be cancelled, having been made in order to defeat his rights; that he might be declared the heir of *O T*; and that possession of the property with mesne profits might be awarded to him. *Held* on the evidence that the suit against *B V* was collusive, and that the sale in execution was in fraud of the plaintiff's right. He was, therefore, entitled to a decree declaring that he was not bound by the sale of the 3rd November 1875, in the suit brought by *J* against *B V* as representative of her deceased husband *O T*. Whether the plaintiff was entitled also to immediate possession of the property in the suit, depended on the question whether *B V*'s life-estate was defeasible on her re-marriage. She belonged to a caste in which re-marriage was permitted. The following issue was accordingly sent to the lower Court for trial: "Whether, by the usage of the country, the rights and interests of *B V* by inheritance in her deceased husband's property, the subject of this suit, ceased and determined on re-marriage in 1876 as if she had then died." PAREKH RANCHOR *v.* BAI VAKHAT

[I. L. R., 11 Bom., 119

62. ———— *Alienation by widow to her married daughter—Act I of 1877 (Specific Relief Act), s. 42.*—The effect of a gift by a Hindu widow of her deceased husband's estate to her daughter is merely to accelerate the latter's succession and put her by anticipation in possession of her life-estate, and therefore affords no cause of action to a reversioner to maintain a declaratory suit impeaching the gift. *Per* MAHMOOD, *J.*, that, in the exercise of the discretion allowed to the Court by s. 42 of the Specific Relief Act, a declaratory decree should be refused to the plaintiff in such a case, where the donee was a married woman and capable of bearing a son, who would be the next reversioner to the full ownership of the estate of the donor's deceased husband. *Indar Kuar* v. *Lalla Prasad Singh, I. L. R., 4 All., 532,* and *Udhar Singh* v. *Ranee Koonwur, 1 Agra, 234,* referred to. BHUPAL RAM *v.* LACHMA KUAR . I. L. R., 11 All., 253

63. ———— **Suit by reversioners to declare purchase by ancestor benami**—*Ground for declaratory decree.*—In a suit by reversionary heirs to declare that the property standing in the name of defendant had been purchased by the ancestor in his name benami, it was held that there was no ground for a declaratory decree. RAJBUNSEE LALL *v.* JUDOOBUNS SUHAYE . 9 W. R., 285

64. ———— **Suit for declaration of right to succeed**—*Alienation by Hindu widow.*—The plaintiff's mother was entitled to certain property for her life under an award, under which the plaintiff was entitled to succeed to the property after her mother's death. The plaintiff sued her mother and the holder of a decree in execution of which the property had been sold, praying for a declaration of her right to succeed to the property, and that the said decree and sale might be declared void against her, alleging that the decree had been obtained and executed by collusion between the defendants. *Held* that the suit could be maintained under the exception in the judgment of the Privy Council in *Kattama Natchiar* v. *Dorasinga Tevar, 15 B. L. R., 83.* JAGESRI KUAR *v.* RAM NATH BHAGAT

[I. L. R., 1 All., 371

65. ———— *Suit by daughter in lifetime of mother.*—*Held* that a daughter can claim a declaration of her rights in paternal estates

DECLARATORY DECREE, SUIT FOR
—*continued*

4 REVERSIONERS—*continued.*

during the lifetime of her mother JEEWAN RAM *v* ROONTA . . . . 1 Agra, 240

66. ———— **Suit by remote reversioner** —*Specific Relief Act, 1877, s 42* —An Oudh talukhdar, deceased, before annexation, provided by his will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew Settlement was made with the senior widow after the mutiny and a sanad granted to her as talukhdar with full power of alienation, and her name was afterwards entered in the lists prepared under s 8 of the Oudh Estates Act, 1869 Certain of her

the object of his suit with that of the other, yet he was entitled on this appeal to the decree which he sought, because his suit had been wrongly decided against him on the merits RAMANAND KUAR *v* RAGHUNATH KUAR ANANT BAHADUR SINGH *v* RAGHUNATH KUAR

[I. L. R., 8 Calc, 769: 11 C. L. R., 149 L. R., 9 I. A, 41

67. ———————— *Specific Relief Act (I of 1877), s 42* —The intervention of two life-estates does not preclude a reversioner from obtaining a declaration of his interest as to land under the Specific Relief Act, s 42 KANDASAMI *v* AKKAMAL [I. L. R., 13 Mad., 195

68. ———————— *Suit for declaration that defendant not the adopted son—Consequential relief—Specific Relief Act (I of 1877), s 42* —A suit by persons who are merely distant relations and not reversionary heirs, for a declaration that the defendant is not the adopted son, is not maintainable under s 42 of the Specific Relief Act (I of 1877) Every declaratory decree must be ancillary to some consequential relief obtainable thereby, and no such relief is possible in the case of distant and contingent, and not presumptive, reversionary heirs. ANYABA *v*. DAJI I. L. R., 20 Bom., 202

69. ———— **Suit to set aside will for invalidity**—*Hostile will* —A party who, subject

[16 W. R, 214

70. ———— **Suit to avoid effect of nuncupative will**—*Cause of action—Hindu widow—Testamentary declaration.*—A sonless Hindu widow, in possession of her deceased husband's estate as such, made a statement before a revenue official, which was recorded by him, to the effect that she

DECLARATORY DECREE, SUIT FOR
—*continued*

4 REVERSIONERS—*continued.*

wished the property to go after her death to her nephew, and that *S*, the person entitled to succeed her, had no right to the property *Held* that such statement, as it was intended to operate, and would have operated, as a will in respect of the property, gave *S* a right to sue for a declaration that it should not have any effect as against him KALIAN SINGH *v* SANWAL SINGH I. L. R., 7 All., 163

71. ———— **Suit by reversioner to set aside deed** —A Hindu died, leaving a widow, two daughters *R* and *P*, and a grandson *B* by his daughter *R* The widow took possession of the estate and executed an ikrarnama, wherein, after reciting that she was in possession "without the co-parcenary of any one," she declared that "*B*, the grandson of me, the declarant, is the heir of my lat husband and of me the declarant," and that all the property was "the right of *B* as aforesaid," and continued — "During the life of me the declarant, I am in possession without the co-sharership of any one, and will continue to be so, after my death, *B* will get possession of the whole of the moveable and immoveable properties appertaining to the estate of my late husband No one else has the right or demand to the same, therefore, these words have been written and given as an ikrarnama that it may be of use when occasion arises" Under the ikrarnama, proceedings were completed for mutation of names in favour of

72 ———————— *Discretion of Court to grant declaratory decree* —A suit by a reversioner to set aside a zur i peshgi lease executed more than nine years previously having failed by

that a declaratory decree might finally be passed. *Held* that it was not a case in which it would be right for the Court to exercise its discretion. DOOLHUN JANKEE KOOER *v*. LALL BEHAREE ROY [19 W. R., 32

73 ———— **Mortgage by Hindu widow in possession of property in lieu of maintenance**—*Specific Relief Act, s 42—Hindu widow.* —The name of the widow of a member of a joint Hindu family was allowed by the other members to be recorded in her husband's place in respect of his

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

deed of mortgage of the property, which did not specifically state the amount of the estate mortgaged, and also a bond, upon which the obligee obtained a decree, in execution whereof he attached part of the property recorded in the name of the obligor. The members of the family brought a suit, in which they prayed for a declaration that the mortgage executed by the widow was invalid, and that the property was not liable for the amount due thereunder, or to attachment in execution of the decree obtained upon the bond. *Held* that, if the widow's possession were only a possession by the plaintiffs' consent entitling her merely to receive the profits for her maintenance, the plaintiffs might eject her from the property, and that, before they could obtain a declaration under s. 42 of the Specific Relief Act, they must seek their relief by ejectment, that being the substantial and real relief appropriate to the cause of action. On the other hand, if the widow had an estate in possession, given to her in exchange for her maintenance, she had an interest which she was competent to alienate. *Held* also that, inasmuch as the deed of mortgage contained no description of the amount of the estate mortgaged by the widow, and upon its face mortgaged her share of the property only, it could have no operation beyond her share, and the Court would not be justified in granting a declaration under s. 42 of the Specific Relief Act, merely because the plaintiffs apprehended some possible future claim based upon the allegation that the transfer comprised the entire estate. BHOLAI *v.* KALI

[I. L. R., 8 All., 70

74. ———— Suit by reversioner for possession—*Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s. 578.*—A suit brought against *K*, the widow of *R*, a Hindu, by the representatives of *R*'s brothers, *H* and *P*, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After *K*'s death, *M*, a daughter of *R*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently *S*, *M*'s son, who had been born after *K*'s compromise, brought a suit against *M* and the representatives of *H* and *P* to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K* and the withdrawal of the former suit by *M* were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and, upon these findings, gave him a decree declaring his right to possession on *M*'s death. The lower Appellate Court reversed the decree, holding that the compromise entered into by *K* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Held* that the prayer in the plaint was wide enough to include a prayer for declaratory relief such as the first Court had given. Also that it could not be said that a daughter's son was not, under any condition, competent to maintain a declaratory suit of this nature during the lifetime of his mother or maternal aunt, in respect of his maternal grandfather's property, to the full ownership of which he had a reversionary right. Also that the awarding of declaratory relief, as regulated by s. 42 of the Specific Relief Act, is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that such improper exercise of discretion under s. 42 of the Specific Relief Act has no higher footing than that of an error, defect, or irregularity, not affecting the merits of the case or the jurisdiction of the Court, within the meaning of s. 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of appeal would have no power to interfere. *Ram Kanaye Chuckerbutty* v. *Prosunno Coomar Sein, 13 W. R., 175, Sadut Ali Khan* v. *Khajeh Abdul Gunnee, 11 B. L. R., 203, Sheo Singh Rai* v. *Dakho, I. L. R., 1 All., 688: L. R., 6 I. A., 87,* and *Damoodur Surmah* v. *Mohee Kant Surmah, 21 W. R., 54,* referred to. SANT KUMAR *v.* DEO SARAN

[I. L. R., 8 All., 365

75. ———— Decree against widow—*Fraud—Reversioner.*—Upon the death of *R*, a Hindu who was separate from his brother *S*, his widow *G* became life-tenant of his estate, and his daughter *B* became entitled to succeed after *G*'s death. In 1882 a suit was brought by *S* and *G* against *V* to recover the value of a branch of a mangoe tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R* was not the owner of the grove, nor was *G* the owner. In 1885 *B* brought a suit against *G*, *S*, *V*, and *A*, to whom *V* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in collusion between *S* and *G* on the one hand and *V* on the other, for the purpose of improperly preventing her from asserting her rights. *Held* also that, if it should turn out that there was fraud and collusion in the proceedings of 1882 and an attempt to interfere with the plaintiff's right as reversioner to the grove on the death of her mother, she would be entitled in the present suit to claim not only a declaration of her right, but also to have the grove reduced into the

DECLARATORY DECREE, SUIT FOR
—continued

4 REVERSIONERS—*concluded*

possession of the life tenant; and that such relief could be given upon this form of plaint *Katama Natchiar's case, 9 Moore's I A, 543, Adi Deo* [illegible]

5 DECLARATION OF TITLE

78 ———— **Intention to interfere with rights**—To entitle a plaintiff to a declaratory decree, he must show some cause of suit something more than a wish to interfere with his rights Intention to interfere with such rights should be held to constitute a cause of action if at all, only when it is clearly shown JESMANEE KOOER v DEBEE DYAL RAE . 3 N. W, 137

77 [illegible]

stances exist which necessitate his application to the Court for a declaratory decree It is discretionary with the Court to make a declaratory decree KHADIM ALI v NAZIR BEGUM 3 N W, 262

78 [illegible]

[9 W. R, 325

GOBINDONATH ROY CHOWDHRY v KISHEN KANT ROY 10 W. R., 254

79 ———— **Inability to make binding decree**—*One sided cases*—Declaratory orders ought [illegible]

[9 W. R., 4[illegible]

[illegible]

PUREEJAN KHATOON v BYKUNT CHUNDER CHUCKERBUTTY . . . 7 W. R., 98

81. ———— **Prospective injury**—*Suit to declare user*—In a suit to establish plaintiff's right to the reasonable use for the purpose of irrigation of water the flow of which had been impeded by a bund erected by defendants—*Held* that, even though plaintiffs had not yet been endamaged by the acts of the defendants it was in the discretion of the Court, *if they proved their right, to give them a declaratory decree recognizing that right*, seeing that serious consequences might otherwise result WUZEEROODDEEN v SHEO BUND LALL . 11 W. R, 285

DECLARATORY DECREE, SUIT FOR
—continued

5 DECLARATION OF TITLE—*continued*

82 ———— **Anticipation of injury**—*Annoyance*—Courts cannot by anticipation grant a decree prohibiting a defendant from annoying a plaintiff It must be shown that some substantial annoyance or injury which the Court can recognize has been actually committed before the Courts will interfere KASIM ALI KHAN v BIRJ KISHORE [2 N. W, 182

83 ———————— *Cause of action*—A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him The present defendant in the course of that suit [illegible]

mation of possession alleging that the defendants' statement affected his (plaintiff's) title by throwing a cloud over it *Held* there was no cause of action *Per* PAUL, J—A suit merely in anticipation of a threatened ejectment will not lie There must be *something in the case either in the nature of an* invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief, but a mere allegation, or a mere threat without action taken or founded upon it will not be sufficient to entitle a party to a declaration of his title JAN ALI v KHONDKAR ABDUR KHUMA [6 B. L R., 154 14 W. R., 420

84 ———— **Allegation injurious to plaintiff**—*Consequential relief*—The words of s 15, Act VIII of 1859 are to be interpreted as giving a right to obtain a declaration of title only in those cases in which the Court could have granted relief if relief had been prayed for A suit by a party in possession for a declaration of title and to set aside, not any deed nor any act of the defendant, but a mere allegation on his part that he holds under a certain tenure, is not maintainable NILMONY SINGH DEO v KALEE CHURN BHUTTACHARJEE [14 B L R, 382 23 W. R., 150: L. R., 2 I A, 83

85 ———— **Suit by person in posses-** [illegible]

[illegible]

BACHUN ALI v DEWAN ALI 11 W R., 376

86. ———————— *Confirmation of title*—Where the plaintiff in a suit for confirmation of his title being (though illegally) in possession it

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

was held that his not suing for possession was no bar to his obtaining a decree declaratory of his title. SHIBOO SOONDUREE DABI *v.* BECKWITH [9 W. R., 580

87. ———— Order under Land Registration Act (Beng. Act VII of 1876), s. 59—*Specific Relief Act, 1877, s. 42—Possession.*—The effect of an order under s. 59 of the Land Registration Act being to "settle the actual possession," the person against whom such an order is made is precluded by s. 42 of the Specific Relief Act from bringing a suit merely for a declaration of his title without seeking to recover possession also. RAM MUNDUR *v.* JANKI PERSHAD . . . **12 C. L. R., 139**

88. ———— *Land not properly described—Land Registration Act (Bengal Act VII of 1876), ss. 59, 62—Specific Relief Act (I of 1877), s. 42—Subsequent suit for possession.*—A person is not debarred from bringing a suit for declaration of title on the ground that the land in question is not properly described. *Kazem Sheik* v. *Danesh Sheik, 1 C. W. N., 574, Dwarkanath Roy* v. *Jannobee Chowdhrain, 19 W. R., 81, Darbaree Sayal* v. *Fatu Dhalee, 23 W. R., 285, Mahomed Ismail* v. *Lalla Dhundur Kishore Narain, 25 W. R., 39, Ajodhia Lall* v. *Gumani Lall, 2 C. L. R., 134,* distinguished; but if an order under s. 59 of the Land Registration Act is made against him, he is precluded by s. 42 of the Specific Relief Act from bringing a suit merely for declaration of his title without seeking to recover possession, although he may be in physical possession, the effect of such an order being to "settle the actual possession." *Ram Mundur* v. *Janki Pershad, 12 C. L. R., 139, Omrunissa Bibee* v. *Dilawar Ally Khan, I. L. R., 10 Calc., 350,* and *Krishnabhupati Devi* v. *Ramamurti Pantulu, I. L. R., 18 Mad., 405,* referred to and followed. RAJ NARAIN DAS *v.* SHAMA NANDO DAS CHOWDHRY . . **I. L. R., 26 Calc., 845 [4 C. W. N., 162**

89. ———— Declaration of title as owners.—Parties not proving possession, and not entitled to consequential relief, may yet under s. 15, Code of Civil Procedure, obtain a decree declaring them rightful owners. THAKOORDEEN TEWAREE *v.* ALI HOSSEIN KHAN . . . . **8 W. R., 341**

On appeal to the Privy Council, however, it was found that the plaintiffs had asked for and were entitled to consequential relief.

See S. C. **13 B. L. R., 427 : 21 W. R., 340 [L. R., 1 I. A., 192**

90. ———— Right ceasing to exist pending suit—*Declaratory decree where right to possession is barred.*—In a suit for declaration of right which existed at the time the suit was commenced, but which had ceased to exist pending the suit before decree, plaintiff is not entitled to a decree, and a declaratory decree of title will not be given when the plaintiff's claim would have been barred by limitation had he sued for possession. NOBOKISHORE DEY *v.* RAMKISHEN . . . . . **9 W. R., 131**

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

91. ———— Suit by person out of possession—*Omission to ask for possession—Refusal to recognize proprietary right.*—In a suit in which the plaintiffs stated that they had already obtained a decree for possession of certain land, and had received formal possession, and stated their cause of action to be "the defendant's act of not recognizing us as their landlords and thereby preventing us exercising our proprietary rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding payment of rent" praying for a decree establishing their proprietary right and declaring the defendants to be their tenants,—*Held* that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the lands. LOKENATH SURMA *v.* KESHAB RAM DOSS . **I. L. R., 13 Calc., 147**

92. ———— Denial of title without injurious act—*Annoyance.*—In suits for a declaration of title to a divided share of ancestral property, the ground alleged in each case for seeking the declaration was that the representatives of the brothers of the plaintiff's father had refused to be parties to the registering of the property in plaintiff's name, and had executed a deed of sale of it to a third party (third defendant), and registered him as the purchaser. The Court of first instance in each case decreed for the plaintiff. The Appellate Court, following *Padagaligum Pillai* v. *Shanmugham Pillai, 2 Mad., 333,* dismissed the suits on the ground that the plaintiffs were not in a position to maintain them. On special appeal,—*Held* that the suits should be remanded for a declaration of the plaintiff's title, if established. To maintain a suit for a declaration of title, some adverse act, intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, cannot imperil the plaintiff's title, nor have any serious effect on the quiet enjoyment of his proprietary right, and is not sufficient to support such a suit. The principle upon which the decision in *Padagaligum Pillai* v. *Shanmugham Pillai* proceeds is inapplicable to suits under s. 15 of the Civil Procedure Code. KARYAN *v.* PERIA SIDDEN. KARYAN *v.* LINGA GAUNDAN. KARYAN *v.* DODDALI [6 Mad., 307

93. ———— Failure of previous suit for possession of land—*Res judicata, Plea of.*—Suit brought by plaintiff against the first three defendants as his tenants on kanam, and the fourth, the representative of a rival jenmi, to obtain a declaration of title as jenmi. Plaintiff had previously sued the first three defendants to establish the relation of jenmi and kanamkar and to recover the land. He failed and then brought the present suit. *Held* that this was a case of the employment of the device of a suit for a declaration of title in order to get back land by a crooked and not legal process, after failure to recover by proper legal means, the intention being to cut off the defendants (the tenants) from the plea of *res judicata.* The Court, which had a discretion as to

DECLARATORY DECREE, SUIT FOR —*continued*

5 DECLARATION OF TITLE—*continued*

whether such a suit should be permitted ought at once to have said that it should not Where there are no interests to be protected there is no foundation for a suit for a declaratory decree SHUNGUNY MENON *v* KALAMPULLY VALIA NAIR 6 Mad., 117

94. ———— **Injury or hostile act giving cause of action**—*Fraud* —In a suit for a declaration of the plaintiff's title to, and confirmation of his possession of, certain lands which he alleged had first been sold to him by one of the defendants and then sold by his vendor to the other defendant —*Held* that, in the absence of proof of fraud in the later sale, there was no cause of action ABDOOL AZIM CHOWDHRY *v* MAHOMED KABEE 11 W. R , 281

laws or to eject under colour of a mere declaration of title CHOKALINGAPESHANA NAIKER *v* ACHIYAR [I. L R , 1 Mad , 40

See GANPUTGIR BHOLAGIR *v* GANPATGIR [I L R., 3 Bom., 230

96 ———— **Improper execution of decree by ameen**—*Omission to give possession*

decree,—*Held* that when in execution the ameen measured a portion of plaintiff's land as covered by

against defendant, and the suit would lie GOUR PERSHAD DOSS *v* SOOKDEB RAM DEB [12 W. R , 279

97 ———— **Tenant setting up larger**

Held that the plaintiff was entitled to the declaration asked for, notwithstanding that in consequence of his failure to prove a reasonable notice to quit, he was unable to o tain a decree for ejectment A Judge, interfering with the discretion exercised by a lower Court in granting a declaratory decree should state his reasons for so doing KALI KISHEN TAGORE *v* GOLAM ALI I L.R., 13 Calc , 3

98 ———— **Third person compelling payment of rent to him**—*Cause of action* —When a person obliges the tenants of an estate to pay rent to him, his act may be treated as a dispossession of the party wronged sufficient to entitle the latter to sue for declaration of title RADHA MADHUB PANDA *v* JUGGERNATH DOOAB . 14 W. R., 183

See HOYMOBUTTY DASSEE *v* SREEKISSEN NUNDEE [14 W. R., 58

99 ———— **Unsuccessful intervention in rent suit**—*Cause of action* —Unsuccessful intervention in a suit for rents against raiyats, followed by no result operating injuriously on plaintiff's title or possession can afford him no cause of action in a suit for declaration of right and confirmation of possession JUGGUT CHUNDER ROY *v* MOHIMA CHUNDER PAUL 11 W R., 331

100 ———— **Slander of title**—*Civil Procedure Code, 1859 s 15* —The issuing of procla-

title and threats on *B*'s part are not in themselves sufficient to entitle *A*, who is in possession and enjoyment of the estate as rightful owner, to a decree declaring him to be the rightful owner THIRUVENGADATHIENGAR *v* SANGILIVEERAPPA PANDYA CHINNATHUMBIAR . I L R , 1 Mad., 65

101. ———— **Suit for ejectment of one defendant and declaration against others**—*Suit before Act VIII of 1859* —Before the enactment of Act VIII of 1859, s 15, a suit could not have been brought for a mere declaration of title without consequential relief A suit cannot be brought against several defendants to eject one, and to obtain a declaration of title against the rest NAAN MANI *v* GODA SHANGARA . 1 Mad., 252

102 ———— **Suit for confirmation of title by purchaser at sale in execution**—*Confirmation of possession* —The purchaser of property from a judgment debtor, whose right title, and interest have been subsequently sold to another party

103 ———— **Suit by first mortgagee against subsequent mortgagee as purchaser affecting his title** —*R* having executed two mortgages of the same share, his mortgagees obtained against him separate decrees in each of which the property was declared liable to sale in satisfaction of the debt Plaintiff first purchased under the decree obtained on the earlier mortgage, and defendant (who was the second mortgagee) himself purchased the same right, title, and interest at the second sale The

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

his rights had not been disturbed by any act of the defendant. BUDDHINATH JHA *v.* AMRIT SAHOO [10 W. R., 120

104. ———— Suit for declaration of title as mortgagee—*Rejection of claim to attached property.*—On attachment of certain property in execution of a decree, *A* preferred his claim under s. 246, Act VIII of 1859, on the ground that he held a mortgage thereof from the judgment-debtor. Thereupon an order was passed for sale of the property subject to the mortgage. *B* afterwards claimed the same property as his absolute estate, and his claim was allowed, and the property released from attachment. *A* was not a party to these proceedings. *Held* that *A* could maintain a suit against *B* for a declaration of his title as mortgagee. GOBIND PRASAD TEWARI *v.* UDAI CHAND RANA 6 B. L. R., 320

105. ———— Interference with plaintiff's right—*Cause of action.*—A Government ijaradar's covenant with Government that he will not object to the use of the tanks, roads, cow-path, etc., within his ijara, does not prevent him from making settlements for those tanks, roads, etc.; and the mere fact of his giving a lease to one party cannot interfere with another party's right to use such road, or the waters of such tank, or give that other party cause to sue for a declaration of title. WOOSUM ALI *v.* JAN ALI . . . . 11 W. R., 394

106. ———— Suit to declare estate forfeited—*Specific Relief Act (I of 1877), s. 42.*—Certain trusts of a house were declared in favour of *A* and *B* for life, subject to forfeiture upon the happening of particular events; and further trusts in favour of the issue of *A* and *B* were also declared. The settler died, leaving a will under which *C* took an estate for his life with remainder to the settlor's son *E* absolutely. *E* assigned his interest in the trust premises to the plaintiff, who now sued the *cestuis que trustent,* and *C,* praying that, in the events which had happened, it might be declared that the life-estates of *A* and *B* had been forfeited. He also asked for various declarations as to his rights. *Held* that no declaratory decree could be made. BHUPENDRO BHUSAN CHATTERJEE *v.* TRIGUNANATH MOOKERJEE . . . . I. L. R., 8 Calc., 761

107. ———— Suit by landlord during continuance of tenancy—*Specific Relief Act, s. 42.*—It is open to a landlord, where his title is in jeopardy from the aggressions of a neighbouring zamindar, and where his title may be damaged by a denial of his rights over his land, to bring a suit for the purpose of having his rights declared as against such wrong-doers and for the purpose of being put into possession of the land as against them. *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15,* explained. BISSESSURI DABEEA *v.* BARODA KANTA ROY CHOWDRY. I. L. R., 10 Calc., 1076

108. ———— Suit to establish title to property on the ground of trespass by defendant to particular part of it—*Decree confined to that portion.*—He who seeks a declaration of matters not necessary to the immediate relief sought must sustain the burden of making out the abstract proposition which he has volunteered to support, and it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem. Suit brought for a declaration of title to a considerable tract of country on account of a trespass committed by defendant on a particular hill. *Held* that, as to that particular hill, the plaintiff's claim was sustainable, and that disposed of the only question which it was necessary to decide. KALLAVETTI KUNGJAL KUNHOLEY KUTTY *v.* NILAMBUR THACKAYAKATIL MANA VIKRAMAN *alias* THIRUMULPAD . 8 Mad., 17

109. ———— Suit for declaration of title after defendant has obtained order for certificate under Act XXVII of 1860.—A suit may be maintained for a declaration of title which may be used as a means for the withdrawal of a certificate under Act XXVII of 1860, though a suit will not lie to set it aside. RUSSICK CHUNDER *v.* RAM LALL SHAHA . . . . 22 W. R., 301

110. ———— Suit against holder of certificate under Act XXVII of 1860.—Where a certificate had been granted to the personal representative of a deceased shebait of debutter property, who set up no claim to the property, and the manager of the debutter property on behalf of the surviving shebait brought a suit against the certificate-holder for a declaration under Act VIII of 1859, s. 15, the District Judge was held to have done right in refusing the declaration. RUGHOOBUR DYAL SINGH *v.* RAM NARAIN KOLYA . . 22 W. R., 312

111. ———— Refusal to register—*Suit for declaration of title under unregistered deed—Specific performance.*—*A* brought a suit in the Munsif's Court against *B* and *C,* alleging that they had sold outright to him by saf-kobala certain landed property for R300, which was duly paid when the kobala was executed; that possession was given to him; that *B* and *C* set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money had not been paid; that therefore the Registrar refused to register the deed; that in fact there was no such stipulation as alleged by *B* and *C,* and that the whole of the purchase-money was paid. It was stated in the plaint that the suit was brought to set aside the fraudulent objections and to establish the full title of *A* as purchaser. *Held* (MITTER, J., dissenting) that the suit would not lie, the unregistered deed could not be admitted in evidence, nor parol evidence given of the contract under which *A* alleged he acquired his title. RAHMATULLA *v.* SARIATULLA KAGCHI [1 B. L. R., F. B., 58: 10 W. R., F. B., 51

SEPAHEE SINGH *v.* CHUNDUN [2 N. W., 160: Agra, F. B., Ed. 1874, 213

DECLARATORY DECREE, SUIT FOR
—*continued.*

5 DECLARATION OF TITLE—*continued*

112 ———— **Suit to ascertain shares in family property**—*Overt act of injury* —Where there is a dispute as to the shares of the several members of a family in a family property, the possession of which is undisturbed, a suit will lie to ascertain the shares of the different members In a suit for a declaratory decree, it is not necessary to allege any overt act which may give rise to relief in the shape of damages or a decree for possession BHAGWAN SINGH v. MITARJIT SINGH
[8 B L R, 382: 17 W. R., 169

one-third share of certain lands One member sued the others for partition of the family property, claiming to have his right declared to receive one third of the share of the family in the profits of the said lands *Held* that the Court was not debarred from granting the relief prayed for by the provisions of s 42 of the Specific Relief Act PANCHANADAYYAN v NILAKANDAYYAN . I. L R, 7 Mad., 191

114 ———— **Invasion of right**—*Cause of*

no cause of action RAMGOPAUL TEWAREE v GORA CHUND PORYAL . 15 W R, 28

115 ———— **Dismissal of former suit for enhanced rent**—*Cause of action* —A former

mal lands of his zamindari ISSUR CHUNDER ROY v JUGGESSUR GHOSE . . 17 W R, 184

116. ———— **Suit by person in possession of land to establish title**—*Civil Proce-*

DECLARATORY DECREE, SUIT FOR
—*continued*

5. DECLARATION OF TITLE—*continued.*

CHUNDER v PARBUTTY DOSSEE
[I L R, 3 Calc., 612: 1 C. L. R., 404

117. ———— **Suit to declare land lakhiraj**—*Resumption decree declaring lands mal—Specific Relief Act (I of 1877), s 42—Title by possession—Limitation Act (XV of 1877), s 28, sch II, art. 130* —In a suit instituted in 1877, *A* prayed for a declaration that he had a lakhiraj title to certain lands, the defendant stated that the lands for a declaration of a title to which *A* now sued formed part of certain lands which had been the subject of resumption proceedings, which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by *A*, were not lakhiraj It being found as a fact that *A* had neither been a party to, nor been presented in, the resumption proceedings, that he had been in quiet and undisturbed possession of the lands which he now claimed for more than twelve years before the institution of his suit and that proceedings had been taken by the defendant calculated to disturb such possession,—*Held* that *A* was entitled, under s 42 of Act I of 1877, to the declaration prayed for ABHOY CHURN PAL v. KALLY PERSAD CHATTERJEE
[I L R, 5 Calc, 949: 6 C. L. R., 260

118 ———— **Suit to declare proprietary right**—*Previous suit for rent dismissed—Consequential relief—Act I of 1877 (Specific Relief Act), s 42* —*S* sued *B* in a Court of Small Causes for arrears of ground rent of a house. The latter denied *S*'s proprietary right to the land and his liability to pay ground rent, and *S*'s suit was in consequence dismissed Thereupon *S* sued *B* in the Civil Court for a declaration of proprietary right to the land and of his right to receive ground rent *Held* that the suit was not barred by the proviso to s 42 of the Specific Relief Act, because it did not include a claim for arrears of ground rent, and that the suit was one in which the specific relief claimed might properly be granted The principle laid down in *Sadut Ali Khan v. Khajeh Abdool Gunnee, 11 B. L R, 203,* applied SOMKALI v BHAIRO
[I. L. R, 5 All, 55

119 ———— **Suit to declare rights under**

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

land which had been collected by *B.* It appeared that there had been no denial of the plaintiffs' rights before 1889, that no rent had been collected for several years before suit, the mortgagors who had remained in possession as lessees after the execution of the mortgages having refused to attorn to *B. Held* that the suits were not barred by Specific Relief Act, s. 42, for want of a prayer for possession; that the suits were not barred by limitation save as to the claim for rent; that the transactions having been proved to be benami in character, the plaintiffs were entitled to a declaration of their two-thirds right under the mortgages of 1884 and a like declaration as to half of the mortgage of 1880; and that the plaintiffs were entitled to possession of the mortgage documents of 1884 and the other documents connected therewith, but not the others. MAHABALA BHATTA *v.* KUNHANNA BHATTA . I. L. R., 21 Mad., 373

120. ——— Obstruction to alleged highway—*Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), ss. 133, 137—Parties.*—An owner of land has a right to bring a suit under s. 42 of the Specific Relief Act against any one of the public who formally claims to use such lands as a public road, and who thereby has endangered the title of the owner. To such a suit it is unnecessary to make the Secretary of State a party. Such a suit is not barred by an order of a Criminal Court under s. 137 of the Criminal Procedure Code. *Khodabux Mundul* v. *Monglai Mundul, I. L. R., 14 Calc., 60,* overruled. CHUNI LALL *v.* RAM KISHEN SAHU . I. L. R., 15 Calc., 460

121. ——— Sale in execution of decree of property not belonging to judgment-debtor—*Right of owner to bring suit to establish title and not wait for dispossession.*—In execution of a decree on a mortgage, certain property was sold which the plaintiff in this suit claimed as his own under a sale to himself by the sons of the judgment-debtor. He applied to the Court to have the sale set aside, but failing in his application he sued both the decree-holder and the auction-purchaser for a declaration of his title to the property in question. The Assistant Judge held on appeal that the suit was not maintainable on the grounds that a separate suit could not be brought, as the question of title was one for decision in the execution-proceedings, and that, even if the point could be raised in a separate suit, the present suit was premature, as the plaintiff should have waited till he was dispossessed by the auction-purchaser. *Held* that the suit was not premature. A person, whose property is sold in execution of a decree against a third party, is not bound to wait till he is dispossessed by the auction-purchaser. As soon as his title is denied, he is entitled to bring his suit. SHIVRAM CHINTAMAN *v.* JIVU . . . . I. L. R., 13 Bom., 34

122. ——— Suit for declaration of title as holder of a stanom to which a malikana allowance is attached—*Specific Relief Act (I of 1877), s. 42.*—Suit to declare plaintiff's title to the stanom of fifth Raja of Palghat; the first Raja (defendant No. 1) received a malikana allowance from Government payable to the various stanomdars, but had refused to pay to plaintiff the fifth Raja's share. *Held,* the plaintiff being entitled to sue for further relief than the declaration of his title and having omitted to do so, the suit must be dismissed under Specific Relief Act, s. 42. KOMBI *v.* AUNDI [I. L. R., 13 Mad., 75

123. ——— Consequential relief—*Specific Relief Act (I of 1877), s. 42.*—In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants, and had for more than twelve years been excluded to their own knowledge from the joint family property. *Held* that if, as alleged by the plaintiffs, plaintiff No. 1 was the *de jure* ejaman of the family, he was entitled to the possession and management of the family property, and a suit for a mere declaration of his right would not lie. *Chandu* v. *Chathu Nambiar, I. L. R., 1 Mad., 381,* distinguished. MUTTAKKE *v.* THIMMAPPA [I. L. R., 15 Mad., 186

124. ——— Suit for declaration of right to possession of lands as member of joint family—*Specific Relief Act (I of 1877), s. 42.*—A plaintiff brought his suit in a Civil Court asking for a declaration of his right to the possession of certain lands as a tenant at fixed rates or in the alternative for possession, alleging that the lands were the property of a joint Hindu family of which he was a member, that the family still remained joint, and that he was entitled, as a member of such joint Hindu family, to a one-third undivided share in this ancestral property. *Held* that the Civil Court was competent to give the plaintiff a decree declaring that he was a member of the joint Hindu family, that the family still remained joint, that the property in dispute was ancestral and had not been partitioned, and that the plaintiff was entitled to a one-third undivided share; further that s. 42 of the Specific Relief Act would not apply to the suit, inasmuch as the Civil Court, if the plaintiff was found to be out of possession, was not competent to grant consequential relief in the shape of a decree for possession as a tenant at fixed rates. BRIJ BHUKHAN *v.* DURGA DAT . I. L. R., 20 All., 258

125. ——— Illegitimate son of a Sudra—*Specific Relief Act (I of 1877), s. 42—Hindu law—Inheritance—Further relief.*—The widows of a shrotriemdar, who was a sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as shrotriemdar in lieu of his deceased father, and to

DECLARATORY DECREE, SUIT FOR
—*continued*

5 DECLARATION OF TITLE—*continued*

CHINNAMMAL *v* VARADARAJULU
[I L. R., 15 Mad., 307

126 ———— Refusal of declaratory decree, the case made for it being defective—*Specific Relief Act s 42*—Under the Specific Relief Act s 42, a suit was brought for a decree declaratory of the plaintiffs' title to be mutwalis and managers of property from ancient times connected

that they were not entitled to the decree claimed
s any opinion
which either
have relating

I. L. R., 12 All, 587
L R., 17 I A, 187

127 ———— Consequential relief—

CHANDER RAI I. L. R., 13 All., 17

128 ———— Suit for declaration of title by an objector in execution proceedings—*Specific Relief Act (I of 1877) s 42—Consequential Relief—Civil Procedure Code, s 283*—In a suit under Civil Procedure Code, s 283 for a declaration that the sale to defendant No 2 of certain land in execution of a decree was invalid, it appeared that the land had been attached in execution of a decree obtained by defendant No 2 against defendant No 1, who held it as the plaintiff's tenants that the plaintiff had intervened unsuccessfully in the execution proceedings and had been referred to a regular suit and that the land had been brought to sale and purchased by defendant No 2 who was now in possession *Held* that the suit was not maintainable for want of a prayer for possession KUNHIAMMA *v* KUNHUNNI I L R., 16 Mad., 140

129 ———— Mere possession on the one side and unjustifiable dispossession on the other—*Specific Relief Act (I of 1877), s 42—Right of the possessor dispossessed by a wrong doer, as against the latter—Injunction—Wakf*—Lawful possession of land is sufficient evidence of right as owner as against a person who has no title whatever and who is a mere trespasser The former can obtain a declaratory decree and an injunction restraining the wrong doer In such a suit the defence was that the land was wakf, and the defendant mutwalli of it Both Courts found that the plaintiff was in possession as purchaser from some of those who were entitled to sell But the first Court did not find a fact which the Appellate Court found *viz* that the property had been constituted wakf Both Courts however concurred in the finding that the defendant at all events was not the mutwalli and had no title *Held* that the plain

this suit as parties interested were not before the Court ISMAIL ARIFF *v* MAHOMED GHOUSE
[I L R., 20 Calc, 834. L R., 20 I. A, 99

130 ———— Suit by person in possession for declaration of title—*Burden of proof—Failure of plaintiff or defendant to prove title—Effect of plaintiff's possession—Specific Relief Act (I of 1877), s 42*—The plaintiff, who was in possession of

any title to the land but the plaintiff proved that he had been for ten years in possession and had built a shed on it *Held* that no declaration of the plaintiff's title could be made, but *held* on the authority of *Ismail Ariff* v *Mahomed Ghouse, I L R 20 Calc, 834 L R, 20 I A, 99*, that the plaintiff was lawfully entitled to the land and to the shed thereon GANGARAM CHIMNA PATEL *v* SECRETARY OF STATE FOR INDIA
[I L R, 20 Bom, 798

131 ———— Objection that consequential relief is available—*Specific Relief Act (I of 1877), s 42—Objection raised for first time on appeal*—The plaintiff, as heir to her husband,

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

brought a suit, in which Government was not represented, for a declaration of the title to a quarter share of the jenmi value of land taken up under the Land Acquisition Act. *Held* that the suit for a declaration only was maintainable. Even assuming that the plaintiff was able and called upon in this case to ask for further relief, *held*, following the decision in *Limba bin Krishna* v. *Rama bin Pimplu, I. L. R., 13 Bom., 548*, that the suit should not be dismissed on this ground, the objection not having been raised in either of the lower Courts. CHOMU *v.* UMMA

[I. L. R., 14 Mad., 46

132. ———— Conseqential relief—*Specific Relief Act (I of 1877), ss. 42, 56—Amendment of plaint on appeal—Raising fresh issue on appeal.*—The plaintiff obtained a decree in a suit in which he averred that he was entitled to the office of Sheik of Kallai and to certain properties attached thereto, and prayed for a declaration that the defendant had no right either to the office of Sheik or to the properties in question, for an injunction restraining him from interfering with the properties or doing anything in any way inconsistent with the plaintiff's right to the office, and for further and other relief. It appeared on the evidence for the defence that the defendant was in possession of part of the property, but no issue had been framed as to the maintainability of the suit under the last clause of the Specific Relief Act, s. 42. *Held* (on appeal by the defendant) that the Court of first instance should take evidence and try an issue specifically directed to this question. It having appeared on the evidence recorded on that issue that the defendant was substantially in possession of the office of Sheik and of its emoluments,—*Held* that the suit was not maintainable, although an injunction was asked for as relief consequential on the declaration. The plaintiff was permitted to pay additional stamp duty and amend the plaint by adding a prayer for possession. ABDULKADAR *v.* MAHOMED

[I. L. R., 15 Mad., 15

133. ———— *Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s. 53—Amendment of plaint on appeal.*—A karar was executed by members of two Malabar tarwards, by which the tarwad of the plaintiffs and defendants Nos. 1 and 2 was amalgamated with that of which defendant No. 3 was a karnavan; part of the property of the plaintiff's branch was in the possession of defendants Nos. 1 and 3, and part of it was held under demises from defendant No. 3. The plaintiffs sued for a declaration of their title to this property and for a declaration that the karar was not binding on them. An issue was framed on the question whether the suit was maintainable for want of a prayer for all relief consequential on these declarations. *Held* (1) that the suit was not maintainable for want of a prayer for possession of the lands under demise; (2) that the plaintiffs should not be permitted to amend the plaint on appeal by the addition of such a prayer. NARAYANA *v.* SHANKUNNI I. L. R., 15 Mad., 255

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

134. ———— *Suit for a mere declaration of title without consequential relief—Specific Relief Act (I of 1877), s. 42—Injunction—Amendment of plaint.*—The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a talukhdari estate, to the exclusion of defendant No. 1, who, he alleged, was a supposititious child set up by his step-mother to defeat the plaintiff's right of inheritance. It appeared that defendant No. 1 had obtained a decree against the plaintiff's father, establishing his legitimacy and declaring him entitled to receive maintenance out of the estate in question. In accordance with this decree, the talukhdari settlement officer (defendant No. 2), who was in management of the estate under Act XXI of 1881, paid defendant No. 1 an allowance of R200 a month on account of his maintenance. The plaintiff alleged that the payment to defendant No. 1 was illegal and wrongful, but he did not ask for an injunction restraining him from receiving the allowance. The defendants contended that the suit was not maintainable because the plaintiff had sued for a mere declaration of title without asking for consequential relief. *Held* (CANDY, J., doubting) that the suit was barred under s. 42 of the Specific Relief Act, as the plaintiff had omitted to seek the relief of an injunction against defendant No. 1, restraining him from receiving future payment of maintenance. *Held*, further, that plaintiff was at liberty to amend his plaint by praying for an injunction as against both defendants. SARDARSINGJI *v.* GANAPATSINGJI

[I. L. R., 14 Bom., 395

135. ———— Executor or administrator of a shareholder, Rights of—*Specific Relief Act (I of 1877), s. 42— "Holding a share," Meaning of—Agreement, Construction of—Objection taken for first time in appeal.*—Prior to the year 1863, *W W* carried on an extensive timber trade in Burma. In that year the defendant company was formed for the purpose of taking over the business from him together with the capital and assets engaged therein. The nominal capital of the company was R25,00,000, divided into one thousand shares of R2,500 each. On the 22nd July 1864, an agreement carrying out the above object was executed between *W W* and the defendant company. This agreement set forth the assets and property to be transferred, and classified them as (*a*) "fixed assets," which consisted of immoveable property, buildings, etc., valued at R2,76,000 or thereabouts; and (*b*) assets other than fixed assets which consisted of what was called "forest operations," and of valuable contracts, rights, and concessions from the King of Burma, etc. The agreement further specified the consideration to be paid to *W W* for each of these classes of assets. For the "fixed assets" he was (under the 12th clause of the agreement) to receive one hundred fully paid-up shares of the company. That clause contained certain provisions as to the payment of the ordinary dividend upon those shares, and concluded with a provision that the directors of the company should not be bound to consent

DECLARATORY DECREE, SUIT FOR —*continued*

5 DECLARATION OF TITLE—*continued*

to or to recognize as valid any assignment made by *W W*, his executors or administrators of the shares, or any of them, within five years from the date of the registration of the company For the remaining assets it was provided by the 13th clause

as might remain in any year after paying a dividend

five years, his executors or administrators should not be entitled to the said extra or preferential dividend after the expiration of the said period, notwithstanding they might continue to hold the said shares Subsequently to the execution of this agreement, the business and assets were transferred to the company by *W W*, and one hundred fully paid up shares were duly allotted to him under cl 12, and his name was entered on the register of shareholders In 1888 *W W*, then domiciled in England, died By his will he appointed his three brothers—*R W*, *L A W*, and *A F W*—his executors, and he directed that his executors should hold the said shares and all his interest therein and attached to the holding thereof upon trust for such of his said brothers as might survive him, if more than one, as joint tenants *R W* died in the testator's lifetime, and only *A F W* proved the will On the 27th September 1888, letters of administration with the will annexed were granted by the High Court of Bombay to the plaintiff in this suit (*F Y S*) as attorney for the said executor *A F W* On the 29th September 1889, the said letters of administration were produced to and registered with, the defendant company The hundred shares continued to stand in the testator's name in the register of shareholders In a parallel column in the register, under the heading "Remarks," the following entry was made — 'Administration in India to the estate of *W W* has been granted to Mr *F Y S* as attorney for *A F W*" Save for this entry, the register remained unaltered after the testator's death The plaintiff now sued to have it declared that cl 13 of the agreement was still in operation, and that, as such administrator as aforesaid, he was entitled to the extra or preferential dividend payable on the said one hundred shares if and when there should be sufficient net profits to allow payments thereof under the said clause The company disputed the plaintiff's claim They contended that *A F W*, the proving executor of the testator's will, had ceased to hold the shares

time when such dividends were declared, he was

DECLARATORY DECREE, SUIT FOR —*continued*

5 DECLARATION OF TITLE—*continued*

holding the shares in the capacity of executor and as an undistributed part of the testator's estate The

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estate had been got in, and the debts paid, that the estate had not been divided because it would not be in accordance with the private wishes of the testator which they (*i.e*, he and his brother *L A W*) were aware of, that apart from these private wishes, there was no reason why the estate should not be divided between his brother and himself *Held* by FARRAN, *J*, and by the Court of appeal that the plaintiff was entitled to the declaration sought for The executor or his attorney (the plaintiff) was still the registered holder of the shares, and under

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There was nothing to be found in the agreement, express or implied, showing the intention of the parties to regard anything but the legal holding, and to go beyond that holding would virtually be to add a new term to the agreement On appeal the defendants contended that the Court would not make

whether the right to a preferential dividend was still in existence as contended by the plaintiff, or had come to an end. The circumstance moreover, that the objection had been taken for the first time on appeal would by itself be fatal to it BOMBAY BURMAH TRADING CORPORATION *v* SMITH

[I. L. R., 17 Bom., 197

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DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

brought a suit, in which Government was not represented, for a declaration of the title to a quarter share of the jenmi value of land taken up under the Land Acquisition Act. *Held* that the suit for a declaration only was maintainable. Even assuming that the plaintiff was able and called upon in this case to ask for further relief, *held,* following the decision in *Limba bin Krishna* v. *Rama bin Pimplu, I. L. R., 13 Bom., 548,* that the suit should not be dismissed on this ground, the objection not having been raised in either of the lower Courts. CHOMU *v.* UMMA

[I. L. R., 14 Mad., 46

132. ———— Conseqential relief—*Specific Relief Act (I of 1877), ss. 42, 56—Amendment of plaint on appeal—Raising fresh issue on appeal.*—The plaintiff obtained a decree in a suit in which he averred that he was entitled to the office of Sheik of Kallai and to certain properties attached thereto, and prayed for a declaration that the defendant had no right either to the office of Sheik or to the properties in question, for an injunction restraining him from interfering with the properties or doing anything in any way inconsistent with the plaintiff's right to the office, and for further and other relief. It appeared on the evidence for the defence that the defendant was in possession of part of the property, but no issue had been framed as to the maintainability of the suit under the last clause of the Specific Relief Act, s. 42. *Held* (on appeal by the defendant) that the Court of first instance should take evidence and try an issue specifically directed to this question. It having appeared on the evidence recorded on that issue that the defendant was substantially in possession of the office of Sheik and of its emoluments,—*Held* that the suit was not maintainable, although an injunction was asked for as relief consequential on the declaration. The plaintiff was permitted to pay additional stamp duty and amend the plaint by adding a prayer for possession. ABDULKADAR *v.* MAHOMED

[I. L. R., 15 Mad., 15

133. ———————— *Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s. 53—Amendment of plaint on appeal.*—A karar was executed by members of two Malabar tarwards, by which the tarwad of the plaintiffs and defendants Nos. 1 and 2 was amalgamated with that of which defendant No. 3 was a karnavan; part of the property of the plaintiff's branch was in the possession of defendants Nos. 1 and 3, and part of it was held under demises from defendant No. 3. The plaintiffs sued for a declaration of their title to this property and for a declaration that the karar was not binding on them. An issue was framed on the question whether the suit was maintainable for want of a prayer for all relief consequential on these declarations. *Held* (1) that the suit was not maintainable for want of a prayer for possession of the lands under demise; (2) that the plaintiffs should not be permitted to amend the plaint on appeal by the addition of such a prayer. NARAYANA *v.* SHANKUNNI . I. L. R., 15 Mad., 255

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

134. ———————— *Suit for a mere declaration of title without consequential relief—Specific Relief Act (I of 1877), s. 42—Injunction—Amendment of plaint.*—The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a talukhdari estate, to the exclusion of defendant No. 1, who, he alleged, was a supposititious child set up by his step-mother to defeat the plaintiff's right of inheritance. It appeared that defendant No. 1 had obtained a decree against the plaintiff's father, establishing his legitimacy and declaring him entitled to receive maintenance out of the estate in question. In accordance with this decree, the talukhdari settlement officer (defendant No. 2), who was in management of the estate under Act XXI of 1881, paid defendant No. 1 an allowance of R200 a month on account of his maintenance. The plaintiff alleged that the payment to defendant No. 1 was illegal and wrongful, but he did not ask for an injunction restraining him from receiving the allowance. The defendants contended that the suit was not maintainable because the plaintiff had sued for a mere declaration of title without asking for consequential relief. *Held* (CANDY, *J.,* doubting) that the suit was barred under s. 42 of the Specific Relief Act, as the plaintiff had omitted to seek the relief of an injunction against defendant No. 1, restraining him from receiving future payment of maintenance. *Held,* further, that plaintiff was at liberty to amend his plaint by praying for an injunction as against both defendants. SARDARSINGJI *v.* GANAPATSINGJI

[I. L. R., 14 Bom., 395

135. ———— Executor or administrator of a shareholder, Rights of—*Specific Relief Act (I of 1877), s. 42— "Holding a share," Meaning of—Agreement, Construction of—Objection taken for first time in appeal.*—Prior to the year 1863, *W W* carried on an extensive timber trade in Burma. In that year the defendant company was formed for the purpose of taking over the business from him together with the capital and assets engaged therein. The nominal capital of the company was R25,00,000, divided into one thousand shares of R2,500 each. On the 22nd July 1864, an agreement carrying out the above object was executed between *W W* and the defendant company. This agreement set forth the assets and property to be transferred, and classified them as (*a*) "fixed assets," which consisted of immoveable property, buildings, etc., valued at R2,76,000 or thereabouts; and (*b*) assets other than fixed assets which consisted of what was called "forest operations," and of valuable contracts, rights, and concessions from the King of Burma, etc. The agreement further specified the consideration to be paid to *W W* for each of these classes of assets. For the "fixed assets" he was (under the 12th clause of the agreement) to receive one hundred fully paid-up shares of the company. That clause contained certain provisions as to the payment of the ordinary dividend upon those shares, and concluded with a provision that the directors of the company should not be bound to consent

DECLARATORY DECREE, SUIT FOR —*continued*

5 DECLARATION OF TITLE—*continued*

to or to recognize as valid any assignment made by *W W*, his executors or administrators of the shares or any of them, within five years from the date of the registration of the company For the remaining assets it was provided by the 13th clause of the agreement that *W W*, his executors or administrators should be entitled, so long as he or they should hold the hundred shares to an extra preferential dividend, payable out of such surplus net profits

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tors) for the reserve fund. The said extra or preferential dividend was to be one third of such surplus net profits The said 13th clause also provided that, if *W W* died within the above stated period of five years, his executors or administrators should not be entitled to the said extra or preferential dividend after the expiration of the said period

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paid up shares were duly allotted to him under cl 12, and his name was entered on the register of shareholders In 1888, *W W*, then domiciled in England, died By his will he appointed his three brothers—*R W*, *L A W*, and *A F W*—his executors, and he directed that his executors should hold the said shares and all his interest therein and attached to the holding thereof upon trust for such of his said brothers as might survive him, if more than one, as joint tenants *R W* died in the testator's lifetime and only *A F W* proved the will On the 27th September 1888, letters of administration with the will annexed were granted by the High Court of Bombay to the plaintiff in this suit (*F Y S*) as attorney for the said executor *A F W* On the 29th September 1889, the said letters of administration were produced to and registered with, the defendant company The hundred shares continued to stand in the testator's name in the register of shareholders In a parallel column in the register, under the heading "Remarks," the following entry was made —"Administration in India to the estate of *W W* has been granted to Mr *F Y S* as attorney for *A F W*" Save for this entry, the register remained unaltered after the testator's death The plaintiff now sued to have it declared that cl 13 of the agreement was still in operation, and that, as such administrator as aforesaid, he was entitled to the extra or preferential dividend payable on the said one hundred shares if and when there should be sufficient net profits to allow payments thereof under the said clause The company disputed the plaintiff's claim They contended that *A F W*, the proving executor of the testator's will had ceased to hold the shares as executor, and was holding them as trustee under the specific bequest in the will, and that he was only entitled to the preferential dividends if, at the time when such dividends were declared, he was

DECLARATORY DECREE, SUIT FOR —*continued*

5 DECLARATION OF TITLE—*continued*

holding the shares in the capacity of executor and as an undistributed part of the testator's estate They insisted that the plaintiff should prove that he so held the shares before he could be entitled to the declaration sought for The executor was examined in England on commission. He deposed that the estate had been got in, and the debts paid, that the estate had not been divided, because it would not be in accordance with the private wishes of the testator which they (*i e*, he and his brother *L A W*) were aware of, that apart from these private wishes there was no reason why the estate should not be divided between his brother and himself *Held* by FARRAN, *J*, and by the Court of appeal that the plaintiff was entitled to the declaration sought for The executor or his attorney (the plaintiff) was still the registered holder of the shares and under cl 13 of the agreement it was intended that *W W*, his executors or administrators, should be entitled to the extra dividend so long as he or they should be registered holder or holders of the shares, without reference to the beneficial interest therein There was nothing to be found in the agreement express or implied, showing the intention of the parties to regard anything but the legal holding, and to go beyond that holding would virtually be to add a new term to the agreement On appeal the

their discretion as to the amount to be carried to the reserve fund, upon which the balance of profit available for the preferential dividend depended It was therefore, from the very nature of the case, important that the directors should know for certain whether the right to a preferential dividend was still in existence as contended by the plaintiff, or had come to an end. The circumstance, moreover, that the objection had been taken for the first time on appeal would by itself be fatal to it BOMBAY BURMAH TRADING CORPORATION *v* SMITH

[I. L. R., 17 Bom., 197

possession was contained in the plaint It appeared

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

that the land in question had been given to the plaintiff by his father, and had subsequently been attached and brought to sale in execution of a decree against the plaintiff's father, and had been purchased by the defendants who were put into constructive possession under the Civil Procedure Code, s. 319, the land being in the actual possession of tenants. *Held* that the suit for a declaration merely was not maintainable under the Specific Relief Act, s. 42. KRISHNADHUPATI DEVU *v.* RAMAMURTI PANTULU [I. L. R., 18 Mad., 405

137.———— Consequential relief—*Specific Relief Act (I of 1877), s. 42.*—At a sale in execution of a decree against the plaintiffs, the pleader who had acted for the plaintiffs purchased their property with his own money, but in the name of his mohurrir, and for a very inadequate sum. The plaintiffs thereupon brought a suit against the defendants (the pleader and his mohurrir) for a declaration that the pleader-defendant, in so purchasing, was a trustee on their behalf, for an order directing the defendants to reconvey the property to the plaintiffs, and for other relief. At the time of filing the suit, possession of the land sold had not been given to anybody. *Held* that s. 42 of the Specific Relief Act (I of 1877) was no bar to the suit, as being one merely for a declaratory decree without consequential relief. AGHORE NATH CHACKERBUTTY *v.* RAM CHURN CHACKERBUTTY . . I. L. R., 23 Cal., 805

138.———— Suit for a declaration that plaintiff's interests are not affected by sale in execution of decree—*Specific Relief Act (I of 1877), s. 42—Further relief.*—The plaintiffs were purchasers at a sale held in execution of a decree for money, and had obtained possession. Before that decree had been executed, the property in question was mortgaged to two other persons. After the purchase by the plaintiffs, the mortgagees, with knowledge of the auction-purchasers' rights, brought a suit for sale upon their mortgage without making the former auction-purchasers parties. They obtained a decree, and brought the mortgaged property to sale, and it was purchased by *N S* and another. The former auction-purchasers thereupon sued the purchasers under the decree upon the mortgage for a declaration that they and their interests were not affected by the suit for sale and by the decree for sale and the sale in execution of that decree. *Held* the plaintiffs in that suit were not bound either to tender the mortgage-money, or to offer to redeem, or to frame their suit as a suit for redemption, and that their not having done so did not deprive them of their right to a declaration. *Bhawani Prasad* v. *Kallu, I. L. R., 17 All., 537,* referred to. NATHU SINGH *v.* GUMANI SINGH [I. L. R., 18 All., 320

139.———— Right to sue for declaration—*Specific Relief Act (I of 1877), s. 42—Mortgage—Code of Civil Procedure (1882), s. 287.*—*D* mortgaged certain property to plaintiff. After *D*'s death, plaintiff obtained a decree for recovery of his debt by sale of the mortgaged property. Before the property was advertised for sale, the defendants, who were *D*'s brothers, objected under s. 287 of the Code of Civil Procedure (Act XIV of 1882), alleging that *D* was not the sole owner of the property; that they were joint owners with him; that they had set aside the property for religious purposes; and that *D* had no right to mortgage it. The Court executing the decree thereupon ordered that the applicants' (defendants') claim should be notified in the proclamation of sale. Plaintiff then filed a suit against the defendants, praying for a declaration that the property belonged to *D* exclusively, and the defendants had no right or interest in it. *Held* that, under s. 42 of the Specific Relief Act (I of 1877), the plaintiff was entitled to the declaration prayed for. Plaintiff having himself purchased the property after this claim for declaration had been allowed by the Subordinate Judge, it was contended that he was not entitled any longer to a declaratory decree. *Held* that the change of circumstances brought about by the plaintiff himself purchasing the property did not take away the right to sue which had already accrued to him. *Govinda* v. *Perumdevi, I. L. R., 12 Mad., 136,* referred to. WAMANRAO DAMODAR *v.* RUSTOMJI EDALJI . . . I. L. R., 21 Bom., 701

5. DECLARATION OF TITLE—*concluded.*

6. ENDOWMENTS.

140.———— Suit to eject one claiming to be the jheer of a muth—*Specific Relief Act (I of 1877), s. 42—Consequential relief.*—Three disciples of a muth brought a suit, alleging that the defendant was in possession of the muth under a false claim of title as the successor to the late jheer, and praying that it be declared that he was not the duly appointed successor to the late jheer, and that an appointment to the vacant office of jheer be made by the Court, but no consequential relief was asked for. *Held* that the suit was not maintainable for the reason that relief consequential on the declaration sought under s. 42 of the Specific Relief Act was not asked for. SRINIVASA AYYANGAR *v.* SRINIVASA SWAMI . . . . I. L. R., 16 Mad., 31

141.———— Suit by trustees for a declaration that an appointment to the office of pattamali was invalid—*Specific Relief Act (I of 1877), s. 42—Omission to ask for consequential relief—Custody by pattamali of articles belonging to temple—Possession by trustees not divested where pattamali was acting in the capacity of a mere servant—Maintainability of suit without prayer for consequential relief.*—Some of the trustees of a temple having sued others for a declaration that an appointment by the latter of a person to the office of pattamali was invalid, it was objected by the defendants that, even if the allegation were true, the suit must fail, as the pattamali (who was also impleaded as a defendant) had taken charge of documents and jewels belonging to the temple, and consequential relief should have been prayed for. The plaint was accordingly amended, but the District

DECLARATORY DECREE, SUIT FOR —*continued.*

6 ENDOWMENTS—*concluded*

Court, whilst holding that the appointment of the pattamalı was invalid, dismissed the suit on the ground that the amendment had been made after the lapse of the period of limitation *Held* that the suit for a declaration would lie without consequential relief being prayed for, inasmuch as its object was not to establish any legal character or any right to any property in the plaintiffs but was in effect to have an act done by the other trustees in contravention of duty declared null and void Even if s 42 of the Specific Relief Act applied to such a decree, which was doubtful, no further relief than the declaration was necessary as the custody of the documents and jewels by the pattamalı was merely that of a servant under the trustees with whom the possession in fact and in law remained There was therefore nothing of which delivery could be sought from the possession of the pattamalı and no question of limitation arose JANARDANA SHETTI GOVINDARAJAN *v* BADAYA SHETTI GIRI

[I L R, 23 Mad, 385

7 ERRORS IN DEMARCATION AND SURVEY OF LANDS

142 ———— Alteration of boundary line—*Civil Procedure Code, 1859 s 15—Discretion of Court*—Under s 15 of Act VIII of 1859 it is discretionary with the Court whether it will make a declaratory decree or not In a suit brought for confirmation of possession by a declaration of right and determination of boundaries in respect of certain land of which the plaintiff was in possession by setting aside a new thakbust map, prepared by the Deputy Collector, and a proceeding before that officer to which the plaintiff was no party the plaintiff not having gone before the Deputy Collector and pointed out to him the grounds upon which he contended the map was not correct,—*Held* that the plaintiff ought not to have a declaratory decree MOTEE LALL *v* BHOOP SINGH BAHADOOR

[2 Ind Jur, N S, 245 : 8 W. R., 64

143 ———— *Discretion of Court—Hostile acts*—In suits for declaratory decrees under s 15 Act VIII of 1859, it is entirely in the discretion of the Court to grant or to withhold relief, and each case must be judged by its own particular circumstances Where parties in possession of certain lands sued for a declaration of title, not only on the allegation that defendant had caused a demarcation to be made behind their backs annexing a slice of their lands to defendant's estate, but had also under colour of this proceeding, sued plaintiff's tenants for rent under Act X, and proceeded against them to enforce a measurement under Act VI (Bengal) of 1862 it was held that acts had been done hostile and obviously injurious to the plaintiffs, and that the suit would lie PUREE JAN KHATOON *v* BYKUNT CHUNDER CHUCKERBUTTY

[9 W. R., 380

144. ———— *Suit to declare boundary line arbitrary—Prohibition by Government of zamindari rights—Held* (by PHEAR, J)

DECLARATORY DECREE, SUIT FOR —*continued*

7 ERRORS IN DEMARCATION AND SURVEY OF LANDS—*continued*

that where Government wrongfully draws a boundary line cutting off a portion of an estate settled with a zamindar's ancestors, and forbids his enjoyment of

[9 W R., 426

145 ———— Fraudulent and collusive

sufficient cause of action for a declaratory decree under s 15, Act VIII of 1859 BROMMO MOYEE DEBIA CHOWDHRAIN *v* KOOMODINEE KANT BANERJEE BURODA KANT BANERJEE *v* KOOMODINEE KANT BANERJEE 17 W R., 467

146 ———— Allegation of error in survey map—*Cause of action—Suit to set aside survey proceedings*—Plaintiff having sued as the shebait of certain lands in defendant's talukh, alleging that they belonged to his lakhiraj debutter, and asking to have a thak demarcation amended and his right declared it was held that, as plaintiff had been present at the survey proceedings which were his own act, he had no cause of action SOODUKHINA CHOWDHRAIN *v* ISSUR CHUNDER MOJOOMDAR

[12 W R., 25

147. ———— *Suit for lands wrongly marked on survey map*—A suit will lie for a declaration of title to certain lands which have been erroneously marked on the survey map as belonging to the defendant SHIB JATON ROY *v* PANCHANAN BOSE

[3 B L. R., Ap, 55 11 W. R., 466

148 ———— *Thakbust map—Omission of allegation of injury or loss*—Where a plaint in a suit for declaration of title merely

CHATTERJEE *v* MADHUSUDAN PATRA

[13 B L. R., Ap, 12

S C RAM BUNDHOO CHATTERJEE *v* MUDHOO SOODUN PATRA 21 W. R., 134

149 ———— Alteration in survey map—*Cause of action*—A suit for a declaration of title to certain lands which the defendants had caused to be demarcated in the survey maps as a part of their talukhs without the knowledge and in fraud of the plaintiff was held to disclose a sufficient cause of action PROMOTHONATH ROY *v* POORNO CHUNDER BANERJEE . 11 W. R., 543

150 ———— *Causing alteration in maps—Hostile act—Cause of action*—

DECLARATORY DECREE, SUIT FOR —*continued.*

7. ERRORS IN DEMARCATION AND SURVEY OF LANDS—*concluded.*

Where, on the occasion of the batwarra of a zamindari, the proprietors of an outside talukh interfered and caused the Collector to exclude certain land of an ousut talukh from the maps and records then made, without opposition from the shikmi talukhdars, it was held that their conduct amounted to making evidence which might eventually be used adversely to the rights of the ousut talukhdars, who, therefore, had a cause of action against them justifying a suit for a declaratory title. OBHOYA CHURN SIMLYE *v.* MOHESH CHUNDER DASS . 23 W. R., 22

151. ———— *Suit to declare survey maps incorrect—Alteration by misrepresentation of defendant.*—In a suit for a decree declaring certain survey maps to be incorrect on the ground of their having been altered on an incorrect representation by the defendants of their boundaries, where it was found that plaintiff had always been in possession, and no infringement of her right had taken place,—*Held* that there was no cause of action. JARDINE, SKINNER & Co. *v.* SHURNO MOYEE [24 W. R., 215

8. REGISTRATION OF NAMES BY COLLECTOR.

152. ———— **Joint property standing in one name in Collector's register**—*Cause of action.*—The fact of joint property standing on the Collector's register in the name of the elder brother is no slur on the younger, and no ground for a suit on the part of the latter for declaration of title. GOPEE LALL *v.* BHUGWAN DOSS . 12 W. R., 7

153. ———— **Decision of Collector declaring right in partition proceedings**—*Cause of action.*—A Collector's declaration of the title of a party to an entire share of an estate and his action in dividing the share for such party are an injury to, and a slur upon, another party claiming a fraction of the share, and give him a sufficient cause of action. SHEO PERSHAD SOOKOOL *v.* SHUNKUR SAHOY . . . . 16 W. R., 190

154. ———— *Estates with same name—Cause of action.*—Defendant having obtained from the Collector an order for a batwarra of his share in a mouzah in the vicinity of plaintiff's estate, the latter, after applying in vain to the revenue authorities for a declaration that his own estate (Sheopore) had nothing to do with defendant's mouzah, which was found to be recorded on the towzi with an *alias* of Sheopore, brought a civil suit for a declaration of his own right to Sheopore. *Held* that, as the two estates were separately recorded in the towzi with distinct areas and sudder jummas, and as plaintiff's ownership of Sheopore was not disputed, and there was no allegation of his lands being incorporated by the partition in the defendant's estate, plaintiff had no cause of action. FOOLBASHEE KOWAR *v.* ARZUN SAHOO . 12 W. R., 134

DECLARATORY DECREE, SUIT FOR —*continued.*

8. REGISTRATION OF NAMES BY COLLECTOR—*continued.*

155. ———— **Obtaining hostile registration of name**—*Suit for declaration of title and to have name registered.*—Immediately before the British entered Bhootan, the Soobah of Mynagorie gave plaintiff a mourasi pottah of some jotes of land, and shortly after ran away. After the British entered, the defendants gave him kabuliats and paid him rent. The British authorities also recognized his rights and received rents from him. Subsequently the defendants disputed plaintiff's rights, and applied to the Collector to have their own names registered as jotedars. Their applications having been successful, plaintiff sued for a declaration of his title under the pottah. *Held* that, as plaintiff's title had been acknowledged by the defendants and recognized by the British authorities, he was entitled to the declaration sought. SREE KANT SHAHA *v.* KALTOO DOSS . . . . . 10 W. R., 135

156. ———— **Successful opposition to entry of names in Collector's register**—*Cause of action.*—Where parties relying on their title to certain property apply to have their names put into the Collectorate books, and their application is successfully opposed by other parties claiming the same property on the ground of a conveyance made to themselves, such opposition constitutes a good cause of action to the parties first mentioned if they have the right alleged. REWAL MAHTON *v.* PENAM MUNDAR . . . . . . 22 W. R., 9

157. ———— **Co-sharer recorded as entitled to larger share than he was entitled to**—*Act XI of 1859, s 11—Suit to declare rights.*—In a suit for a declaration of plaintiff's title, on the allegation that defendant, one of the sharers with him in a joint estate, had been recorded under Act XI of 1859, s. 11, separately in respect of a larger share than that to which he was entitled, it was pleaded that the suit would not lie, because plaintiff had not appeared before the Collector and objected to defendant's being registered. *Held* that by such omission plaintiff had not forfeited his right to the share of which he was in possession, and that the suit was one in which it would be proper to make a declaratory decree. GOLUCK CHUNDER *v.* RAM HUREE . . . . . 23 W. R., 104

158. ———— **Injury to title—Causing wrongful entry of name as proprietor**—*Cause of action.*—In 1832 *B* and *M* granted a zur-i-peshgi lease of a mouzah to *T*. Subsequently *M* mortgaged his share to *D, L,* and *S*. After this (in 1855), the defendant's wife purchased *M*'s rights and interests under a decree of Court. A suit for foreclosure was then brought by the three mortgagees who obtained a decree in 1856. Prior to the decree, one *J S*, who had purchased the interest of *S*, was made a party to the suit, and he sold his interest to the plaintiff's father in 1861. The defendant, having failed in a suit to recover possession of *M*'s share on the strength of his wife's auction purchase, obtained an ikrarnamah from *M*'s sons relinquishing

DECLARATORY DECREE, SUIT FOR —*continued.*

8 REGISTRATION OF NAMES BY COLLECTOR—*concluded.*

in his favour the rights they had inherited from their father. He then applied to the Collector, and, in spite of the plaintiff's objection, had his name recorded in the towzi as proprietor in succession to *M.* To cancel the effect of this proceeding, the plaintiff sued for a declaration of title and confirmation of possession *Held* that, as the plaintiff was in possession and had been so from the time of the conveyance by *J S,* there was no necessity for his taking out execution of the foreclosure decree, the expiry of which, therefore, could not deprive him of his title to the declaratory decree now sought, the defendant's conduct in the mutation proceeding being sufficient cause of action ABLAK RAM *v* MOHENDRO PERSHAD TEWAREE . . . 20 W. R., 365

159. ———— **Suit for declaration of title to land and to have the revenue register transferred to plaintiff's name.**—Suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the tarwad of which the plaintiff was karnavan, and to have the revenue register of those lands transferred to the plaintiff s name The plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the tarwad, of whom the last, in whose name the lands were last assessed, on becoming karnavan of the tarwad, applied to the Collector to have the registry of those lands transferred to the names of his own nephews, the first and second de-

9 ENFORCING OR REMOVING LIEN OR ATTACHMENT.

160 ———— **Mortgage lien not enforced**—*Civil Procedure Code, 1859, s 15—Suit to avoid lien —B* mortgaged by deed certain premises to *J D,* and at the same time delivered to him title deeds comprising the said premises and also other immoveable property of *B* *B* subsequently became embarrassed and assigned all his immoveable estate

deeds, and praying for a declaration that the immoveable property other than the mortgaged premises was vested in them free of any lien of the defendant,—

DECLARATORY DECREE, SUIT FOR —*continued.*

9. ENFORCING OR REMOVING LIEN OR ATTACHMENT—*continued*

Held that, *J D* not having made any attempt or

decree BEATTIE *v.* JETHA DUNGARSI [5 Bom., O. C., 152

161. ———— **Claim to attached property**—*Suit for declaration of rights in attached property* —An unsuccessful claimant to property about to be sold in execution of decree is entitled, in a suit brought for the purpose, to a declaratory decree to the extent of his rights and interest in the property, notwithstanding it may be joint family property, and that he asks for more than he is entitled to GOLAM MAHOMED SHAHA *v* MOOKTA KESHEE DEBEE . 7 W. R., 161

162. ———————— *Suit for declaration of right in attached property—Consequential relief* —The plaint in a suit for a declaration that the plaintiff had a right of property and possession

163. ———————— *Suit for decla-*

should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognize the adjudication and govern itself accordingly. *Narayanrav Damodar Dabholkar v Balkrishna Mahadav Gadre, I. L. R., 4 Bom., 529,* followed KOLASHERRI ILLATH NARAINAN *v* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI . I. L. R., 4 Mad., 131

164. ———————— *Consequential relief—Specific Relief Act (I of 1877), s 42—Court Fees Act (VII of 1870), s 7, cl. iv.—*

the attachment being made under s 274 of the Civil Procedure Code (Act X of 1877), by an order prohibiting *D* from transferring or charging the property in any way, and all persons from receiving it

DECLARATORY DECREE, SUIT FOR —*continued.*

9. ENFORCING OR REMOVING LIEN OR ATTACHMENT—*continued.*

of the Specific Relief Act (I of 1877), because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or, at any rate, for the removal of the attachment. *Held* by the High Court on appeal that the plaint was not open to objection on the ground that it only asked for a declaratory decree without any consequential relief. *Held* that the prohibitory order to *D* did not constitute a dispossession of *D* and still less of the plaintiffs, and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to *D* so long as they admitted that *D* had an interest in the attached property. *Held* also that the plaintiffs could not have properly asked for any consequential relief in their suit, but that, when they instituted it, they were entitled, and indeed bound, to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendants' decree against *D*, from afterwards alleging that he had purchased without notice of the plaintiffs' claim. NARAYANRAV DAMODAR *v.* BALKRISHNA MAHADEV . . . I. L. R., 4 Bom., 529

165. ——————— *Specific Relief Act (I of 1877), s. 42—Suit for release of goods wrongfully seized.*—A suit for the release of goods wrongfully seized is not a declaratory suit under s. 42 of the Specific Relief Act (I of 1877). In substance the suit was a suit for goods, though as a matter of form the decree might contain a declaration. RAGHUNATH MUKUND *v.* SAROSH KAMA

[I. L. R., 23 Bom., 266

166. — *Assignment of interest of judgment-debtor in surplus proceeds of sale—Attachment by creditor of judgment-debtor —Suit for declaration of assignee's title—Civil Procedure Code, s. 266 (k)—Contingent interest.*— In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor *X*. After the date of sale, but before the whole of the purchase-money had been paid into Court, *X* applied to the Court by petition, praying that the amount due to him might be paid to *A*, to whom, he alleged, he had assigned it. Before any order was made on this petition, *B*, *C*, *D*, and *E*, in execution of separate decrees against *X*, attached the sum in Court. The District Munsif ordered that *B*, *C*, *D*, and *E* should be paid before *A*. *A* brought a suit against *B*, *C*, *D*, and *E* in another District Munsif's Court for a declaration that he was entitled to the money and to set aside the said order. The Munsif set aside the order and declared the plaintiff to be entitled to the amount. *B*, *C*, *D*, and *E* appealed against this decree, and the District Court passed a [de]cree dismissing *A*'s suit. *Held* on second appeal be[low] that he was entitled to a decree, declaring his [title to] the amount claimed. CHATHU *v.* KUNHAMED BASH[A] [I. L. R., 11 Mad., 280

167. ——————— *Specific Relief Act (I of 1877), s. 42—Civil Procedure Code (1882), s. 283—Suit to declare attachment subsisted, and that there had been no termination of attachment by abandonment.*—The plaintiff had an attachment against certain property. Owing to his not filing a necessary affidavit, the execution-petition was struck off. Subsequently he applied for the sale of the property, and the Court directed a fresh attachment to issue. The defendant then came forward and alleged that he had purchased the property prior to the second attachment, and he obtained an order in his favour. *Held*, in a suit brought under s. 283 of the Civil Procedure Code to enforce the first attachment and to have it declared that it was subsisting at the time of the defendant's purchase, that the suit for a declaratory decree was maintainable, and that the facts did not amount to an abandonment of the first attachment by the plaintiff. SRINIVASA SASTRIAL *v.* SAMI RAU

[I. L. R., 17 Mad., 180

10. RENT AND ENHANCEMENT OF RENT.

168. ——— **Decree as to rate of rent**— *Consequential relief—Decree before rent is due.*— A decree that the defendant is liable to pay rent at a certain rate before any rent is due, being a mere declaratory decree without any consequential relief, ought not to be made. *Per* PEACOCK, *C.J.* BOYDONATH *v.* RAMJOY DEY . . 9 W. R., 292

169. ——— **Right to enhance on future service of notice**—*Enhancement of rent— Reg. V of 1812—Notice.*—A decree declaratory of the plaintiff's general right to enhance on future service of notice may be passed in a suit under Regulation V of 1812, where the plaint was for enhancement at a certain specified rate, and in which service of notice was held to be n[ot] proved. ISHUR CHUNDER MUNDUL *v.* SHAM CHU[...]SS [...] R., 1864, 312

170. ——— Su[...] decement without notice—*De*[...] by *A* -Plaintiff sued for arrears of re[...] title to [...]thout notice. *Held* that the [...] to recover rent at the enhan[...] to the liability of tenur[...] he was entitled to a decree[...] enhancement. The Court[...] to try the validity of th[...] defendant as to some of [...] have proved that it was hi[...] defendant had paid rent fo[...] so, and the Court refused, [...] right to enhance the rent [...] KAZI *v.* HARIHAR MOOKERJ[...]

[B. L. R., Sup. V[...] W. R., F. B., 115

171. ——————— *Declaration of right.*—The plaintiff filed a suit for rent at an

DECLARATORY DECREE, SUIT FOR
—continued

10 RENT AND ENHANCEMENT OF RENT
—continued

enhanced rate under Act X of 1859 The Court of first instance d smissed the case on the ground that the defendants had sho vn that the tenure was not liable to enl ancement On appeal to the Judge the plaintiff s suit was dismissed on the ground that he had not proved service of notice but a declaratory decree was given that the tenure was liable to en hancement *Hel l* that the Judge should simply have dismissed the suit Act X of 18o9 gives him no power to make sucl a declaratory decree NARA KANT MUZAMDAR v RAJA BARADAKANT ROY
[3 B L R., Ap, 31

ANUNDMOYEE CHOWDHRAIN v CHUNDER MONEE DOSSIA 3 W R, Act X, 139

KRISTOMONEE DEBIA v FAKEER CHAND KHAN
[3 W R, Act X, 140

RADHAMONEE DOSSIA v SHIBESSUREE DEBIA
[6 W R, Act X, 25

NILMONEE SINGH DEO v HEERA LALL CHOWDHRY
[23 W R., 442

172 Suit for declaration of title to land with a view to enhance the rent—*Discretion of Court*—A declaratory decree

ABDOOL GUNNEY and ABDOOL GUNNEY v ZAMOO RUDOONISSA KHANUM
[11 B L R, 203 19 W R. 171
L R., I A, Sup Vol., 165

BEPIN BEHAREE ROY v ISSUR CHUNDER SEN
[24 W R, 13

173 ———— Failure to prove notice of enhancement—*Discret on of Court*—If in a suit for enhancement the plai tiff fails to prove that he has served tl e defendant witl a proper notice the

174 ———— Declaratory decree— *Fi rther relief —Arrears f re it—Specific Relief Act (I of 1877) s 42*—In a suit for a declaratory decree in respect of plaintiff's right to certain land where it appeared that rent was due to tl e pla ntiff in respect of such land if l is case were a true o1e and where such rent was not claimed —*Held* that the further relief referred to in tl e proviso to s 42 of the Specific Rel ef Act is f irther relief i 1 relation to the legal character or right as to any property whicl any person is entitled to an l whose title to such character or right any person denies or

DECLARATORY DECREE, SUIT FOR
—continued

10 RENT AND ENHANCEMENT OF RENT
—concluded

is interested in denying" and does not include a claim for arrears of rent FAKIR CHAND AUDHIKARI v ANUNDA CHUNDER BHUTTACHARJI
[I L R., 14 Calc., 586

11 ORDERS OF CRIMINAL COURT

175 ———— Order convicting of mis chief—*Civil Procedure Code 1859 s 15—Suit after criminal proceed ngs under ss 430 432 Penal Code*—Certain criminal proceedings having been successfully taken against the plaintiff s tenants for mischief done in respect to a nullah coming under either s 430 or 432 (injury or obstruction to flow of water) of the Penal Code the plaintiff brought a suit in the Civil Court for a declaration that the nullah was his own exclusive property, and therefore not such a stream as could come under either of those sections *Held* that it was within the d scretion of the Court under s 15 of the Civil Procedure Code to allow such a suit to be brought KARTICK PARAMANICK v KISHEN MOHUN MITTER
[22 W R., 329

176 ———— Order as to nuisance—*Suit to set aside order of Magistrate under Act XXV of 1861 ss 308 to 315—Jurisdiction of Civil Co rt*—The plaintiff built a bridge over a certain khal (canal) which was removed by order of the Magistrate under Ch XX of the Criminal Proce dure Code tl e defendant it was alleged set the Magistrate i 1 motion The plaintiff now sued the defendant for a declarat on of h s right to erect the bridge in question an l to have the order of the

KAMALA KANT CHUCKERBUTTY
[6 B L R, 643 15 W R, 293

177 ———— Order on dispute as to possession—*S it to set aside Magistrate's order under s 321 Criminal Procedi re Code 1861—Order not put in force*—Plaintiff s right to a de claratory decree as to the erroneousness of the Magis trate's order passe l under s. 321 Code of Criminal Procedure perm tting defendant to erect a drain pipe to take water from plaintiff s reservoir was *held* to be not affected by the fact that the Magistrate's order had not been put in force MEGHRAJ SINGH v RASHDHAREE SINGH 17 W R, 281

178 ———— *Trespass to land—Order under Ch XL Criminal Procedure Code—Right to sue for declaratory decree*—A person wl ose right to land has been disputed and who has obtained an order under Ch XL of the Code of Criminal Procedure 18 2, from a Magistrate declaring him ent tled to retain possession is entitled to sue for a declaration of h s right to the land. NARASIMMA CHARYA v ROGHUPATTY CHARYA
[I L R., 6 Mad., 176

DECLARATORY DECREE, SUIT FOR —*continued.*

11. ORDERS OF CRIMINAL COURT —*concluded.*

179. ——— **Order as to rival hats**—*Cause of action—Consequential relief.*—When a plaintiff alleged that he had held a hât on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival hât on these days and prevented persons from attending the plaintiff's hât; that this led to disturbance which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his hât on the said days, and that the plaintiff suffered loss and damage in consequence,—*Held* that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring, as against the defendant, that the plaintiff had a right to hold his hât on Tuesdays and Fridays. GOPI MOHUN MULLICK *v.* TARAMONY CHOWDHRANI

[I. L. R., 5 Calc., 7: 4 C. L. R., 309

180. ——— **Declaration of title to land**—*Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133, order under, for removal of an obstruction standing upon certain land—Ownership of such land—Public roads—Bombay Land Revenue Act (Bombay Act V of 1879), s. 37.*—A Magistrate made an order against the plaintiff under s. 133 of the Criminal Procedure Code (Act X of 1882) for the removal of a certain otta standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that the land on which the otta stood was his property, and not that of the Government. *Held* that, the public roads being vested by s. 37 of the Land Revenue Code (Bombay Act V of 1879) in the Government of Bombay, they were "interested to deny" the plaintiff's title to the land, and therefore, under s. 42 of the Specific Relief Act (I of 1877), the plaintiff (subject to the discretion of the Court) was entitled to a declaration as against the Government of his right to the land, and the plaintiff was not called upon to wait until the Government had taken possession of the land. It was contended that the jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s. 133, which provides that "no order made by a Magistrate under this section shall be called in question in any Civil Court." *Held* that the Magistrate's order under this section is not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v.* JETHABHAI KALIDAS . . **I. L. R., 17 Bom., 293**

12. MISCELLANEOUS SUITS.

181. ——— **Suit to have status as tenure-holder declared**—*Civil Procedure Code, 1859, s. 15—Consequential relief.*—A suit in which the plaintiff prayed for a decree declaring that the defendant was not, as had been fraudulently recorded in the revenue registers, a perpetual lessee, but only tenant-at-will of certain villages, of which the plaintiff was proprietor, held to be maintainable. MAHOMED *v.* KANIZUK FATIMA . . **6 N. W., 231**

DECLARATORY DECREE, SUIT FOR —*continued.*

12. MISCELLANEOUS SUITS—*continued.*

182. ——— **Suit for declaration of right as vadil**—*Consequential relief—Act XI of 1843.*—A suit to be declared vadil, or elder, among the holders of a patilkiwatan will not lie, as upon such declaration no consequential relief can be given.—*See* Act XI of 1843. YESAJI APAJI PATIL *v.* YESAJI RHALOJI . . . **8 Bom., A. C., 35**

183. ——— **Denial of plaintiff's right as audhikari**—*Cause of action.*—In a suit for declaration or confirmation of the plaintiff's title to the office of the audhikari of the Difloo Sastur, alleged to be situate at Nowgong, where the defendant in his written statement claimed to be the audhikari, and alleged that the headship was situated elsewhere, the defendant was held to be asserting a title adverse to the plaintiff sufficient to justify a declaratory decree. KOONDO NATH SURMA GOSSAMEE *v.* DHEER CHUNDER SURMA ADHIKARI GOSSAMEE . **20 W. R., 345**

184. ——— **Suit for declaration on low stamp duty to obtain relief for which a higher stamp is chargeable**—*Specific Relief Act (I of 1877), s. 42.*—The defendant was in possession of the estate of a deceased gosavi as his shishya (spiritual son). The plaintiff sued upon a stamp of R10 for a declaration that he was the true shishya of the said gosavi by a previous adoption, his real object being to establish a title to the estate in the hands of the defendant. *Held* that, under the circumstances, the Court would not exercise, in the plaintiff's favour, the discretionary power to grant a declaratory decree vested in it by s. 42 of the Specific Relief Act (I of 1877), inasmuch as to do so would enable the plaintiff to obtain a relief on a stamp of R10 which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law. GANPATGIR BHOLAGIR *v.* GANPATGIR . . . . **I. L. R., 3 Bom., 230**

185. ——— **Suit to declare illegal proceedings removing person from office**—*Want of actual ouster—Specific Relief Act, s. 42.*—Suit by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie, because further relief might have been sought. *Held* that, unless there had been an actual ouster from office, a declaratory suit would lie. RAMANUJA *v.* DEVANAYAKA

[I. L. R., 8 Mad., 361

186. ——— **Right to appoint ghatwal**—*Infringement of right of Government.*—In a suit by the Government in which the plaint claimed the right "to reinstate a ghatwal in possession of a certain estate as being a ghatwali tenure liable to be appropriated to the use of the ghatwal for the time being, by setting aside a patni talukh collusively created by the defendants," it was found that no right of the Government had been infringed by the creation of such patni talukh, which the defendant had a right

DECLARATORY DECREE, SUIT FOR —*continued*

12 MISCELLANEOUS SUITS—*continued*

to make, and the Government was held not to be entitled to a bare declaration of right ANAND KUMARI v GOVERNMENT

[9 B L R, 16 note: 11 W. R., 180

187 ——— **Suit for declaration of right to damages** —*Quære*—Whether claim for declaration of right to damages is one that is maintainable KESHAREE LALL v GOBINDRAM 4 N W, 70

188 ——— **Suit for declaration of right to flow of water**—*Omission to specify damages* —A suit for a declaration of prescriptive right to the use and enjoyment of the water of a

interfere with similar rights possessed by parties holding land lower down on the same watercourse SARDAWAN v HURBUNS SINGH 11 W R, 254

189 ——— **Suit for declaration of right**

maintenance and for the expenses attendant on the

other relief as might be necessary No specific sum was asked for maintenance nor was it stated on what portion of the estate the maintenance was sought to be charged, nor that the defendant took with notice of the plaintiff s assertion of her rights The lower

have framed issues for the purpose of determining what should be allowed for the maintenance of the plaintiff and the expenses of the marriages, if the plaintiff should be found entitled to them NISTARINI DASI v MAKHANLAL DUTT

[9 B L R, 11 : 17 W. R., 432

190 ——— **Suit for declaration that decree is fraudulent and collusive**—*Specific Relief Act, 1877, s 42—Suit to set aside a decree on the ground of fraud* —Subsequently to a decree for partition of an ancestral estate, the creditors

the moneys due to them They then sued all the parties to the partition for a declaration that the decree then passed was, so far as it affected their (the plaintiffs') interests fraudulent and collusive, and of no effect *Held* that the suit was not maintainable RAM SARUP v RUKMIN KUAR

[I. L. R., 7 All., 884

191. ——— **Suit for declaration of right to an account**—*Specific Relief Act, s 42* —Where it is open to the plaintiff to ask for an account, against the defendant of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by s 42 of the Specific Relief Act, I of 1877, from asking for a mere declaratory decree BAI AMOPE v MULCHAND GIRDHAR

[I L. R., 9 Bom, 355

192. ——— **Suit by landholder for declaration of right to take land from occupancy-tenant for cultivation of indigo** —*Wajib ul arz—Act I of 1877 (Specific Relief Act), s 42* —The zamindars of a village sued an occupancy tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib ul urz—"when necessary one or two bighas out of the tenants' lands are taken with their consent (ba khushi) for sowing indigo" Upon the basis of this entry, they claimed to be entitled to take a portion of the occupancy holding at a certain period of the year for the purpose of cultivating indigo *Held* by the Full Bench that the word "khushi" used in the wajib ul urz indicated that the land was only to be taken with the occupancy tenant's consent, and the document created no right of the nature alleged namely, to take the land despite the tenant *Per* TYRRELL, J—That the suit was not maintainable under the special provisions of the Specific Relief Act (I of 1877). SHEO BARN v BHAIRO PRASAD I. L. R., 7 All., 880

193 ——— **Suit for declaration that property is wuqf**—*Act XX of 1863 ss 14 15, 18—Civil Procedure Code, s 539—Act I of 1877 (Specific Relief Act), s 42* —A Mahomedan brought a suit against a person in possession of certain pro

parties, filed a written statement, in which he denied that the property now in question was wuqf *Held* that the suit was not maintainable under the provisions of s 42 of Act I of 1877 (Specific Relief Act) *Held*, further, that the relief contemplated by s 42 of the Specific Relief Act being always a matter of the Court's discretion and inasmuch as the evidence adduced by the plaintiff himself showed that the defendant was using the property for charitable purposes, it would not be proper to make the declaration prayed for by the plaintiff, even if the suit was maintainable WAJIB ALI SHAH v DIANAT ULLA BEG I. L. R., 8 All., 31

DECLARATORY DECREE, SUIT FOR —*concluded.*

12. MISCELLANEOUS SUITS—*concluded.*

194. ——— **Suit for declaration that decree is fraudulent**—*Specific Relief Act (I of 1877), s. 42—Injunction.*—Suit for a declaration that a decree of a subordinate Court was passed fraudulently, the Judge having been bribed by the decree-holder, the present defendant. *Held* that the suit did not lie. The remedy would appear to be by way of injunction to restrain the decree-holder from executing the decree. KUNHAMED *v.* KUTTI

[I. L. R., 14 Mad., 167

195. ——— **Suit for declaration that the defendant is a mere benamidar for plaintiff**—*Specific Relief Act (I of 1877), s. 42.*—In a suit by *A* to obtain a declaration that a decree originally obtained by *B* against *C* and another, which had been purchased in the name of *D*, had really been purchased by the plaintiff for his own benefit,—*Held* that, inasmuch as it was not necessary to ask for an injunction, the suit was not barred by the proviso to s. 42 of the Specific Relief Act. GOUR MOHUN GOULI *v.* DINONATH KARMOKAR

[I. L. R., 25 Calc., 49
2 C. W. N., 76

DECREE.

DECREE—*continued.*

See CASES UNDER APPEAL—DECREES.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, S. 2.

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—DECREES.

See CASES UNDER RIGHT OF SUIT—DECREES.

——— **Adjustment or satisfaction of—**

See CASES UNDER CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, SS. 257, 258.

——— **Assignment of—**

See CASES UNDER CIVIL PROCEDURE CODE, 1882, S. 232.

DECREE—*continued*.

See CASES UNDER CIVIL PROCEDURE CODE, s 244—PARTIES TO SUITS

See CASES UNDER SET OFF—CROSS DECREES

——— barred by limitation

See EVIDENCE—CIVIL CASES—DECREES [I L R., 3 Calc, 383
14 B L R., P C, 370, 371 note

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION

——— Consent—

See CIVIL PROCEDURE CODE s 244—QUESTIONS IN EXECUTION OF DECREE [I L R, 23 Calc, 639

See ESTOPPEL—ESTOPPEL BY JUDGMENT [1 C L R, 528
I L R., 24 Bom, 77

See EXECUTOR I L R, 21 Bom, 400

See MAHOMEDAN LAW—DEBTS [I L R., 4 Calc, 142

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R, 23 Calc, 934

See PRACTICE—CIVIL CASES—CONSENT DECREE 5 C L R, 464
[1 Ind Jur, N S, 395
I. L. R., 25 Calc, 649

See RES JUDICATA—ADJUDICATIONS [I L R., 24 Calc., 216
I L R, 24 Bom, 77
[2 C W N, 174

See RES JUDICATA—MATTERS IN ISSUE [I. L R, 21 Mad, 91

See TRANSFER OF PROPERTY ACT s 67 [I. L R, 22 Calc, 859

——— Copy of, deduction of time necessary for obtaining—

See CASES UNDER LIMITATION ACT 1877 s 12 (1871 s 13)

——— Execution of—

See CASES UNDER EXECUTION OF DECREE

——— Ex-parte—

See CASES UNDER CIVIL PROCEDURE CODE 1882, s 108

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES

——— for performance of a particular act.

See CASES UNDER CIVIL PROCEDURE CODE 1882 ss 259, 260 (1859, s 200)

——— Form of—

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS

DECREE—*continued*

——— Joint liability under—

See CASES UNDER CONTRIBUTION, SUITS FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

See LIMITATION ACT 1877, ART 99 (1871, ART 100) I. L. R., 4 Calc, 529

——— of Court of Native State

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES [I L. R., 15 Bom, 216

——— of Small Cause Court, Suit on—

See EVIDENCE—CIVIL CASES—DECREES [6 B L R., 729, 730 note
7 B L R., Ap., 61

See CASES UNDER RIGHT OF SUIT—DECREES

——— payable by instalments

See CASES UNDER CIVIL PROCEDURE CODE 1882 ss 257 258

See CASES UNDER LIMITATION ACT 1877, ART 179 (1871, ART 167)—ORDER FOR PAYMENT AT SPECIFIED DATES

——— Reversal of—

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES AFTERWARDS REVERSED

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—ALTERING SETTING ASIDE OR REVERSING, DECREE I. L. R, 19 Mad., 96

——— Reversal of whole, on appeal by one defendant

See CASES UNDER CIVIL PROCEDURE CODE, 1882 s 544 (1859 s 337)

——— Revival of—

See DECREE—REVIVAL OF DECREE [3 B L R, Ap, 94 12 W R., 28

See LIMITATION ACT, 1877 ART 179 (1871, ART 167)—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS . 24 W R., 143

See RIGHT OF SUIT—DECREES SUITS ON [I L. R., 7 Calc., 74

——— Superseded—

See CASES UNDER MONEY PAID UNDER PROCESS OF DECREE

——— Transfer of, for execution

See CASES UNDER BENGAL ACT III OF 1870

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC

DECREE—*continued.*

1. FORM OF DECREE.

(a) GENERAL CASES.

1. ———— Necessity for a decree—*Act XIX of 1873 (N.-W. P. Land Revenue Act), ss. 113, 114, 115—Omission to frame decree in case in which a question of title is decided—Second appeal.*—It is essential that in a suit under the Civil Procedure Code a decree should be drawn up. *Held*, therefore, that in a proceeding under s. 113 of the North-West Provinces Land Revenue Act, where the rights of the parties are decided, a decree should be drawn up giving effect to the decision. An Assistant Collector passed a decision under s. 113 declaring the rights of the parties, but did not draw up a decree giving effect to such decision. There was an appeal to the District Court from such decision, which made a decree affirming it. *Held* by STUART, *C.J.*, on second appeal, that the defect arising from the want of a decree on the record of the Court of first instance was a bar to the hearing of the second appeal, and the proceedings of the District Court should be set aside, and the case should be sent back to the Assistant Collector in order that he might frame a decree. *Held* by STRAIGHT, *J.*, that the decree of the District Court was appealable, such defect notwithstanding, and the appeal should be decreed, and the decree of the District Court reversed, and the case be sent back to the Assistant Collector for the purpose aforesaid. Observations by STUART, *C.J.*, on the absence in the Code of Civil Procedure of any mandatory provisions in reference to the framing of decrees. RANJIT SINGH *v.* ILAHI BAKHSH

[I. L. R., 5 All., 520

2. ———— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 113 and 114—Partition, Application for—Order on objection as to title raised in course of partition-proceedings.*—A Collector or Assistant Collector trying a question of title raised in the course of the hearing of an application for partition under the N.-W. P. Land Revenue Act (XIX of 1873) is not bound to cause a formal decree to be drawn up embodying the result of his order or decision on such point. NIAZ BEGAM *v.* ABDUL KARIM KHAN . I. L. R., 14 All., 500

3. ———— Drawing up decrees—*Duty of Judge.*—The duty of Judges in seeing that decrees are properly drawn up pointed out. RUSTOM ALLY *v.* AMEER ALLY SAUDAGUR . 10 W. R., 487

4. ———— *Insufficient payment of Court-fees, Procedure to be adopted on—Appellate Court, Power of.*—In a suit for specific performance of a contract for the sale of land and for possession, the plaintiff did not pay the full Court-fees, but the Munsif heard the suit and dismissed it. An appeal by the plaintiff was entertained by the Subordinate Judge, who passed a decree for specific performance, and decreed that, if the deficient Court-fees were paid, possession should be given to the plaintiff, but that, on failure to pay the Court-fees, the claim for possession should be dismissed. *Held* that, the plaintiff not having in the first instance paid the full Court-fees, he should have been called upon by the Munsif to do so. As this was not done, the Court of

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

first appeal was not in error in entertaining the appeal which was preferred by the plaintiff; but he should have passed no decree until the fees due had been paid, and if they were not paid, the decree should have been for the dismissal of the whole suit. KRISHNASAMI *v.* SUNDARAPPAYYAR

[I. L. R., 18 Mad., 415

5. ———— *Contents of decree.*—Decrees of Court should be drawn up by the Judge in such a way as to make them self-contained and capable of execution without referring to any other document. JOYTARA DASSEE *v.* MAHOMED MOBARUCK . I. L. R., 8 Calc., 975: 11 C. L. R., 399

DWARKANATH HALDAR *v.* KAMALA KANTH HALDAR . . . . 3 B. L. R., Ap., 129

[12 W. R., 98

6. ———— *Duty of judgment-debtor and decree-holder.*—It is the duty of the judgment-debtor, as well as the decree-holder, to see that the decree is properly drawn up; and if he does not do so, the Court will execute it according to its terms. KRISHTOKISHORE DUTT *v.* ROOPLALL DASS

[I. L. R., 8 Calc., 687: 10 C. L. R., 609

7. ———— *Distinctness and consistency with judgment requisite.*—The decree should not be vague, but explicit in its terms as well as in accordance with the judgment. CHUNDER MONEE DOSSEE *v.* DHURONEEDHUR LAHORY

[7 W. R., 2

NUNDO KISHORE SINGH *v.* LALLA BURJUN LALL

[15 W. R., 154

NUTHOO SINGH *v.* RAM BUKSH SINGH

[18 W. R., 34

8. ———— *Omission to specify boundaries in decree for land—Vague decree—Civil Procedure Code, 1859, s. 190.*—A decree which was passed for a specified quantity of land contiguous to the plaintiff's estate, but which gave no boundaries of such land, was held, with reference to s. 190, Act VIII of 1859, to be indefinite and incapable of execution. DWARKANATH ROY *v.* JANNOBEE CHOWDHRAIN . . . . 19 W. R., 81

DARBAREE SAYAL *v.* FATU DHALEE

[23 W. R., 285

The remedy is to apply to have the decree rectified. DARBAREE SAYAL *v.* FATU DHALEE

[23 W. R., 285

SRISTEEDHUR BHUTTACHARJEE *v.* KALEE DOSS DEY . . . . . . 24 W. R., 479

9. ———— *Omission to specify boundaries in decree for land—Specific statement of relief granted by decree.*—*A* claimed certain lands, claiming one portion of such lands under one title and the remainder under another and separate title. In the schedule to his plaint he gave the boundaries of the entire lands claimed by him, but did not give any boundary between the lands claimed by him under one title and the lands claimed by him under the other title. The lower Court decreed the whole of the plaintiff's claim. The lower Appellate

DECREE—*continued*

1 FORM OF DECREE—*continued*

Court confirmed so much of the decree of the Court of first instance as declared the plaintiff's right to the first portion of the land and dismissed his suit as to the remainder, and, there being no evidence to show what lands in particular out of the whole claim were comprised in the first portion for which it gave him a decree, directed them to be ascertained in execution *Held* that the decree was bad as it should have specified the particular lands decreed KANGAL CHANDRA RUJ *v* KANYE LALL RUJ

[I. L. R, 4 Calc, 69

10 ———————— *Anticipated difficulty of executing decree*—The Court will not be deterred from making a decree by the difficulties to be expected in carrying it out PURAPPANVANALINGAM CHETTI *v* NALLASIVAN CHETTI

[1 Mad., 415

11 ———————— *Decree not specifying relief granted—Decree on appeal*—A decree of an Appellate Court not specifying the relief granted but merely repeating the judgment "that the appeal be decreed" is not a sufficient compliance with the requirements of the law HURSARUN SINGH *v* PURSHUN SINGH . 2 N W, 415

12 ———————— *Refund of purchase money—Decree on appeal*—In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to *A* purchased a Government revenue paying estate from *B* but on going to take possession he found *C*, who claimed under a patni grant also from *B* in possession. A case was therefore instituted by *B* under Act IV of 1840, but it was ordered that *C* should be retained in possession *A* then brought a suit against *B* and *C* to recover his purchase-money No relief was asked against *C*, nor had *C* anything to do with the sale from *B* to *A* The suit was dismissed On appeal it was ordered merely "that the decree be reversed and the appeal decreed with costs" Nothing was asked against *C* in the grounds of appeal In execution of this decree, *C*'s property was seized and sold. *C* petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it *Held*, on special appeal that *C* was not liable to refund the purchase money BELL *v* GURUDAS ROY 1 B L R, A C, 50

13 ———————— *Decree on appeal*—Distinction pointed out between a decree of an Appellate Court simply reversing the decree of the lower Court and a decree which, reversing that decree, goes on to record judgment for the other party HUREEKISHORE ROY *v* KALEEKISHORE SEN

[8 W R., 114

14. ———————— *Decree of High Court affirming decree of mofussil Court*—The ruling in *Chowdhry Wahid Ali v Mullick Inayet Ali, 6 B L R, 52*, that, whether the decree of the lower Court is reversed or modified, or affirmed, the decree passed by the Appellate Court is the final decree in the suit and as such the only decree which is capable of being enforced by execution, not dis [illegible] that in all [illegible] body in a [illegible] below as [illegible] necessity of a reference to the superseded decree *Quære*—Can the ruling in *Anandmayi Dasi v Purno Chandra Roy, B L R, Sup Vol, 606*, be supported? KISTOKINKER GHOSE ROY *v* BURRODACAUNT SINGH ROY

[10 B. L R., 101: 17 W. R., 292
[14 Moore's I. A, 465

S C in lower Court KISHEN KISHORE GHOSE *v* BURODA KANT ROY . 8 W. R., 470

JOY NARAIN GIREE *v* GOLUCK CHUNDER MYTEE

[22 W. R., 102

15 ———————— *Reversal of order under which land is taken in execution—Mesne profits*—For the restoration of possession with mesne profits of lands made over in execution of a decree subsequently reversed on appeal, a specific order is not necessary to be inserted in the decree of the Appellate Court GOOROOCHURN BOSE *v* BYKUNTNATH ACHARJEE 5 W. R., Mis, 38

16 ———————— *Decree to have a future operation*—In a suit by a landlord to recover possession where defendant, who was a tenant at-will, had received no notice to determine his tenancy, plaintiff obtained a decree to come into operation at the beginning of the next Amli year *Held* that there was nothing in the Civil Procedure Code to prevent a decree of this nature being passed. RAM NARAIN MANJHEE *v* FUTEMA SOOBA

[23 W. R, 399

17 ———————— *Decree to have a future operation*—A decree to have future operation was held not allowable, *e g*, to declare that the costs of a suit should be borne by the unsuccessful party in a suit to be hereafter brought. KASHEE CHUNDER DEY *v* BUNGSHEE BUDDUN DEY

[23 W. R., 89

So a prospective decree for contingent arrears of maintenance is irregular JULEBIA CHITTA KOOER *v* BHAGEE KOOER . 6 N. W., 41

18 ———————— *Decree dealing only partly with case*—*Allegation of fraud*—The plaint alleged fraud in the defendants in that they represented themselves as agents, when in fact they were principals, in fifty eight instances in which they had made *contracts with the plaintiffs* The prayer of the plaint was "that the defendants may either be held personally responsible on the several said contracts as purchasers thereunder, or otherwise that they may be held personally liable for damages, for fraudulently representing that they were authorized to effect the contracts aforesaid," and further asked for an account and for damages It appeared clear to the Judge below, on the evidence, that the defendants acted as principals, and he treated the case on the issue of fraud alone. Ten cases only

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

of the fifty-eight were selected by the plaintiffs, on which they gave evidence of the fraud; and the Judge found in their favour as to three, and held that the plaint charging fraud, the plaintiffs could not succeed on any cause of action incidentally disclosed. The decree was drawn up with reference only to the three cases on which the fraud was found, so far as finally to dispose of them, but ordered an enquiry as to the fraud in all the rest. *Held* that the case was appealable, and that the decision of the Court below was right. GHASSERAM MISSER *v.* WILLIAMSON . . 2 Ind. Jur., N. S., 205

19. ——————— *Decree for larger amount than that claimed—Consent of parties—Compromise of suit awarding plaintiff more than amount claimed—Execution of decree limited to amount claimed—Suit for larger amount awarded in compromise.*—By consent of parties and the leave of the Court, a suit may be amended to cover an increased claim, and there is nothing in the law which prevents the parties to a suit enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than that originally asked for. MOHIBALLAH *v.* IMAMI . . . . I. L. R., 9 All., 229

(*b*) ACCOUNT.

20. ——————— **Account, Suit for**—*Principal and agent—Duty of Court as to decree.*—Where a plaint alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable,—*Held* that such suit was essentially one for an account, and that the Court following the general rule ought not to make a final decree at the hearing, but should order an account to be taken of such agent's dealings with the plaintiff's money. HURRONATH ROY *v.* KRISHNA COOMAR BUKSHEE

[L. R., 13 I. A., 123 : I. L. R., 14 Calc., 147

21. ——————— *Decree for account of dissolved partnership—Civil Procedure Code (1882), s. 215—Procedure—Onus of proof—Taking of accounts.*—In a suit for an account of a dissolved partnership, a decree should be passed under the Civil Procedure Code, s. 215, in accordance with form No. 132 in sch. IV; and it should direct an account to be taken of the dealings and transactions between the parties, and of the credits, property, and effects due and belonging to the late partnership, and it should direct the appointment of a receiver of the outstanding debts and effects. Observations on the procedure to be adopted and the burden of proof on the taking of the account. THIRUKUMARESAN CHETTI *v.* SUBBARAYA CHETTI

[I. L. R., 20 Mad., 313

(*c*) AGENT.

22. ——————— **Agent, Suit in name of, for principal**—*Description of plaintiff on decree.*—Where a plaintiff sues by his recognized agent and obtains a decree, the decree should stand in the name of the agent, not as for himself alone, but as agent and on behalf of the plaintiff. GOLAM JELANEE CHOWDHRY *v.* NULEET CHUNDER SINGH

[11 W. R., 503

(*d*) ARBITRATION.

23. ——————— **Arbitration, Reference to**—*Prohibition to proceed with award.*—The Court of first instance in its decree "prohibited the arbitrators from giving an award." As they were not parties to the suit in substitution of that order, it was ordered that the defendants be enjoined from proceeding in the award before the arbitrators and from collecting certain debts released in their favour from attachment. PARMESHAR DAT *v.* HARI NAIK

[7 N. W., 357

24. ——————— **Arbitration, Reference to, when one party declines to consent**—*Suit for share of land.*—In a suit in which plaintiffs claimed a 6-anna share of certain land belonging to a mouzah, it was found on measurement that 262 bighas of the land claimed belonged to that talukh. Pending the suit, all the defendants except one (*O*) agreed to a reference to arbitration, upon which it was found that 44 bighas, in addition to the 262, belonged to the plaintiffs. *Held* that the proper decree was that the plaintiffs were entitled to recover, as against all the defendants, including *O*, a 6-anna share in 262 bighas; and as against all except *O*, a 6-anna share in the 44 bighas awarded by the arbitrators. DOORGACHURN THAKOOR *v.* KALLY DOSS HAZRAH . . . 10 W. R., 463

(*e*) BILL OF EXCHANGE.

25. ——————— **Suit on bill of exchange**—*Civil Procedure Code (Act XIV of 1882), ss. 532, 538—Negotiable Instruments Act (XXVI of 1881), s. 35.*—A plaintiff suing on a bill of exchange the drawer, acceptor, and endorser where the endorsement has been made before maturity and without restriction, is entitled to a decree against all three defendants; a decree containing a condition exempting the endorser from liability until the plaintiff has exhausted his remedies against the drawer and acceptor is therefore illegal. BANK OF BENGAL *v.* KARTICK CHUNDER ROY . . I. L. R., 16 Calc., 804

(*f*) CONSENT DECREE.

26. ——————— **Decree by consent**—*Minor—Duty of Court.*—A Court ought not to make a decree by consent against an infant without ascertaining that it is for the benefit of the infant that such a decree should be pronounced. RAM CHURN RAHA BUKSHEE *v.* MUNGUL SIRCAR

[16 W. R., 232

(*g*) CONTRIBUTION.

27. ——————— **Contribution, Suit for**—*Specification of separate sums due.*—In a suit for contribution, a decree cannot pass jointly against all the

DECREE—*continued.*

1 FORM OF DECREE—*continued*

defaulters It should specify the particular sums to be paid by each BAMA SOONDUREE DEBIA *v* ANUNDMOYEE DEBIA . . 3 W. R., 170

PITAMBUR CHUCKERBUTTY *v* BHYRUBNATH PALEET . . 15 W. R., 52

MOHADEO MISSER *v* LAHOREE MISSER [24 W. R., 250

28 ———— *Order for separate payment of share of debt* —The decree in a suit by a debtor against his co debtors for contribution, *if in favour of plaintiff, should order payment* separately by each defendant of the amount only of his just proportion of the debt TAVASI TALAVAR *v* PALANIANDI TALAVAR 3 Mad , 187

RUJAPUT RAI *v* MAHOMED ALI KHAN [5 N. W., 215

OTIOOLLA *v* ASEERUN . 7 W. R , 194

KRISTO COOMAR CHOWDHRY *v* ANUND MOYEE CHOWDHRAIN . . 7 W. R , 300

MOHESSUR BUKSH SINGH *v* MUTHOORA PERSHAD [8 W. R , 515

NOBIN MOHUN GHOSSAL *v* GOPAL CHUNDER MOOKERJEE 11 W. R , 538

RASH MUNJOOREE CHOWDHRAIN *v* RADHA SOONDUREE DOSSEE 23 W R., 283

BHURUT PANDEY *v* MUNTHOORA KOER [23 W. R , 421

29 ———— *Suit against co-tenants to recover rent paid on their behalf—Order for separate payments* —In a suit against co tenants to recover rent paid by plaintiff on their behalf, a joint decree declaring the defendants collectively liable ought not to be passed The Court should determine what portion of the whole rent ought to be repaid by each one of the defendants and whether each defendant is under any liability to pay the plaintiff at all KRISTO MONEE DEBIA *v* BURODA DOSSIA CHOWDHRAIN . 14 W. R., 143

30. ———— *Proportionate li-*

31. ———— *Principle in assessing share of co-sharer of revenue.*—Principle considered fair in assessing a co-sharer's share of the Government revenue paid for the whole estate to save it from sale JUGGOBUNDOO ROY *v* FYEZ BUKSH CHOWDHRY . . . 8 W. R., 166

32 ———— *Suit for contri-*

defendant against whom the decree was passed, the

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

Appellate Court directed the defendants exonerated by the first Court to be added as respondents, set aside the decree against the appealing defendant, and passed a decree against the defendants, who were added as respondents, as representatives of one *S*, and ordered the amount so decreed to be recovered from the estate of her (*S*'s) husband On appeal ... o were thus ... liability to ... of *S*, they not being heirs to her stridhan, they were not liable for the plaintiff's claim,—*Held* that, inasmuch as a claim for contribution creates only a personal liability against the co-sharers on account of whose share the payment has been made, and does not create a charge on the estate, the persons liable would not be the reversionary heirs to *S*'s husband's estates, but those who would inherit her stridhan UPENDRA LAL MUKERJEE *v* GIRINDRA NATH MUKERJEE [I. L. R., 25 Calc., 565 2 C. W. N., 425

(*h*) COSTS.

33 ———— **Annexing amount of costs to decree**—*Civil Procedure Code, 1859, s 360—Practice* —It is a convenient practice for a Court to annex to every decree the costs incurred by both parties NOBO KRISTO MOOKERJEE *v* PARBUTTY CHURN BHUTTACHARJEE 13 W. R., 23

34. ———— **Specification of costs without allotment of responsibility**—*Civil Procedure Code, 1859, s 189—Decree for costs* —The mere specification of costs in a decree without an allotment of responsibility is not a sufficient compliance with s 189, Act VIII of 1859 JANOKEE NATH MOOKERJEE *v* JOYKISHEN MOOKERJEE [15 W. R., 4

35 ———— **Copy of judgment with schedule of costs annexed**—*Civil Procedure Code, 1859, s 189* —A copy of the judgment, with the schedule of costs appended, does not constitute a proper decree such as is required under s 189, Code of Civil Procedure PURMESSUREE DUTT JHA *v* JOYNAUTH THAKOOR . . 15 W. R., 326

36. ———— **Decree of Appellate Court** —*Civil Procedure Code, 1859, s 360 —Semble*— When an Appellate Court decrees an appeal and gives costs of its own Court, the costs of the first Court should be included in the decree MAHOMED BUSSEEROOLLAH CHOWDRY *v* RAM KANT CHOWDRY . . . . . . 16 W. R., 266

37. ———— *Omission to*

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

costs of the first Court. MOTHOORA MOHUN ROY *v.* HUREE KISHORE ROY . . 18 W. R., 286

Reversing on review S. C. HUREE KISHORE ROY *v.* MUTHOORA MOHUN ROY . 17 W. R., 445

38. ———————— *Specification of proportionate share of cost—Civil Procedure Code, 1859, s. 360.*—Where a decree of the High Court awards costs, the order is not bad in law simply because it does not specify the exact amount to be paid as costs of the lower Court. Such specification is not rendered incumbent by Act VIII of 1859, s. 360, which only requires a Court of appeal to declare the proportions in which the costs are to be paid where more parties than one are made liable. RAJ KRISHNA SINGH *v.* PRONODA DABEE RAJ COOMAREE [21 W. R., 74

39. ———————— *Specification of liability for costs.*—An Appellate Court finally determining a suit is bound to decide by which of the parties before it the costs shall be borne; it is not at liberty to declare that the costs shall be borne by the unsuccessful party in a suit to be hereafter brought. KASHEE CHUNDER DEY *v.* BUNGSHEE BUDDUN DEY . . . 23 W. R., 89

(i) DAMAGES.

40. ———— **Damages, Suit for**—*Plaintiffs with separate interests—Apportionment of damages.*—Where plaintiffs with separate interests sue for and obtain damages, the decree should not be a joint one for a lump sum, but should apportion the damages. TRILOKENATH JHA *v.* HUR DUTT KHURHUREE . . . . . 9 W. R., 299

41. ———————— *Assessment of damages.*—A decree for damages must assess them, and not leave them to be ascertained in execution of the decree. MUNEEBUN *v.* MUSEEHUN 13 W. R., 139

(j) DECLARATORY SUIT.

42. ———— **Declaratory decree, Suit for**—*Suit by one of several brothers for declaratory decree as to mal land.*—Where property in dispute was found by the lower Court to be debutter land belonging to plaintiff, one of four brothers of a joint family, and not mal land included in defendant's patni, it was *held* that plaintiff was entitled to a declaration that the whole land was mal land, and that he was entitled to a fourth share. GUNGA GOBIND SINGH *v.* JOY GOPAUL PANDA [10 W. R., 105

43. ———————— *Suit for declaration of title and confirmation of possession.*—Plaintiff prayed for a declaration of title to, and confirmation of, his possession of 17 bighas, which he claimed through *J* and five others. The lower Court found that of these persons, *J* only ever had any interest in the 17 bighas, and gave plaintiff a decree declaring that he had purchased the rights and interests of *J*, whatever they might be. *Held* that such a decree was bad, as not in any way declaring what interest the plaintiff had in the 17 bighas, or whether he had any right, and that the Court ought to have decided what *J's* precise rights were which had passed to the plaintiff. RAM PHUL AHIR *v.* BHUGWAN DUTT PAUREY . . . 12 W. R., 326

(k) DEED, SUIT TO SET ASIDE.

44. ——— **Suit to set aside deed of sale**—*Legal necessity as to part of consideration-money.—Quære*—Where it has been found that, as to a certain portion of the consideration-money of a deed of sale of joint ancestral property, there was a legal necessity, it is a correct principle to uphold the deed as to that portion of the land which bears the same proportion to the whole quantity conveyed, as the money borrowed for the discharge of the legal necessity bore to the whole amount of the consideration-money? RAJARAM TEWARI *v.* LUCHMUN PERSAD [4 B. L. R., A. C., 118: 12 W. R., 478

45. ——— **Parda-nashin, Suit by, to set aside deed**—*Declaration of title.*—In a suit by the heirs of a Mahomedan parda-nashin lady to set aside a deed of sale executed by her, whilst living apart from her relations, in the house of the purchaser, who had occasionally acted as her mukhtar,—*Held* that, where the substantial relief prayed for is that the deeds should be set aside, the Court is not justified in substituting therefor a mere declaration of the plaintiff's title. THAKOOR DEEN TEWARRY *v.* ALI HOSSEIN KHAN [13 B. L. R., P. C., 427: 21 W. R., 340
L. R., 1 I. A., 192

S. C. in lower Court . . . 8 W. R., 341

(l) EJECTMENT.

46. ———— **Suit for arrears of rent**—*Order in default of payment.*—In suits for arrears of rent the decree ought not to direct in what mode execution should issue. SHYAM CHURN CHUCKERBUTTY *v.* HEERACHAND MOZOOMDAR [Marsh., 48: 1 Hay, 113

47. ———————— *Decree for ejectment.*—A decree for ejectment ought not in a suit for arrears of rent to be passed against the holder of a permanent transferable tenure. SREENIBASH LAEK *v.* PROSUNNO COOMAR MITTER . 25 W. R., 218

48. ———————— *Cancelment of tenure—Act X of 1859, s. 78.*—The decretal order in a suit by a plaintiff, who, having given a lease on a zur-i-peshgi advance to the defendant, has been declared entitled to sue for the balance of rents after giving the defendant credit for the amount of his advance, should, after pronouncing the tenure liable on cancelment, go on to say, according to s. 78, Act X of 1859, that it will be cancelled if the arrear be not paid within fifteen days. GIREE DHAREE SAHOO *v.* BUKSUN . . . 1 W. R., 361

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

49. ———————— *Execution of decree for ejectment for arrears of rent—Extension of time for payment—Bengal Tenancy Act (VIII of 1885), s 66, cls 2 and 3* — *Per* PRINSEP and

RAMPINI, *J.*—

JJ—The decree for ejectment passed under s 66,

and not in the form of an application for review of judgment. BODH NARAIN *v* MAHOMED MOOSA

[I. L R., 26 Calc., 639
3 C. W. N., 628

50. ———— Decree for unconditional re-entry—*Farmer—Act X of 1859, ss. 22, 78.*—

en

(m) ENDOWMENT.

51. ———— Suit to set aside sale of property

—*Re paym*

sale of pro

as had been rightly advanced. JOY LALL TEWAREE *v.* GOSSAIN BHOOBUN GEER . 21 W. R., 334

52. ———————— *Charitable trust, Scheme for management of account—Matters to be considered in framing scheme.*—The plaintiffs sued as persons interested in the maintenance of a religious and charitable institution, and prayed that the defendants, as recipients of the offerings at the idol's shrine, should be made accountable as trustees for the right disposal of the property thus acquired

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

the property of the temple, (2) to take an account

the position of the shevaks and of other persons connected with it *Held* that the decree was right, no futher direction being necessary, and the first thing to be done being to take an account of the trust property. CHOTALAL LAKHIRAM *v.* MANOHAR GANESH TAMBEKAR . I. L. R., 24 Bom., 50
[4 C. W. N., 23

Affirming the decree of the High Court in MANOHAR GANESH TAMBEKAR *v.* LAKHMIRAM GOVINDRAM . . I. L. R., 12 Bom., 247

(n) ENHANCEMENT OF RENT

53. ———— Enhancement, Suit for—*Enhancement, Grounds for—Suit for enhancement on several grounds*—In decreeing enhanced rent, it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed. GANGA NARAYAN DAS *v* SARODA MOHUN ROY CHOWDHRY

[3 B. L. R., A. C, 230 : 12 W R., 30

54. ———————— *Act X of 1859, s 13—Defective decree*—In a suit for a kabuliat at

claim
it de-
ready
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notice as therein prescribed, which notice the plaintiff had failed to give in this case ZINTUT BIBEE *v* JAFFUR ALI . . . 14 W. R., 172

55. ———————— *Parties, Non-joinder of—Suit barred as to added parties*—In a suit for the recovery of rent at an enhanced rate, brought by two of four brothers, joint and undivided owners of the tenure, the other two brothers, on an objection taken by the defendant that they ought to have been parties to the suit, presented a petition signifying their assent to the institution of the suit, and were thereupon treated as parties to the suit.

originally filed the suit, and that, as the claim for rent was indivisible, the decree in their favour should be for the whole amount. BOIDONATH HAO *v* GRISH CHUNDER ROY . . . I. L. R., 3 Calc., 26

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*o*) GOODS.

56. ———— **Goods**—*Suit to recover specific goods in hands of third parties—Alternative claim for value as compensation—Specific Relief Act (I of 1877), ss. 10, 11.*—In execution of a decree obtained by the defendants against one *M* in the Court of Small Causes, certain goods were attached, to which plaintiff preferred a claim. That claim being disallowed, plaintiff filed, in the City Civil Court, Madras, a suit for and obtained a declaration of his title to the goods, but prior to the date of the decree, namely, in October 1895, the goods attached had been sold by the Court of Small Causes, and certain third parties had become purchasers thereof. On plaintiff, in December 1897, suing "for the recovery of the goods or their value as compensation,"—*Held* that, the goods not being in the possession or under the control of the defendants, plaintiff was not entitled to a decree for their recovery in specie; and that plaintiff's only remedy was by way of damages for the wrongful taking of his goods at the instance of the defendants. MURUGESA MUDALI *v.* JOTHARAM DAVAY . . . . **I. L. R., 22 Mad., 478**

(*p*) HEIRS.

57. ———— **Heirs, suit against**—*Joint decree.*—In a suit against heirs inheriting equally, a joint decree may be passed without determining the liability of each. BROJO MOHUN MOZOOMDAR *v.* ROODRANATH SURMAH . . **15 W. R., 192**

58. ———— **Heir of deceased obligor, Suit on bond against**—*Specification of mode of realization.*—A decree in a suit upon a bond, against the heir of the deceased obligor, awarded to the plaintiff the amount of the bond from the property of the obligor, and directed that "the defendant be released from the claim in this suit." An order for execution of the decree was set aside by the Principal Sudder Ameen, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person. *Held* that the decree was informal in not expressing that the debt was to be realized out of the assets of the deceased in the hands of the heir, or that should come to the hands of the heir, but that the Principal Sudder Ameen had jurisdiction to amend and ought to have amended the decree in this respect. ANUND ROY *v.* MUNORUT SINGH . . . . . **Marsh., 611**

(*q*) HINDU WIDOW.

59. ———— **Hindu widow, Decree against**—*Specification of nature of decree.*—In a decree against a Hindu widow it should be stated whether the decree is a personal decree or one against her as representing her deceased husband. RAM KISHORE CHUCKERBUTTY *v.* KALLY KANT CHUCKERBUTTY . **I. L. R., 6 Calc., 479 : 8 C. L. R., 1**

60. ———— **Hindu widow, Suit against**—*Suit by reversioner to set aside sale.*—In a suit by a reversioner to set aside a sale of property made by a Hindu widow, the Court cannot direct possession to be given to the reversioner, but can only declare the sale to be invalid, and leave the widow or her vendees as her tenants in possession. GOLUCK CHUNDER DASS *v.* GOPAL KISHEN SEN

[W. R., 1864, 250

(*r*) IDOL.

61. ———— **Suit respecting idol whose temple has been destroyed**—*Turn of worship—Removal and re-conveyance of idol.*—In a suit respecting an idol which had been set up by the common ancestor of the parties, but whose temple had been destroyed by the erosion of the river, the plaintiffs asked for a declaration of their right to remove the idol to their own house and to keep it there for the period of their turn of worship. *Held* that in giving the plaintiffs a declaratory decree the Court should define the precise period for which the plaintiffs were entitled to worship the idol deducting any period for which the defendants had a joint claim, and should also make provision in the decree for the re-conveyance of the idol to the place where it was at the plaintiff's expense and before the expiration of their turn of worship, so as to allow the other parties the full benefit of their turns. RAM SOONDAR THAKOOR *v.* TARUCK CHUNDER TURKOBUTTUN . . . . . . **19 W. R., 28**

(*s*) IMPROVEMENTS.

62. ———— **Improvements, Value of**—*Suit for possession.*—In a suit for the recovery of immoveable property inquiries as to the value of improvements must be held before decree, and cannot legally be reserved, with or without the consent of the parties, for determination in the execution department. NELLAYA VARIYATH SILAPANI *v.* VADIKAPAT MANAKALE ASHTAMURTI NAMBUDRI

[I. L. R., 3 Mad., 382

(*t*) MAHOMEDAN WIDOW.

63. ———— **Widow in possession of estate as security for dower**—*Suit by heir for possession.*—Where a woman is in possession of her husband's estate as security for unpaid dower, the proper decree in a suit against her for possession by the heir is a decree for possession subject to the amount due with a direction for an account as to mesne profits received by her. MAHOMED AMEEROODEEN KHAN *v.* MOZUFFER HOSSEIN KHAN

[5 B. L. R., 570 : 14 W. R., P. C., 5

(*u*) MAINTENANCE.

64. ———— **Suit by Hindu widow for administration**—*Maintenance, Right to decree for.*—In a suit by a Hindu widow for administration under the will of her deceased husband, the Court will not give a decree for her general right to maintenance. BIZJIE BEBEE *v.* MONOHUR DOSS

[2 Ind. Jur., N. S., 118

DECREE—*continued.*

1. FORM OF DECREE—*continued*

65. ———— Suit for recovery of possession of property on which Hindu widow has a claim for maintenance—*Order as to maintenance* —Where the nearest relative of a Hindu widow sued for recovery of property in her possession, and the lower Appellate Court awarded the claim without fixing the amount of maintenance to be given to the widow, the High Court remanded the suit in order that the amount of maintenance might be fixed, notwithstanding that the widow claimed maintenance in that Court for the first time RAZABAI KOM RANGOJI *v* SADU BIN BHAVANI

[8 Bom , A. C , 98

66. ———— Decree for contingent ar-

stituting a basis for a suit JULEBIA CHITTA KOOER *v* BHAGEE KOER . . . 6 N. W., 41

67. ———— Decree declaring right to maintenance, and directing payment of arrears—*Order for future payments* —Where the Civil Court, upon the suit of a Hindu widow for maintenance, makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during

maintenance and directing payment of arrears should contain an order directing payment of future maintenance VISHNU SHAMBHOG *v* MANJAMMA

[I. L. R., 9 Bom , 108

68 ———— Cash allowance—*Decree for future payment of share* —The plaintiff in this suit sought to recover eleven years' arrears of his share in a certain Government allowance received by the defendants, and also prayed for an order directing the defendants to pay him and his heirs his proper share in future The Court passed a decree for the plaintiff for the amount claimed, and also directed that the defendants should pay to the plaintiff and his heirs for the future his share in the allowance *Held* also that the order in the decree as to payment in future was bad. It could not be executed, as the amount of the allowance was variable, and the defendants were not liable until they obtained payment of the allowance from Government CHAMANLAL *v* BAPUBHAI

[I. L R., 22 Bom , 669

69. ———— Declaration of mother's right to maintenance where whole estate goes to adopted son—*Suit to establish adoption and recover property* —The High Court, being im-

DECREE—*continued.*

1. FORM OF DECREE—*continued*

provide a sufficient maintenance for the widow, and directed that the Court executing the decree should determine what was a proper and sufficient maintenance for the widow, and should secure the same, either by directing an investment of a sufficient part of the estate in trust for that purpose or by such other means as it might deem sufficient JAMNABAI *v* RAYCHAND NAHALCHAND

[I. L. R , 7 Bom , 225

70. ———— Suit by heir to recover family property from widow—*Provision for widow* —The Court will not allow the heir to recover family property from a widow entitled to be maintained out of it without first securing a proper maintenance for her *Jamnabai v Raychand Nahalchand, I L R , 7 Bom , 225,* followed YELLAWA *v.* BHIMANGAVDA I. L. R., 18 Bom., 452

71. ———— Maintenance, mother's right to—*Right to possession in virtue of claim* ... *ession,* ... -After ... n land ... mort- ... xisting ... mort-gage was afterwards assigned to the plaintiff, who sued the widow (defendant No 2) and the mother (defendant No 1) of *S* for possession The mother (defendant No 1) contended that any right the widow (defendant No 2) had to mortgage the property was subject to her (the first defendant's) right to maintenance out of it, and, as her maintenance, she claimed to remain in possession The lower Court held that the property should not be given to the plaintiff until a proper arrangement had been made by him for the maintenance of defendant No 1, but stated that it imposed that condition on the supposition that there was no other family property out of which she could be maintained *Held* that the decree was wrong in making the right of the first

in some other form RACHAWA *v.* SHIVAYOGAPPA

[I. L. R., 18 Bom., 679

72. ———— Decree for maintenance—*Suit for altering the rate of maintenance fixed by a decree* —A suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property But where such deterioration is due to the plaintiff's own default in not keeping the property

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

more appropriate one by application under the leave reserved. GOPIKABAI *v.* DATTATRAYA

[I. L. R., 24 Bom., 386

73. ———— Decree for maintenance where it is charged on property—*Receiver, Appointment of, in case of default—Transfer of Property Act (IV of 1882), ss. 67, 99, 100.*—To avoid any difficulty in executing a decree for maintenance out of property charged with payment of the allowance and make a fresh suit unnecessary in case of default in payment of the instalments, a receiver should be appointed under the decree itself with directions, in case of default in payment of the maintenance, to take possession of the estate and sell the same and out of the sale-proceeds to pay the allowance for maintenance. HEMANGINEE DASSEE *v.* KUMODE CHANDER DASS **I. L. R., 26 Calc., 441**

[3 C. W. N., 139

74. ———— Maintenance of mother and marriageable daughters—*Provision for maintenance of daughter ceasing on marriage.*—A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another wife, alleging that he was in possession of his father's property, for maintenance and for the marriage expenses of the daughters, both of whom were of marriageable age. The Court of first instance gave the plaintiffs a decree for a monthly allowance and R540 to the widow as arrears of maintenance and R1,000 for the marriage expenses of the daughters. *Held* that the Court of first instance should have separated the maintenance to which it considered the three plaintiffs respectively entitled, and that, as to the two minor plaintiffs, it should have declared that such maintenance should cease upon their marriage. TULSHA *v.* GOPAL RAI . . **I. L. R., 6 All., 632**

(*v*) MESNE PROFITS.

75. ———— Mesne profits, Conditional decree for.—A decree awarding immediate mesne profits at the rate admitted by defendants, and larger mesne profits contingently on a higher rate being proved at the time of execution, is altogether irregular. LOTFOOLLAH *v.* NUSSEEBUN **10 W. R., 24**

76. ———— Mesne profits, Decree for, after partition of zamindari.—A question of the partibility of a zamindari disputed in a family of six brothers having been decided in favour of three who sued for their shares,—*Held* that the decree should be that the plaintiffs were entitled to recover one-half of the zamindari, together with the mesne profits thereon, from the time of their dispossession; provided that they should recover such mesne profits for a period of no more than three years next before the commencement of the suit, subject to an allowance to the defendants for all or any portion of such mesne profits which the latter might prove to have been duly applied for the benefit of the joint family. APPA RAO *v.* COURT OF WARDS

[I. L. R., 5 Mad., 236
L. R., 9 I. A., 125

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*w*) MORTGAGE.

77. ———— Suit on money-bond—*Charge on land—Specification of property from which money may be realized.*—In decreeing a claim founded on a simple money-bond, a Court has no authority to direct the realization of the money out of any named property, and thus make it a charge upon such property. In such a case, if the decree does this, and the property is sold before attachment, the title conveyed by the sale is not affected (as there is no charge upon this property before it is attached) and the decree-holder's remedy lies against the judgment-debtor. OMRITO LALL SIRCAR *v.* RAMDHUN CHAKEE . . . . . **18 W. R., 503**

78. ———— Decree against mortgagor—*Mode of execution.*—Where a decree is against the mortgagor generally, coupled with a declaration of the lien, the decree-holder may proceed either against the person and his property or against the mortgaged property, though whether such a course will be allowed in any particular case is a matter for the discretion of the Court executing the decree. LUCHMI DAI KOORI *v.* ASMAN SING

[I. L. R., 2 Calc., 213: 25 W. R., 421

79. ———————— *Money-decree in suit for foreclosure or sale.*—A mortgagee sued for foreclosure or sale in the usual form. The suit was undefended. The plaintiff elected to take a simple money-decree against the mortgagor. The following words were appended to the decree: "*Note.*—The equity of redemption in the property comprised in the mortgage is not liable to attachment and sale under this decree." After ineffectual attempts to realize his debt, the plaintiff applied to the Court for liberty to sell the mortgaged premises. *Held* that the Court had a discretionary power to grant or refuse the sale. The note at the end of the decree did not amount to an absolute prohibition against the sale, but was merely meant as a guide to the Court which should have to execute the decree, and to show that execution should not issue against the equity of redemption, except by special leave of the Court. The Court made an order as if there had been a decree for sale in the first instance, except that the account was to be treated as a final account at the date of the decree. NEERUNJUN MOOKERJEE *v.* OOPENDRO NARAIN DEB . . **10 B. L. R., 57**

80. ———— Foreclosure, suit for—*Mortgage in English form.*—Form of decree in a suit for foreclosure or sale in the mofussil, where the mortgage is in the English form, and all parties concerned are English. MANLY *v.* PATTERSON

[I. L. R., 7 Calc., 394

81. ———— Suit by purchaser at sale in execution of decree on mortgage against assignee of mortgagor.—Form of decree discussed where a person who at a sale in execution of a mortgage-decree has purchased a portion of the mortgaged property brings a suit for that portion against the assignee in possession as a mortgagor. BEPIN BEHARI BUNDOPADHYA *v.* BROJO NATH MOOKHOPADHYA . . **I. L. R., 8 Calc., 357**

DECREE—*continued.*

1 FORM OF DECREE—*continued*

82. ——— **Suit by mortgagee against the mortgagor and purchasers of the mortgaged property.**—In execution of a decree, the right, title, and interest in two parcels of property of a judgment debtor, who had previous to the attachment executed a simple mortgage thereof to *A*, was sold; and *B* and *C* respectively purchased them at different prices *A* sued the mortgagor and the purchasers *B* and *C* for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was "appeal decreed" *A* entered into a compromise with *B*, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against *C*, and compelled him to pay. *C* now sued *B* for recovery of the proportion of the amount paid by him to *A*, but which, according to the valuation of the respective properties, should have fallen into the share of *B* *Held* that the proper decree in the suit of *A* against the mortgagor and *B* and *C* would have been a money-decree against the mortgagor only, with a declaration that the two properties were liable to be sold, clear of subsequent incumbrances, in satisfaction of the mortgage-bond debt BHAIRAB CHANDRA MADAK *v* NADYAR CHAND PAL

[3 B. L. R., A. C., 357: 12 W. R., 291

83. ——— **Suit for declaration of right to redeem**—*Decree for redemption – Quære*—Whether the Court can pass a decree for redemption when the plaint seeks only a declaration of the right to redeem PERUMAL *v.* KAVERI

[I. L. R., 16 Mad., 121

84. ——— **Redemption, suit for**—*Sub-mortgage—Accounts taken between mortgagee and sub-mortgagee*—In a suit for the redemption of land which has been sub-mortgaged by the mortgagee, in which suit the sub mortgagees are co-defendants,

[illegible]

what is due to the original mortgagee, both shall reconvey to the mortgagor NARAYAN VITHAL MAVAL *v* GANOJI . . . I. L. R., 15 Bom., 692

85. ——— *Rights and liabilities of prior and subsequent mortgagees—Suit by second mortgagee—Right of redemption.*—*S* mortgaged a house and site to *R* on the 4th January 1870, and on the 21st February 1870 he

[illegible]

in his own name, but as trustee for *R*. At the Court sale, *D*, the puisne mortgagee, gave notice of his claim to *R* and *N*. *D* sued *N*, *R*, and *S* for the amount due on his mortgage In his evidence *R* admitted that he, subsequently to the sale to *N*, pulled down the house and sold portion of the materials The lower Courts dismissed the suit, holding that *N* (defendant No. 1), the purchaser at the auc-

[illegible]

have had an opportunity of redeeming the mortgaged premises from *R*'s mortgage, and should have been made a party to *R*'s suit He could not be deprived of his right by proceedings to which he was not a party, and was, therefore, entitled to a decree framed on the basis of such right of redemption DAMODAR DEVCHAND *v* NARO MAHADEV

[I. L. R., 7 Bom., 11

86. ——— *First and second mortgages—Second mortgagee not made party to suit by first mortgagee for sale of mortgaged property—Transfer of Property Act (IV of 1882), s 85—Notice*—Certain immoveable property was

[illegible]

sentatives of *H* for redemption of the mortgage of 1865. One of the defendants pleaded that, as he was a

[illegible]

Property Act, that inasmuch as the defendant was in possession of the mortgaged property at the time of the suit of 1877, and his mortgage was a registered instrument, it must be presumed that the plaintiff

[illegible]

accounts, yet the defendant having pleaded that he ought to have been afforded an opportunity of protecting his rights by payment of the prior mortgage-money, the Court should not be too technical in such a matter, where the defendant had the undoubted right now asserted by him, and where the result of not recognizing such right would be to extinguish his security. The Court, therefore, passed an order declaring the defendant entitled to retain possession

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

of the property in suit, if within ninety days he paid into Court the amount of the plaintiff's mortgage-debt, with interest, otherwise the lower Court's decree for redemption on payment of the amount due on the mortgage of 1865 would stand. MUHAMMAD SAMIUDDIN *v.* MAN SINGH . I. L. R., 9 All., 125

87. ———— *Unnecessary declaration—Costs.*—A mortgagee holding two mortgages of the same property sold, under the second mortgage, to the plaintiff, and subsequently under the first mortgage to his son, benami for himself. *Held,* in a suit against the mortgagee and the benamidars, that the plaintiff was entitled to set aside this second sale and to redeem, but that, the mortgagor not being a party, the Court was wrong in introducing into the decree a declaration to the effect that the plaintiff was entitled "as second mortgagee," and had not acquired the equity of redemption belonging to the mortgagor. Such a declaration should in appeal be struck out as embarrassing to the plaintiff's title at the expense of the respondent who resisted. CHOORAMUN SINGH *v.* MAHOMED ALI

[L. R., 9 I. A., 21

88. ———— *Condition in decree.*—In a suit for redemption of a mortgage,—*Held,* with reference to the last paragraph of s. 51 of the Transfer of Property Act, that the Courts below were wrong in subjecting their decrees in favour of the plaintiff to the condition that the defendant should not be evicted till the crops he had sown were cut. DEO DAT *v.* RAM AUTAR . I. L. R., 8 All., 502

89. ———— *Redemption of usufructuary mortgage—Conditional decree for possession.*—In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the plaintiffs as usufructuary mortgagees, and that the mortgage debt had been satisfied from the usufruct of the lands, the lower Court, although it found that the mortgage-debt had not been satisfied as alleged, gave the plaintiffs a decree for possession conditional on the payment of the balance of the mortgage-debt. *Held* that, inasmuch as the defendants never rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount at which the profits of the land should be estimated, it was impossible for the plaintiffs to have ascertained before suit what sum, if any, was due by them, and seeing that, whether such decree was altered or not, the plaintiffs might immediately pay the balance of the mortgage-debt and demand possession, it was unnecessary to interfere with such decree. ZADAH *v.* PARMESHAR DAS . . I. L. R., 1 All., 524

90. ———— *Conditional decree for redemption.*—A conditional decree fixing a period for payment of money found to be due on mortgage-bonds entitling the mortgagor to redemption, though not claimable as of right by the mortgagor, who ordinarily should be ready at once with his money, is a proper and judicious order passed by an Appellate Court, where the Court of first instance determined the amount payable under the mortgage, but failed to fix any time in its decree for the payment of such amount. BARDA KANT RAI *v.* BHAGWAN DAS . . . I. L. R., 1 All., 344

91. ———— *Decree for redemption allowed in suit for ejectment—Discretion of Court.*—A Court can in its discretion pass a decree for redemption in a case in which the plaintiffs have sued in ejectment. *Nilakant Banerjee* v. *Suresh Chunder Mullick, I. L. R., 12 Calc., 414 : L. R., 12 I. A., 171,* referred to and followed. PARSHOTAM BHAISHANKAR *v.* RUMAL ZUNJAR

[I. L. R., 20 Bom., 196

92. ———— *Suit for sale of mortgaged property without redeeming prior mortgage—Transfer of Property Act (IV of 1882), s. 96.*—In a suit on a mortgage by a subsequent mortgagee who made prior mortgagees parties thereto, and in which the plaintiff prayed that the amount due to him might be realized by sale of the mortgaged property, the lower Court decreed the suit, but required the plaintiff, before bringing the property to sale, to redeem certain prior mortgages. *Held,* on appeal, that although, on the authority of the case of *Kantiram* v. *Kutubuddin Mahomed, I. L. R., 22 Calc., 33,* the plaintiff would be entitled to a decree giving him leave to sell the property subject to the prior incumbrances, yet, having regard to the difficulty and complication that would arise under such decree by reason of the fact that one of the defendants, who had purchased the equity of redemption and certain prior mortgages, had obtained upon two of them decrees against the plaintiff, the decree passed by the lower Court was equitable and proper. BENI MADHUB MOHAPATRA *v.* SOURENDRA MOHUN TAGORE

[I. L. R., 23 Calc., 795

93. ———— *Mortgage sued on inadmissible in evidence for want of registration—Secondary evidence—Mortgage effecting consolidation of prior mortgages—Decree to redeem prior mortgages.*—In a suit to redeem a mortgage of 1867 which had been lost and admittedly had not been registered, it appeared that it had been executed in consolidation of two prior mortgages, dated 1856 and 1860, respectively. *Held* that the plaintiff was not entitled to a decree on the footing of the unregistered mortgage which could not be proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. ARUMUGAM PILLAI *v.* PERUASAMI . I. L. R., 19 Mad., 160

See KRISHNA PALLAI *v.* RANGASAMI PILLAI

[I. L. R., 18 Mad., 462

94. ———— *Mortgage being invalid, whether a money decree can be made upon the covenant in the bond.*—When a suit is brought upon a mortgage-bond, although the mortgage is held to be invalid on the ground that the requirements of s. 59 of the Transfer of Property Act were not satisfied, the plaintiff is entitled to recover upon the covenant money which the defendant covenanted to pay. TOFALUDDI PEADA *v.* MAHARALI SHAHA

[I. L. R., 26 Calc., 78

DECREE—*continued*

1 FORM OF DECREE—*continued*

95. ———————— *Transfer of Property Act (IV of 1882), ss 86, 88—Decree for sale—Provision for interest at contract rate until six months from date of decree* —Defendants promised to pay plaintiffs a sum of money for value

whereupon plaintiffs informed defendants by letter that their account carried interest at the higher rate provided for in the promissory note Plaintiffs now sued for the amount due in respect of principal and interest at the rate of 15 per cent per annum from the date of their letter till payment, and asked that, in default of payment on a day to be fixed by the Court, the property might be sold A decree having been passed in plaintiffs' favour provision was made therein ordering defendants to pay the amount of

payment —*Held* that the decree was correctly drawn In principle there is no difference between a mortgage decree which has become absolute and ordinary decree for money After the day fixed for payment, or on the passing of the decree, as the case may be the rights of the parties under the contract become merged in the decree and afterwards there is no more reason for giving interest at the contract rate in the one case than in the other *Rameswar Koer* v *Syed Nawab Mehdi Hossein Khan, I L R, 25 I A, 179 I L R, 26 Calc 39* and *Bakar Sajjad* v *Udit Narain Singh I L R, 21 All 361,* referred to COMMERCIAL BANK OF INDIA v ATEENDRU LAYYA I. L R, 23 Mad., 637

96 ———————— *Transfer of Property Act (IV of 1882)*

for sale was the right decree VENKATASAMI v SUBRAMANYA . . I. L. R., 11 Mad., 88

97 ———————— *Construction of mortgage-bond—Liability of property other than that mortgaged* —Under a mortgage bond a mortgagor stipulated that if the money advanced should not be repaid at a fixed date the mortgaged property might be sold, and that if the property were sold for arrears of Government revenue or for other causes, the

place under the second stipulation that the mortgagee could only obtain a decree against the mortgaged properties *Narotam Dass* v *Sheopargash Singh, I L R, 10 Calc 740,* referred to BUNSEEDHUR v SUJAAT ALI . . I L R, 16 Calc, 540

98 ———————— *First and second mortgages—Suit by second mortgagee for sale—Plaint denying or ignoring title of first mortgagee* —Where a second mortgagee, coming into Court and denying or ignoring the title of a prior mortgagee, asks to have the property sold as if there were no prior incumbrance, the suit should be dismissed and should not be decreed with words of limit-

99 ———————— *Suit by second mortgagees against purchaser of equity of redemption who had paid off a prior mortgage—Suit ignoring lien of purchaser of equity of redemption* —One *A S* purchased the equity of redemption of a

mortgaged property to sale making the original mortgagor and the purchaser of the equity of redemption defendants but omitting any mention of the lien acquired by such purchaser *Held* that such omission was not a valid reason for dismissing the plaintiff's suit altogether *Saliq Ram* v *Haracharan Lal, I L R, 12 All 448* distinguished KALI CHARAN v AHMAD SHAH KHAN

[I. L R., 17 All., 48

100 ———————— *Rights of persons advancing money to pay off a prior mortgage—Suit to sell mortgaged property under mortgage* —Where, in a suit to bring certain immoveable property to sale under a mortgage it was found that the predecessor in interest of one of the defendants had advanced money upon a mortgage of the same immoveable property in order to save a portion thereof from sale under two prior mortgages —*Held* that

portion of the property in suit to sale on payment to the said defendant of the money advanced as aforesaid with interest from the date of payment to the date of the receipt of the final decree by the Court of first instance together with proportionate costs, such payment to be made within 90 days from the ascertainment of such amount and the receipt of the final decree by the Court of first instance, otherwise the plaintiff to be absolutely debarred from all right to redeem that particular portion of the property mortgaged. TULSA v KHUB CHAND

[I L R., 18 All., 581

101. ———————— *Purchaser of mortgaged property paying off prior incumbrances —Suit by puisne mortgagee without offer to redeem prior mortgage* —The purchaser of a portion

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

of certain mortgaged property paid off certain prior mortgages on the property. The subsequent mortgagee brought a suit for sale on his mortgage and made the purchaser a defendant, but did not offer to redeem the prior mortgages. *Held* that the suit would not for that reason necessarily fail, but the plaintiff ought to be given an opportunity of redeeming the defendant's prior mortgages. *Salig Ram* v. *Har Charan Lal, I. L. R., 12 All., 548,* distinguished. *Kali Charan* v. *Ahmad Shah Khan, I. L. R., 17 All., 48* followed. MUHAMMAD NIAMAT ALI KHAN *v.* GHAFFAR MUHAMMAD KHAN

[I. L. R., 21 All., 272

102. ———— *Suit by puisne incumbrancer—Decree for sale.*—In March 1881, *A* purchased certain land, and in the same month mortgaged it to *B*. In June, the land was attached in execution of a decree. In August, *A* discharged the judgment-debt with money borrowed from *C*, and he hypothecated the land to him to secure repayment of the loan. In 1882, *B* brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: *C* was not a party to this suit. In 1886, *B* sold the land to *D* under an instrument, which recited that out of the purchase-money R760 were retained by the purchaser for payment of prior incumbrances, and the finding was that the purchaser undertook to pay the debt owing to *C*. *C* now used *A* and *D* to enforce his hypothecation. *Held* that *C* was entitled to a decree for sale. NARAYANASAMI NAIDU *v.* NARAYANA RAU . . . . I. L. R., 17 Mad., 62

103. ———— *Suit on mortgage for an account and for sale of mortgaged property—Practice—Decree where puisne mortgagee is a party defendant and asks for an account on the footing of his mortgage—Application to vary decree.*—In a suit on a mortgage, for an account and for sale of the mortgaged property, where a puisne mortgagee who is made a defendant appears and proves his mortgage and asks that the decree sought to be obtained by the plaintiff may also provide for an account on the footing of his mortgage, and for payment of the amount found due to him out of the sale-proceeds, the practice of the Court is, where no issue is raised as between the defendants and no question of priority arises, on proof of the subsequent mortgage, to make a decree directing an account on the footing of each of the mortgages, and fixing one period of redemption for all the defendants. *Auhindro Bhoosun Chatterjee* v. *Chunnoo Lall Johurry, I. L. R., 5 Calc., 101,* referred to. An application made by the purchaser of the equity of redemption, who had been made a defendant in such a suit and had been served with a summons, but had failed to appear, that the decree which had been made in accordance with the above practice should be varied by limiting it to a decree in favour of the plaintiff alone, on the ground that the Court had no jurisdiction in such a suit to make a decree between co-defendants, was dismissed. KISSORY MOHUN ROY *v.* KALLY CHURN GHOSE . . . I. L. R., 22 Calc., 100

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

104. ———— *Mortgage by mortgagee of his rights as such, but without assignment—Rights of sub-mortgagee as against original mortgagee.*—*R* and others mortgaged certain immoveable property to *N K*. *N K* made a sub-mortgage to *C L* purporting to mortgage to him his rights as mortgagee, but without assigning his mortgage to *C L*. Upon this title *C L* sued for sale of the property mortgaged by *R* and others to *N K*. *Held* that *C L* was not entitled to bring the property mortgaged to *N K* to sale, but at most to obtain a decree for money against *N K*, in execution of which he might possibly have attached, if it had not been paid off, the mortgage held by *N K*. GANGA PRASAD *v.* CHUNNI LAL . . I. L. R., 18 All., 113

105. ———— *Prior and subsequent incumbrancers—Right of subsequent mortgagee to redeem prior mortgage—Manner in which subsequent mortgagee's right of redemption is effected by partial destruction of the prior mortgage—Transfer of Property Act (IV of 1882), s. 74.*—One *M R* was a co-mortgagee under mortgages of the years 1867, 1868, and 1870, of a village called Ahak and shares in certain other villages, Surajpur, Raipur, Bamoti, and Khera Buzurg. *K D*, the plaintiff, was the representative of a subsequent mortgagee of the share in Khera Buzurg. *K D* in 1874 brought the share comprised in his mortgage to sale, and purchased it himself; but without making *M R* or his representatives parties to his suit for sale. Subsequently, in 1879, *M R* sued for a decree for sale of all the property mentioned above, but the decree which he obtained was limited to the village Ahak and the share in Khera Buzurg. *K D* was not made a party to this suit. In 1882, one *M M A* purchased the share in Surajpur, which had been subject to the mortgage sued upon by *M R* in 1879, but had been exempted from the decree obtained by *M R* in 1879. In 1892 *K D* sued for redemption of *M R*'s prior mortgage of 1867 and for a declaration of his right upon such redemption to bring to sale the property comprised in the mortgage. *Held* that, inasmuch as *M R*'s interest in the mortgaged property had been limited by the decree of 1879 to the village of Ahak and the share in Khera Buzurg, the plaintiff was not entitled to a decree for the sale of the share purchased by *M M A* in Surajpur. MUHAMMAD MAHMUD ALI *v.* KALYAN DAS . . I. L. R., 18 All., 189

106. ———— *Transfer of Property Act (IV of 1882), s. 86—Suit by sub-mortgagee—Decree for sale.*—A sub-mortgagee is entitled to a decree for the sale of the original mortgagor's interest in cases and in circumstances which would have entitled the original mortgagee on the date of the sub-mortgage to claim such relief. MUTHU VIJIA RAGHUNATHA RAMACHANDRA VACHA MAHALI THURAI *v.* VENKATACHELLAM CHETTI

[I. L. R., 20 Mad., 35

107. ———— *Decree on first mortgage, a puisne not being joined—Purchase of mortgaged property by decree-holder for inadequate price—Right of puisne mortgagee—Interest.*—*A*

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

mortgaged land to *B* and then to *C*. *B* sued on his mortgage, and obtained a decree for sale without joining as defendant *C*, of whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale *Held* (1) that the plaintiff was entitled to a decree for sale subject to the right of the representatives of *B*, if the purchaser did not elect to redeem, (2) that the purchaser was not entitled to allowances for improvements, (3) that the plaintiff was entitled to interest at the agreed rate to the date of decree. RANGAYYA CHETTIAR *v* PARTHASARATHI NAICKAR

[I. L R., 20 Mad., 120

108.————————*Gujarat Talukhdars Act (Bombay Act VI of 1888), ss. 31 and* [illegible]

mortgaged property The Court passed a decree against the talukhdar personally, holding that it had no power under ss 31 and 32 of the Gujarat [illegible]

was bound to pass a decree for sale in default of payment of the mortgage-debt *Quære*—Whether the property could be sold without the sanction of the Governor in Council, regard being had to the provisions of cl. 2 of s 31 of the Act. *Nagar Pragi v. Jivabai, I. L R, 19 Bom, 80,* doubted. DOSHI FULCHAND *v.* MALEK DAJIRAJ

[I. L. R., 20 Bom., 565

(*x*) NONSUIT.

109.———— **Suit dismissed as brought with liberty to bring a fresh suit**—*Civil Procedure Code, s 373* —Where a suit for enforce- [illegible]

no Court in India had power to make, and not being made under s. 373 of the Civil Procedure Code, and the plaint not having been returned or rejected under Ch. V of the Code, the decision must be set aside *Watson* v. *Collector of Rajshahye, 13 B. L. R, P. C., 49: 13 Moore's I. A, 160,* and *Kudrat* v. *Dinu, I. L. R, 9 All, 155,* referred to BANWARI DAS *v.* MUHAMMAD MASHIAT . . . I. L. R., 9 All., 690

DECREE—*continued*

1. FORM OF DECREE—*continued.*

(*y*) PAPERS AND ACCOUNTS, SUITS FOR.

110 [illegible]

111. ———— **Suit to recover accounts and papers**—*Inquiry in execution* —In a suit to recover accounts and papers, instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers, if any, were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts, if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and, if so, decide the case accordingly JUGGER NATH PANDE *v* CHUTTUR NARAIN DEB . . . 17 W. R., 410

(*z*) PARTITION.

112. ———— **Partition, Suit for**—*Objection to list of moveable property* —Objection was taken to the accuracy of a list of moveable property of which the plaintiff claimed partition The lower Appellate Court, without determining whether the list was correct or not, gave the plaintiff a decree for the whole of the articles mentioned in the list, declaring that particular excuses with regard to [illegible]

pronounced a decree SHEO GOBIND *v* SHAM NARAIN SINGH . . . . 7 N. W., 75

113. ———————— *Decree for moveables in suit for partition of land.*—Where the claim in a suit was for the partition of certain immoveable property, and for the profits of the property, and defendant in his account took credit for a sum expended in certain jewels, etc, it was held that the things so purchased, being charged against the plaintiff, belonged to the plaintiff, and a decree declaring his right to obtain them might be supported, although the claim did not refer to moveables BULDEO SEHAI *v* CHADEE LALL . . 2 N. W., 95

114. ———————— *Suit for possession by partition of nij-jote land and for mesne* [illegible]

share, and the exact amount due as wasilat CHOWDRY IMDAD ALI *v.* BOONYAD ALI . 14 W. R., 92

115 ———————— *Death of one of sharers pending appeal—Alteration of decree on appeal—Death of a co-parcener pendente lite.*—

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

of certain mortgaged property paid off certain prior mortgages on the property. The subsequent mortgagee brought a suit for sale on his mortgage and made the purchaser a defendant, but did not offer to redeem the prior mortgages. *Held* that the suit would not for that reason necessarily fail, but the plaintiff ought to be given an opportunity of redeeming the defendant's prior mortgages. *Salig Ram* v. *Har Charan Lal, I. L. R., 12 All., 548,* distinguished. *Kali Charan* v. *Ahmad Shah Khan, I. L. R., 17 All., 48* followed. MUHAMMAD NIAMAT ALI KHAN *v.* GHAFFAR MUHAMMAD KHAN

[I. L. R., 21 All., 272

102. ——————— *Suit by puisne incumbrancer—Decree for sale.*—In March 1881, *A* purchased certain land, and in the same month mortgaged it to *B*. In June, the land was attached in execution of a decree. In August, *A* discharged the judgment-debt with money borrowed from *C*, and he hypothecated the land to him to secure repayment of the loan. In 1882, *B* brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: *C* was not a party to this suit. In 1886, *B* sold the land to *D* under an instrument, which recited that out of the purchase-money R760 were retained by the purchaser for payment of prior incumbrances, and the finding was that the purchaser undertook to pay the debt owing to *C*. *C* now used *A* and *D* to enforce his hypothecation. *Held* that *C* was entitled to a decree for sale. NARAYANASAMI NAIDU *v.* NARAYANA RAU . . . . I. L. R., 17 Mad., 62

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DECREE—*continued.*

1. FORM OF DECREE—*continued.*

104. ——————— *Mortgage by mortgagee of his rights as such, but without assignment—Rights of sub-mortgagee as against original mortgagee.*—*R* and others mortgaged certain immoveable property to *N K*. *N K* made a sub-mortgage to *C L* purporting to mortgage to him his rights as mortgagee, but without assigning his mortgage to *C L*. Upon this title *C L* sued for sale of the property mortgaged by *R* and others to *N K*. *Held* that *C L* was not entitled to bring the property mortgaged to *N K* to sale, but at most to obtain a decree for money against *N K*, in execution of which he might possibly have attached, if it had not been paid off, the mortgage held by *N K*. GANGA PRASAD *v.* CHUNNI LAL . . I. L. R., 18 All., 113

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[I. L. R., 20 Mad., 35

107. ——————— *Decree on first mortgage, a puisne not being joined—Purchase of mortgaged property by decree-holder for inadequate price—Right of puisne mortgagee—Interest.*—A

DECREE—*continued*

1 FORM OF DECREE—*continued*

mortgaged land to *B* and then to *C* *B* sued on his mortgage, and obtained a decree for sale without joining as defendant *C*, of whose mortgage he had notice, *D* the son of the decree holder, became the purchaser in execution and improved the land at a considerable cost *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage and sought a decree for sale *Held* (1) that the plaintiff was entitled to a decree for sale subject to the right of the representatives of *B*, if the purchaser did not elect to redeem, (2) that the purchaser was not entitled to allowances for improvements, (3) that the plaintiff was entitled to interest at the agreed rate to the date of decree RANGAYYA CHETTIAR *v* PARTHASARATHI NAICKAR

[I. L. R., 20 Mad., 120

108. ———————— *Gujarat Talukhdars Act (Bombay Act VI of 1888), ss 31 and 32—Mortgage of talukhdari estate—Validity of*

sale of the
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ng that it
the Gujarat

Talukhdars Act to direct a sale of the talukhdari estate *Held* reversing the decree that the mortgage having been effected prior to the coming into force of the Gujarat Talukhdars Act was not invalidated by cl 1 of s 31 of the Act and that the Court was bound to pass a decree for sale in default of payment of the mortgage debt *Quære*—Whether the property could be sold without the sanction of the Governor in Council regard being had to the provisions of cl 2 of s 31 of the Act. *Nagar Pragi v Jivabai, I L R 19 Bom, 80,* doubted DOSHI FULCHAND *v* MALEK DAJIRAJ

[I. L. R, 20 Bom, 565

(*x*) NONSUIT

109 ———— Suit dismissed as brought with liberty to bring a fresh suit—*Civil*

had put it out of his power to sue for relief against the whole of the hypothecated property,—*Held* that the decree being in effect one of nonsuit which no Court in India had power to make, and not being made under s. 373 of the Civil Procedure Code and the plaint not having been returned or rejected under Ch V of the Code, the decision must be set aside *Watson v Collector of Rajshahye, 13 B L R, P C, 48; 13 Moore's I A, 160* and *Kudrat v Dinu I L R 9 All, 155* referred to BANWARI DAS *v* MUHAMMAD MASHIAT

I. L. R., 9 All., 690

DECREE—*continued*

1 FORM OF DECREE—*continued*

(*y*) PAPERS AND ACCOUNTS SUITS FOR

110 ———— Suit for delivery of papers —*Specific decree*—In decreeing a suit for the delivering up of certain nekasi papers it is not sufficient for the Court to order that the claim be allowed. The decree ought to contain a specific order upon the defendant to deliver up the papers RAM COOMAR SIRCAR *v* KALEE COOMAR DUTT 10 W R., 279

111 ———— Suit to recover accounts and papers—*Inquiry in execution*—In a suit to recover accounts and papers instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers if any were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts if any were in the hands of the defendant and whether he had wrongfully refused or omitted to deliver them to plaintiff and if so decide the case accordingly JUGGER NATH PANEE *v* CHUTTUR NARAIN DEB 17 W R, 410

(*z*) PARTITION

112. ———— Partition, Suit for—*Objection to list of moveable property*—Objection was taken to the a
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Appellate Cou
list was corre
for the whole of the articles mentioned in the list declaring that particular excuses with regard to individual articles might fitly be determined in execution of decree The lower Appellate Court was bound to have ascertained whether any and if any, which of the articles were liable to partition before it pronounced a decree SHEO GOBIND *v* SHAM NARAIN SINGH 7 N W, 75

113 ———————— *Decree for moveables in suit for partition of land*—Where the claim in a suit was for the partition of certain immoveable property and for the profits of the property and defendant in his account took credit for a sum expended in certain jewels etc it was held that the things so purchased being charged against the plaintiff, belonged to the plaintiff, and a decree declaring his right to obtain them might be supported although the claim did not refer to moveables BULDEO SEHAI *v* CHADEE LALL 2 N W., 95

114 ———————— *Suit for possession by partition of nij jote land and for mesne*

115 ———————— *Death of one of sharers pending appeal—Alteration of decree on appeal—Death of a co parcener pendente lite*—

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

of certain mortgaged property paid off certain prior mortgages on the property. The subsequent mortgagee brought a suit for sale on his mortgage and made the purchaser a defendant, but did not offer to redeem the prior mortgages. *Held* that the suit would not for that reason necessarily fail, but the plaintiff ought to be given an opportunity of redeeming the defendant's prior mortgages. *Salig Ram* v. *Har Charan Lal, I. L. R., 12 All., 548,* distinguished. *Kali Charan* v. *Ahmad Shah Khan, I. L. R., 17 All., 48* followed. MUHAMMAD NIAMAT ALI KHAN *v.* GHAFFAR MUHAMMAD KHAN [I. L. R., 21 All., 272

102. ——— *Suit by puisne incumbrancer—Decree for sale.*—In March 1881, *A* purchased certain land, and in the same month mortgaged it to *B*. In June, the land was attached in execution of a decree. In August, *A* discharged the judgment-debt with money borrowed from *C*, and he hypothecated the land to him to secure repayment of the loan. In 1882, *B* brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: *C* was not a party to this suit. In 1886, *B* sold the land to *D* under an instrument, which recited that out of the purchase-money R760 were retained by the purchaser for payment of prior incumbrances, and the finding was that the purchaser undertook to pay the debt owing to *C*. *C* now used *A* and *D* to enforce his hypothecation. *Held* that *C* was entitled to a decree for sale. NARAYANASAMI NAIDU *v.* NARAYANA RAU . . . . I. L. R., 17 Mad., 62

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DECREE—*continued.*

1. FORM OF DECREE—*continued.*

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DECREE—*continued.*

1. FORM OF DECREE—*continued.*

The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court; but, before it was decided, one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share in the family property than he had been awarded by the decree of the Courts below. *Held* that he (plaintiff) was entitled to a share in that of the co-parcener who died *pendente lite,* and that the decree appealed from ought to be varied accordingly. SAKHARAM MAHADEV DANGE *v.* HARI KRISHNA DANGE

[I. L. R., 6 Bom., 113

116. ——————— *Deshgat vatan held by desai.*—Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai, and the vatan was property appertaining to the office, the decree for partition was accompanied by a declaration that it was made without prejudice to the right of the desai to any income, payable out of it for the performance of his duties, to which he might be entitled under any law in force. ADRISHAPPA *v.* GURUSHIDAPPA

[I. L. R., 4 Bom., 494

117. ——————— *Suit for partition by a purchaser from a co-sharer—Decree in such suit need not be for a general partition of the entire estate.*—When a purchaser from a co-sharer in a joint family estate sues to have his share severed and given to him, the Court is not bound to force the members of the family into a partition of the whole estate. It is, no doubt, open for each and every co-sharer to ask to have his share divided off and allotted to him (in which case he would have to pay court-fees according to his share). But, in the absence of such a request, the Court is not bound to determine what is the share of each of the co-sharers, and to compel him to take that share by making a general partition. In such a case the High Court refused, in second appeal, to accede to the prayer of some of the co-sharers, who had not appeared in the Court of first instance, to have their shares divided off and allotted to them. MURARRAO *v.* SITARAM

[I. L. R., 23 Bom., 184

See ABDU KADAR *v.* BAPUBHAI

[I. L. R., 23 Bom., 188

118. ——————— *Provisional decree in suit for partition—Right of appeal.*—In a suit for partition of family property, a decree was passed declaring the share to which the plaintiff and some of the defendants were entitled in the family property, but reserving all other questions involved in the suit. *Held* that the decree was a provisional decree and was subject to appeal, but that it was irregular in form in that it should have contained declarations as to all the rights and liabilities which had been adjudicated on, and directions as to the accounts and enquiries remaining to be taken and made. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR . . I. L. R., 18 Mad., 73

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

119. ——————— *Talukhdari estate—Decree of Privy Council.*—In a suit commenced in 1865 by a member of a joint family for the declaration of his rights in a talukhdari estate, partition not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 56; and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865, and also with the addition of villages since acquired out of profits, claiming an account against the talukhdari. The latter alleged, among other defences, that the talukhdari estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits. *Held* that, in regard to the order of Her Majesty above mentioned, which was applicable to an estate held subject to the law of the Mitakshara, the talukhdari estate could not be declared to be impartible; also that a declaration in the Judicial Commissioner's decree that a member of the family entitled to a share upon partition should hold it as an under-proprietor under the talukhdar could not be allowed to stand. PIRTHI PAL *v.* JOWAHIR SINGH . I. L. R., 14 Calc., 493

[L. R., 14 I. A., 37

See SHANKAR BAKSH *v.* HARDEO BAKSH

[I. L. R., 16 Calc., 397

L. R., 16 I. A., 71

(*aa*) PARTNERSHIP.

120. ——————— **Suit for dissolution of partnership.**—In a suit of the nature of one for dissolution of partnership, it is incorrect to make an absolute decree for a specific sum of outstanding balances without anything to guide the Court in fixing that amount. No amount ought to be decreed without satisfactory proof of its having been realized and misappropriated. MUN MOHINEE DASSEE *v.* ICHAMOYE DASSEE . . 15 W. R., 352

(*bb*) POSSESSION.

121. ——————— **Possession, suit for**—*Declaration of proprietary right.*—In a suit for recovery of possession of land, it was declared that the plaintiff was entitled to possession as owner, and ordered that the defendants should deliver to him possession as such. *Held* on appeal that the decree should have simply declared that the plaintiff was entitled to possession without any declaration of right as owner. RADHAKRISHNA SETT *v.* HARAKRISHNA DAS

[1 B. L. R., O. C., 1

122. ——————— *Co-sharers—Intervenors added as parties.*—In a suit to recover possession of a certain mouzah, claimed by the plaintiff as

DECREE—*continued.*

I FORM OF DECREE—*continued*

mortgaged land to *B* and then to *C* *B* sued on his mortgage, and obtained a decree for sale without joining as defendant *C*, of whose mortgage he had notice, *D*, the son of the decree holder, became the purchaser in execution and improved the land at a considerable cost *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale *Held* (1) that the plaintiff was entitled to a decree for sale subject to the right of the representatives of *B*, if the purchaser did not elect to redeem, (2) that the purchaser was not entitled to allowances for improvements; (3) that the plaintiff was entitled to interest at the agreed rate to the date of decree RANGAYYA CHETTIAR *v* PARTHASARATHI NAICKAR

[I. L. R., 20 Mad., 120

108. ———————— *Gujarat Talukhdars Act (Bombay Act VI of 1888), ss 31 and 32—Mortgage of talukhdari estate—Validity of* [illegible]

[illegible]

had no power under ss 31 and 32 of the Gujarat Talukhdars Act to direct a sale of the talukhdari estate *Held*, reversing the decree, that the mortgage, having been effected prior to the coming into force of the Gujarat Talukhdars Act, was not invalidated by cl 1 of s 31 of the Act, and that the Court was bound to pass a decree for sale in default of payment of the mortgage debt *Quære*—Whether the property could be sold without the sanction of the Governor in Council, regard being had to the provisions of cl 2 of s 31 of the Act. *Nagar Pragi* v *Jivabai, I. L R, 19 Bom, 80,* doubted DOSHI FULCHAND *v* MALEK DAJIRAJ

[I. L. R, 20 Bom, 565

(*x*) NONSUIT

109. ———— **Suit dismissed as brought with liberty to bring a fresh suit**—*Civil Procedure Code, s 373*—Where a suit for enforce- [illegible]

[illegible]

had put it out of his power to sue for relief against the whole of the hypothecated property,—*Held* that the decree being in effect one of nonsuit, which no Court in India had power to make, and not being made under s. 373 of the Civil Procedure Code, and the plaint not having been returned or rejected under Ch V of the Code, the decision must be set aside *Watson* v *Collector of Rajshahye, 13 B L. R, P C, 49; 13 Moore's I A, 160* and *Kudrat* v *Dinu, I L R, 9 All, 155,* referred to BANWARI DAS *v* MUHAMMAD MASHIAT . I. L. R., 9 All., 690

DECREE—*continued*

I FORM OF DECREE—*continued*

(*y*) PAPERS AND ACCOUNTS, SUITS FOR

110 [illegible]

[illegible]

The decree ought to contain a specific order upon the defendant to deliver up the papers RAM COOMAR SIRCAR *v* KALEE COOMAR DUTT 10 W. R., 279

111. ———— **Suit to recover accounts and papers**—*Inquiry in execution*—In a suit to recover accounts and papers, instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers, if any, were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and, if so decide the case accordingly JUGGER NATH PANEE *v* CHUTTUR NARAIN DEB 17 W. R, 410

(*z*) PARTITION

112. ———— **Partition, Suit for**—*Objection to list of moveable property*—Objection was taken to the accuracy of a list of moveable property of which the plaintiff claimed partition The lower Appellate Court, without determining whether the list was correct or not, gave the plaintiff a decree for the whole of the articles mentioned in the list, declaring that particular excuses with regard to [illegible]

[illegible]

pronounced a decree SHEO GOBIND *v* SHAM NARAIN SINGH . 7 N. W, 75

113 ———————— *Decree for moveables in suit for partition of land*—Where the claim in a suit was for the partition of certain immoveable property, and for the profits of the property, and defendant in his account took credit for a sum expended in certain jewels, etc, it was held that the things so purchased, being charged against the plaintiff, belonged to the plaintiff, and a decree declaring his right to obtain them might be supported, although the claim did not refer to moveables BULDEO SEHAI *v* CHADEE LALL . 2 N. W., 95

114. ———————— *Suit for par-* [illegible]

[illegible]

115 ———————— *Death of one of sharers pending appeal—Alteration of decree on appeal—Death of a co-parcener pendente lite*—

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

130. ———— **Suit by purchaser of share in undivided property**—*Right to possession.*—A purchaser at a Court-sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one co-parcener only. KALLAPA *v.* VENKATESH VINAYAK

[I. L. R., 2 Bom., 676

131. ———— *Sale in execution of decree of joint family property—Right of purchaser—Suit to cancel sale.*—*G*, the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued *G* on the mortgage, and obtained a decree. A house, which was part of the family property, was sold in execution, and was purchased by the defendant himself. The plaintiff sued to have the sale set aside and to recover his half share in the house. *Held* that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly. *Held* also that it was not competent for the Court in this suit to go into the question whether the mortgage by *G* was binding on the minor plaintiff. MARUTI NARAYAN *v.* LILACHAND . . I. L. R., 6 Bom., 564

132. ———— **Suit by purchaser for share of undivided property**—*Sale of joint family property in execution of decree.*—A judgment-creditor attached in execution and caused to be sold the judgment-debtor's alleged one-twelfth share as a member of an undivided Hindu family, in seven parcels of land of which the applicant was in possession as manager. At the sale *Y* became the purchaser; and subsequently, and without having himself entered into possession, *Y* assigned his interest in the purchase to *G*. *G* claimed to be put into possession, and obtained a Court's order, directing that possession should be given to him. The applicant, however, obstructed the execution of the said order, and applied to the High Court to declare *G* not entitled to the possession he sought. No division of the property in question, by metes or bounds or otherwise, between the members of the undivided family had ever been made, nor had the judgment-debtor ever had separate occupancy of any definite share of the same. *Held* that *G*'s proper remedy was by a suit for partition, and that he could not claim to be put into joint possession with the applicant and the other members of the undivided Hindu family, of the family property. BALAJI ANANT RAJADIKSHA *v.* GANESH JANARDAN KAMATI

[I. L. R., 5 Bom., 499

Contra, INDRASA *v.* SADU

[I. L. R., 5 Bom., 505 note

133. ———— **Suit to set aside sale in execution of decree on a mortgage to secure two debts**—*One debt only binding on tarwad—Declaration of right to possession.*—In a suit b[y] members of a Malabar tarwad to set aside [a] sale in execution of a decree, passed on a mortgag[e] which had been executed by their karnavan an[d] senior anandravans in consolidation of two prio[r] mortgages executed, respectively, to secure two debt[s] it appeared that one of these debts was binding an[d] the other not binding on the tarwad. *Held* tha[t] the Court should declare the plaintiffs entitled t[o] the property sold notwithstanding the sale, bu[t] subject to the charge created to secure the bindin[g] debt. KUNHI MANNAN *v.* CHALI VADUVATH

[I. L. R., 14 Mad., 49[?]

134. ———— **Suit for possession o[f] family property alienated for unjustifiabl[e] purposes**—*Alienation by life-tenant.*—*A* and [*B*] sued *D* and *E* for the estate of a relative, *C*, th[e] deceased husband of *D*, on the ground that th[e] family to which *A*, *B*, and *C* belonged was un[-]divided. *D* (who was a Hindu widow without sur[-]viving issue) and *E* pleaded division, and that [*D*] had sold and assigned the estate to *E*. This aliena[-]tion was not shown to have been made for purpose[s] recognized by Hindu law. *Held* that the Distric[t] Munsif, in disallowing the plaintiff's claim t[o] immediate possession, should not have provided fo[r] the re-assignment of the estate from *E* to *D* fo[r] *D*'s life, but that he was right in declaring tha[t] after *D*'s death the property should revert to th[e] plaintiffs as heirs of *C*. PERIYA GAUNDAN *v.* TIRUMALA GAUNDAN . . 1 Mad., 20[?]

135. ———— **Suit by member of undi[-]vided family against manager**—*Decree o[n] partition.*—A member of an undivided family brough[t] a suit for partition against his father, the managin[g] member, and eight others, of whom the second, third and fourth defendants were plaintiff's infant brothers and obtained a decree. The Judge proceeded t[o] ascertain the amount of the plaintiff's share in th[e] following manner. He assessed what he considere[d] to be the sum received by the first defendant fro[m] the estate, deducted from that sum what h[e] considered should have been the gross expenditure o[f] the defendant, and decreed delivery by the defen[-]dant of one-fifth of the remainder. *Held* that suc[h] a decree was erroneous. TARA CHAND *v.* REEB RAM

[3 Mad., 17[?]

136. ———— **Suit by son to set aside sal[e] by father of ancestral property**—*Right o[f] purchaser.*—Where ancestral property is sold by th[e] father, the son is entitled to sue for cancelment o[f] such sale, and the decree should not be that th[e] property is ancestral and will pass to the father'[s] heirs on his death, but a decree cancelling the sal[e] so far as it obstructs him in asserting his righ[t] and in effect declaring the sale to be invalid, withou[t] interfering with actual possession, that may hav[e] been obtained by the purchaser. BABOO RAM *v.* GAJADHUR SINGH

[Agra, F. B., 86: Ed. 1874, 65

DECREE—*continued*

1 FORM OF DECREE—*continued*

property in dispute The application was granted, the added defendants were found to be possessed of the share which they claimed, and on the proofs which they adduced the plaintiff's claim was dismissed The plaintiff's claim as against the original defendants, who made no opposition, was decreed in

123 ———— *Suit by tenant for possession of julkurs—Expiry of lease before decree*—Where a plaintiff sued while his lease was still running, to recover possession of certain julkurs and the lease expired after action brought but before decree,—*Held* that the decree, instead of directing actual possession to be given, should have merely declared his right to possession up to the date on which his lease expired UMANUND ROY v. SREE KISHEN BANERJEE . . 7 W. R., 248

124. ———— Decree in suit for posses-

s 34 Act XI of 1859 without any special declaration that the sale is annulled and the order for refund of the purchase-money should be made in execution of the decree SREEMUNT LALL GHOSE v SHAMA SOONDUREE DOSSEE 12 W. R., 276

125 ———— Suit for possession of share where co-sharer is in collusion with other defendants—In a suit to recover possession of a specified share of land, the plaintiff charged the de-

RUSTUM ALLY v AMEER ALLY SOUDAGUR [10 W. R., 487

DECREE—*continued*

1 FORM OF DECREE—*continued*

126 ———— Suit for possession under purchase which turns out to be tainted with fraud on the part of one vendor—Where a plaintiff sued for recovery of possession of property which he said he purchased from two defendants and it was found as a fact that one of the defendants did not sell, but that the other used fraud in effecting the sale, it was *held* that the decision below which gave plaintiff a decree for the entire property against the defendant who acted fraudulently was erroneous and that the decree should have absolved from liability the share of the defendant who did not join in or know anything of the sale KALEEDASS MOZOOMDAR v MEHEROONISSA KHATOON [8 W. R., 482

127. ———— Suit by purchaser to have sale in execution of decree confirmed and for possession—*Right to possession.*—After a sale in execution of decree, the sale was set aside In a suit to have the order set aside to have the sale confirmed and for possession of the property, the lower Court having made a decree awarding possession of the property, as well as a declaration of right to have the sale confirmed, the High Court set aside so much of that decree as awarded possession of the property SANGAM RAM v SHEOBART BHAGAT [I. L. R., 3 All., 112

128 ———— Suit by purchaser for possession of share of ancestral estate In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge in pronouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share RAMLOCHAN DAS v MANSUR ALI 1 B. L. R., A. C., 65 : 10 W. R., 96

129 ———— Purchaser from one of several divided co-sharers—*Suit for joint possession—Partition when unnecessary*—The property in dispute (consisting of 12 thikans or plots of land) was originally held by *A* and *B* as tenants-in common, and they divided the income according to their respective shares After *A*'s death, his widow adopted *C* on condition that she was to remain in absolute possession and enjoyment for her life, and that *C* was to succeed to the estate after her death The widow mortgaged 9 out of the 12 thikans sold one, and granted a perpetual lease of another to the defendant The defendant also purchased *B*'s share in the thikans in dispute The plaintiff purchased *C*'s rights, and on the widow's death sued to set aside her alienations and to obtain joint possession with the defendant of

necessary ANTAJI v DATTAJI [I. L. R., 19 Bom., 36

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

sufficient as to the former, but not the latter right. —In cross-suits between the owners of adjoining estates, each claimed, against the other, to be entitled to, and to be put into possession of, property situate on the boundary between their estates. The High Court dismissed both claims on the ground that the evidence of the exclusive right of either party was insufficient. *Held* that, although this might be so, there was, nevertheless, sufficient evidence of possession having been held by both the one and the other, and of the title of both, to support the conclusion that each had a claim to an equal moiety, to which each should be declared entitled. Each should be put into possession of the moiety which was opposite to and adjoined his estate. KHAGENDRA NARAIN CHOWDRY *v.* MATANGINI DEBI

[I. L. R., 17 Calc., 814
L. R., 17 I. A., 62

145. ——— **Suit for exclusive possession of property**—*Finding that parties have equal right to possession—Decree for joint possession.*—Where the plaintiff claimed exclusive possession of immoveable property to which the defendant also claimed to be exclusively entitled,—*Held* that the Court was competent, upon the finding that the property belonged to the parties jointly, to give the plaintiff a decree for joint possession. *Wali-ullah Khan* v. *Muhammad Israr-ullah Khan, I. L. R., 10 All., 627,* distinguised. WAHID ALAM *v.* SAFAT ALAM . . . I. L. R., 12 All., 556

146. ——— **Suit for exclusive possession**—*Decree for joint possession, circumstances under which such decree will be granted.*—Although under certain circumstances in a suit for exclusive possession of immoveable property a decree for joint possession may be given, nevertheless such a decree should not be given unless the plaintiff asks for it, and the evidence shows that he is entitled to it. ANTU SINGH *v.* MANDIL SINGH

[I. L. R., 15 All., 412

147. ——— *Joint ownership proved at hearing—Procedure.*—Exclusive possession can only be awarded on proof of exclusive title. PARASHRAM *v.* MIRAJI . I. L. R., 10 Bom., 569

148. ——— *Suit by co-owner for exclusive possession—Procedure.*—The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but, finding that the plaintiff had been in exclusive possession, allowed his claim and gave him a decree. On second appeal,—*Held* that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. NANA *v.* APPA . I. L. R., 20 Bom., 627

149. ——— **Suit for possession of land sold in execution as property of third parties.**—The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share. *Held* that the decree was right. NARASIMHA NAIDU *v.* RAMASAMI

[I. L. R., 18 Mad., 478

150. ——— **Suit by zur-i-peshgi lessee for possession in a Civil Court**—*Landlord and tenant—Zur-i-peshgi lease—Sub-lease by zur-i-peshgi lessee—Default by sub-lessee, who lets into possession the original lessor and denies the zur-i-peshgi lessee's title—Jurisdiction of Civil Court—Execution of decree—Civil Procedure Code, ss. 263 and 264.*—Two occupancy tenants granted a zur-i-peshgi lease of their occupancy holding to one *R L* for a term of sixteen years. *R L* sublet the holding for a term slightly less than his own. The sub-lessees made default in payment of rent. *R L* distrained their crops. Thereupon the original lessors intervened, claiming the crops as theirs. The question of the distraint having been decided by the Court of revenue against him, *R L* then brought a suit in a Civil Court asking for ejectment of both his lessors and his lessees and to be put into actual possession himself. *Held* that the plaintiff was precluded by reason of the lease granted by him, the term of which had not expired, from obtaining actual possession, unless the sub-lessees were ejected, which could only be done through the Court of revenue. But the plaintiff was entitled to a decree declaring his title as zur-i-peshgi lessee and putting him into possession of the rents and profits of the holding as zur-i-peshgi lessee; the decree for possession to be executed under s. 264 of the Code of Civil Procedure. SITA RAM *v.* RAM LAL . . . I. L. R., 18 All., 440

151. ——— **Decree for possession under mokurari lease**—*Condition as to payment of rent.*—After the sale of a share in an estate under the provisions of Act XI of 1859, a suit was brought to establish a mokurari lease, as an incumbrance under s. 54, upon the share in the hands of the purchaser. The mokurari lease having been established as to so much only of the lands as were covered by the title proved, the decree below, although no question of apportionment had been raised, was conditional that the whole rent reserved should be paid. *Held* that this condition should have been omitted, the amount of rent being determinable by a future proceeding if necessary. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD . . . I. L. R., 14 Calc., 109
[L. R., 13 I. A., 160

152. ——— **Suit for possession and mesne profits**—*Direction for inquiry as to mesne profits—Civil Procedure Code, s. 212.*—Where, under s. 212 of the Code of Civil Procedure, a Court in a suit for possession of immoveable property and mesne profits passes a decree for the property and directs an inquiry into the amount of mesne profits, the direction as to the inquiry into the amount of mesne profits need not necessarily be contained in the decree. *Puran Chand* v. *Roy Radha Kishen,*

DECREE—*continued*

1. FORM OF DECREE—*continued*

137. ———— Suit by member of undivided Hindu family for declaration of his

alone,—*Held* that the plaintiff should have a decree declaring that he was entitled to joint possession along with the execution purchaser as tenant in common But that, if a division in specie were desired, a suit should be brought for that purpose, *Mahabalay* v. *Timaya, 12 Bom, Rep, 138* followed. BABAJI LAKSHMAN v VASUDEB VINAYAK [I. L. R., 1 Bom, 95

138. ———— Suit by member of joint undivided Hindu family to recover possession of property alienated by another member—*Position of purchaser from one member*

matter of fact, the plots of land belonged—part absolutely and part as to mortgagees in possession—not to *B* solely, but jointly to him and his father *C* and others, the members of an undivided Hindu family. A suit having been brought by *C* to recover possession of the said plots of land from *A* and for mesne profits, and for payment over of a sum of R800 paid

family property. DUGAPPA SHETI v VENKATRAMNAYA . . I. L. R., 5 Bom., 493

See also KRISHNAJI LAKSHMAN RAJVADE v. SITARAM MURARRAV JAKHI . I. L. R., 5 Bom., 496

139. ———— Suit by co-sharers for recovery of possession—*Sale in execution of decree of share of one co-sharer in undivided property*—*K* and *R*, two out of five undivided Hindu brothers, sued *V* (a purchaser at an execution-sale of

be maintained, as *K* and *R*, being two of several co-parceners in undivided property, could not say that they were entitled to a specific share in any portion of that property They might have sued for a general partition, or for a decree declaring them

DECREE—*continued*.

1 FORM OF DECREE—*continued*

entitled to joint possession with *V*. KALLAPA BIN GIRMALLAPA v VENKATESH VINAYAK [I L. R., 2 Bom, 676

140. ———— Suit for ejectment of trespassers—*Co-sharers*—Where a tenant has been put into possession of ijmali property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others, but no person has a right to intrude

eject him, and the legal means by which such a partial ejectment is effected is by giving the plaintiffs possession of their shares jointly with the intruder, as explained in the case of *Hulodhur Sen* v. *Gooroodoss Roy, 20 W R, 126* RADHA PROSHAD WASTI v ESUF I. L. R., 7 Calc., 414 : 9 C. L. R., 76

KAMAL KUMARI CHOWDHURANI v KIRAN CHANDRA ROY 2 C. W. N, 229

141 ———— Suit on agreement making sharers severally liable—*Decree causing joint liability*—If a plaintiff sues upon an ikrar, he is not entitled to a decree contrary to its terms Thus, if the ikrar makes each of several sharers severally liable, all the co-sharers cannot be made jointly liable MIRZA NAWAB v BAHADOOR ALI SHAM LAL v BAHADOOR ALI . 7 W. R., 156

142. ———— Joint ownership — *Decree against joint owner where suit is barred against his co sharers*—*Limitation* —The interest of *V* as co sharer in certain land was sold in execution of a decree against him It was purchased by *S*, who

plaintiff was entitled to be put into joint possession of the land with them, although the suit as against them was barred KRISHNAJI BIN MALJI v. VITHU [I. L. R., 18 Bom., 505

143. ———— Co-parcener's right to joint possession of the whole or any part of the joint estate without necessity for partition

DHAR TRIMBAK PATKAR I. L. R., 20 Bom., 467

144. ———— Suit for possession by owners of adjoining estates—*Right of parties to equal moieties of property decreed, although each had claimed the exclusive title*—*Decrees dismissing their suits reversed, the evidence being*

DECREE—*continued.*

1. FORM OF DECREE—*concluded.*

the superior pre-emptor, but that the decree in *K*'s suit was defective and inequitable, inasmuch as it dismissed the suit *in toto*, disallowing his pre-emptive claim wholly irrespective of the contingency of *R*'s omission to enforce the pre-emption decreed to him by depositing the purchase-money within time. As *K* admittedly had pre-emptive right as against the vendee, his suit should have been decreed against the latter in the terms of s. 214 of the Civil Procedure Code; subject, however, to the condition that the decree should not take effect, so far as the enforcement of pre-emption was concerned, in the event of *R*'s enforcing the superior pre-emptive right decreed to him. KASHI NATH *v.* MUKHTA PRASAD

[I. L. R., 6 All., 370

See HULASI *v.* SHEO PROSAD

[I. L. R., 6 All., 455

(*dd*) TRESPASSER.

159. ——————— *Trespasser, Suit against—Decree for damages and not for account.*—A trespasser is not liable to account, but is liable for damages. Where the lower Appellate Court passed a preliminary decree for an account against the defendants who were trespassers by reason of their intermeddling with the plaintiff's estate,—*Held* that the defendants were not liable to account, but were liable for damages, and the proper course for the lower Court was to enquire what damages the plaintiff had sustained by reason of the trespasses complained of by the plaintiff. SRINIBASH ADAK *v.* NOGENDRA NATH DAS . . 4 C. W. N., 105

2. CONSTRUCTION OF DECREE.

(*a*) GENERAL CASES.

160. ——————— **Mode of construction**—*Execution of decree.*—In execution, a decree must be construed by its own terms, and not by the plaint. NUBO KISHORE MOJOOMDAR *v.* ANUND MOHUN MOJOOMDAR . . . . . 17 W. R., 19

161. ——————— *Decree how construed for purposes of execution.*—A decree cannot be extended in execution beyond the real meaning of its terms. BUDAN *v.* RAMCHANDRA BHUNJGAYA

[I. L. R., 11 Bom., 537

162. ——————— **Uncertainty in decree**—*Execution of decree—Power of Court to take evidence to explain it.*—Where the terms of a decree are uncertain, it is not competent to the Court of execution to make any enquiries, by taking oral or documentary evidence, to ascertain the meaning of such terms. NUDDYAR CHAND SHAHA *v.* GOBIND CHUNDER GUHA . . . I. L. R., 10 Calc., 1092

See DWARKANATH HALDAR *v.* KAMALA KANTH HALDAR . 3 B. L. R., Ap., 128; 12 W. R., 99 and KALEE DEBEE *v.* MUDOO SOODUN CHOWDHRY . . . . . . 16 W. R., 171

163. ——————— **Ambiguous decree**—*Reference to pleadings in the suit to ascertain meaning of the decree.*—Where a decree is in its terms ambiguous, it is competent to the Court executing it to refer to the pleadings in the suit in which such decree was passed to ascertain its precise meaning. *Muhammad Sulaiman* v. *Muhammad Yar, I. L. R., 6 All., 30,* distinguished. *Jawahir Mal* v. *Kistur Chand, I. L. R., 13 All., 343,* and *Robinson* v. *Duleep Singh, L. R., 11 Ch. D., 798,* referred to. LACHMI NARAIN *v.* JWALA NATH

[I. L. R., 18 All., 344

164. ——————— In construing a decree, the terms of which are ambiguous, such construction must, if possible, be adopted as will make the decree a decree in accordance with law, and not a decree such as the Court making it had no power to pass. AMOLAK RAM *v.* LACHMI NARAIN

[I. L. R., 19 All., 174

165. ——————— *Duties of executing Court—Transfer of Property Act (IV of 1882), s. 88—Decree for sale on a mortgage wrongly allowing interest after date fixed for payment.*—Where a decree for sale under the Transfer of Property Act as framed is ambiguous, the Court executing it must put its own construction on it, and, if possible, will construe it as a decree properly framed according to law; but where there is no ambiguity in the decree, the executing Court is bound to execute it according to its terms, whether the decree be right or wrong. *Amolak Ram* v. *Lachmi Narain, I. L. R., 19 All., 174,* and *Badshah Begum* v. *Hardai, All. W. N., 1898, p. 17,* referred to. PIRBHU NARAIN SINGH *v.* RUP SINGH I. L. R., 20 All., 397

166. ——————— A Court executing a decree, the terms of which are ambiguous, should, where it is possible, put such a construction upon the decree as would make it in accordance with law. *Amolak Ram* v. *Lachmi Narain, I. L. R., 19 All., 174, Pirbu Narain Singh* v. *Rup Singh, I. L. R., 20 All., 397,* and *Maharaja of Bhartpur* v. *Kanno Dei, All. W. N., 1898, p. 164, quoad hoc,* approved. BAKAR SAJJAD *v.* UDIT NARAIN SINGH

[I. L. R., 21 All., 361

167. ——————— **Difference between heading and body of decree**—*Description of person.*—Where a person was described in the heading as the purchaser of the decree-holder's rights and interests, but the ordering portion of the decree gave him nothing, he was held to have acquired no right under the decree. ZOYNUL ADBEEN *v.* PHOOLASH CHUNDER BOTHRAH . . 15 W. R., 126

168. ——————— **Decree making further enquiry necessary**—*Court executing decree.*—Where a decree shows clearly the intention of the Court which makes it, but leaves something undetermined until further enquiry, such enquiry must be held as intended to be made by the Court to which the decree is sent to be carried into effect. HURUCK CHAND GOLECHA *v.* TILOCK CHAND SINGH

[18 W. R., 512

169. ——————— **Evidence to explain decree**—*Registrar's note of judgment.*—A note of the

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

I. L. R., 19 Calc., 132, referred to. FATIMA BIBI *v.* ABDUL MAJID . . I. L. R., 14 All., 531

(cc) PRE-EMPTION.

153. ——— **Pre-emption, Suit for**—*Decree, conditional, on payment in specified time.*—In decreeing a right of pre-emption a Civil Court has no power to make the decree-holder's right depend on payment of the purchase-money within a specified time. AHSAN ALY *v.* SABOKHEE BIBEE [10 W. R., 53

Contra, EWAZ *v.* MOKUNA BIBI [I. L. R., 1 All., 132

where it was held the Court was competent to make such a condition, and that, if the decree-holder fails to comply with such condition, he loses the benefit of the decree.

154. ——— *Deposit of purchase-money—Power of Court*—A pre-emptor ob-

competent to have done so. SHEO PERSHAD LALL *v.* THAKOOR RAI [3 Agra, 254: S. C. Agra, F. B., Ed. 1874, 153

155. ——— *Conditional decree.*—Where a share in a certain patti was sold by

MAHADIB PARSHAD *v.* DEBI DIAL [I. L. R., 1 All., 291

156. ——— *Deposit of purchase-money—Appellate Court, Powers of—Civil Procedure Code, 1877, s. 214.*—The decree of the

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

157. ——— *Allegation by plaintiff that a certain sum is the actual price*—

158. ——— *Rival suits to enforce the right of pre-emption—Civil Procedure Code, s. 214.*—*K* and *R*, two co-sharers of a village, instituted separate suits in which each claimed to enforce the right of pre-emption, based on the

the exigencies of each case, so as to grant the actual relief required by the parties. *Held,* applying the principles of equity to the present case, that the Court of first instance acted rightly in adding the name of each rival pre-emptor as party defendant in the suit of the other, and in decreeing the claim of

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

other sums for which the defendants should prove themselves entitled to credit, wherever the same might have become payable. The defendants, in their surcharge to the plaintiff's account, claimed credit for various payments made by them to the plaintiff between 25th January 1865 and 5th July 1865. The plaintiff claimed to appropriate these payments in satisfaction of his claim against the defendants prior to 24th January 1865. The commissioner by his construction of the terms of the decree held the plaintiff entitled to make such appropriation. The Judge in the Court of first instance explained his decree to mean that the whole account, prior to 24th January 1865, was wiped out, and directed the commissioner that the plaintiff was not entitled to make the appropriation he claimed. *Held* that the construction put by the commissioner on the decree was right. Where the Court of first instance puts upon its own decree a construction which to the Appellate Court appears to render the decree erroneous, and the decree, on the face of it, admits of another construction, which to the Appellate Court appears to render the decree correct, the Appellate Court will adopt the latter construction. HIRJI JINA *v.* NARAN MULJI

[I. L. R., 1 Bom., 1

(*c*) BUILDINGS, ERECTION OR REMOVAL OF.

178. ———— **Suit for removal of obstruction**—*Decree for plaintiff qualified by declaring that parties retain rights exercised prior to obstruction.*—In a suit for the removal of a building which the defendants had erected, and which was an obstruction to the plaintiff's right to use a courtyard adjoining their residences, it appeared that the land on which the building stood did not belong to either party, but that all the inhabitants of the mohulla had from time immemorial exercised a right of way over it to and from their houses. It also appeared that on a part of the same land there had formerly stood a thatched building used as a "sitting place" by the residents of the mohulla. The lower Appellate Court, while decreeing the claim, observed that the defendants, if they liked, could construct and use a shed "according to the old state of things" and "without offering obstruction to" the right of the plaintiffs to "use it as a sitting place when necessary." *Held* that this was not a declaration of a right in the defendants to build, but merely a statement that the decree would not operate as an interference with the rights of the parties to have a similar thatched building set up as had existed in former times. *Official Trustee of Bengal* v. *Krishna Chunder Mozoomdar, I. L. R., 12 Calc., 239 : L. R., 12 I. A., 166,* distinguished. FATEHYAB KHAN *v.* MUHAMMAD YUSUFF. MUHAMMAD YUSUFF *v.* FATEHYAB KHAN

[I. L. R., 9 All., 434

(*d*) COSTS.

179. ———— **Decree for costs.**—A decree which ordered the defendants, speaking of them collectively, to be paid their costs by the plaintiff, held to mean that each defendant who appeared in the suit as a separate party was to be paid his separate costs, estimated not by the actual expenditure which the parties had been put to, but a sum in lieu thereof calculated in a certain proportion to the value of the suit. GUNESH DUTT SINGH *v.* MUNGAY RAM CHOWDHRY

[21 W. R., 288

180. ———— *Separate defences.*—Where a decree of the High Court directed that the respondent (the plaintiff) should pay to the appellants (the defendants) the costs incurred by them in the lower Court,—*Held* that the costs referred to were those which were specified in the decree appealed against as the costs incurred by the defendants. If several defendants have served in their defence and the lower Court has specified the costs incurred by each of them, the costs payable under the above directions will be their several costs. If they have joined in their defence, or, though they have severed their defence, but the lower Court has specified a single set of costs as the only costs which it will allow or treat as costs in the suit, then the costs payable will be the single set of costs. RAM CHUNDER SEN *v.* DOORGA NATH ROY

[2 C. L. R., 152

181. ———— **Decree for usual costs and interest**—*Costs of previous suit set aside.*—Where a decree was passed awarding the plaintiff's claim "with usual costs and interest" without any specification of the costs intended save the mention of some items in the schedule, and without mentioning the rate of the interest or the date from which it should run, it was held that the decree was meant to give all the costs which the successful party had incurred in the prosecution of the suit from the commencement until the date of the final decree, including costs incurred in the abortive part of the proceedings, *i.e.*, in trials set aside, and that the interest was to be at twelve per cent. on the amount of money actually decreed. BROUGHTON *v.* PERHLAD SEN . . . . . . 19 W. R., 152

182. ———— **Decree in favour of appellant with costs to the respondent**—*Deduction from amount due.*—When a decree in favour of an appellant describes a set of costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and that the remainder only should be recovered under the decree. ISSUR CHUNDER MOOKERJEE *v.* MUNMOHUN CHOWDHRY . . . . 12 W. R., 308

183. ———— **Decree for costs and for redemption**—*Alternative remedy—Right to execute.*—Where a decree, after awarding costs, went on to provide for the redemption of the mortgaged property in dispute, or, on the mortgagor's failure to pay, for its sale and for the costs being added to the mortgage-debt as a charge on the property,—*Held* that the latter provision was an alternative remedy

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued*

[illegible]

to such a note, that what the decree meant was that he was to be credited, and his partners debited, with certain payments *in toto*, and not with their respective shares only. SUMAR AHMED *v.* HAJI ISMAIL HAJI HABIB . . . I. L. R., 1 Bom., 158

170. ——— Discrepancy between decree and judgment—*Limitation of, by judgment*—Where a decree of the Sudder Court was in general terms, *viz.*, "that the appeal be decreed with costs," though the judgment indicated a different intention,—*Held* that the decree ought not to have been used to obtain execution for the whole of the claim, but restricted to that which it was the manifest intention of the Court to grant. MEHDEE BEY *v.* ZELLAL THAKOOR . . . 15 W. R., 530

171. [illegible]

dealt reasonably in construing it with the recital which preceded those words, and a portion of the judgment which was set out in the decree. CHUNDER MOHUN THAKOOR *v.* AMRITO CHUNDER THAKOOR . . . . . 19 W. R., 343

172. ——— Decree of Appellate Court

[illegible]

mary order, made in the course of execution-proceedings, has been set aside in a separate suit brought for that purpose, it cannot be necessarily implied that the intention of the Court was to cancel everything that had been done in the course of the summary proceedings TOYBOON *v* MAHOMED WAJID [2 C. L. R., 504

173. ——— Statement of claim in the

[illegible]

throughout; but the claim, as stated in the paper book of appeal, differed from the claim as it had been stated in the plaint. *Held* that the decree was to be understood as referring to the claim as stated in the plaint, and not as described in the

[illegible]

174. ——— Decree specifying a certain time for execution—*Construction—Condition—Precedent—Limitation.*—The plaintiff ob-

[illegible]

hedges and sheds, and restore the land in suit to the plaintiff. On the 9th December 1885, the

[illegible]

garnishment had merely the effect of postponing the operation of the decree till that time, and the plaintiff had three years from that date within which he might seek execution The mention of a term when a particular right is to become enforceable is not a condition precedent, whether the enforcement be otherwise subject to a condition or not NARAYAN CHITKO JUVEKAR *v* VITHUL PARSHOTAM [I. L R., 12 Bom., 23

175. ——— Construction in execution of an order in Council—*Possession.*—An order of Her Majesty in Council was that a decree-holder should recover what was demarcated by "the thakbust map and proceedings of 1839" *Held*, on the construction of the order, that the latter words meant the proceedings relating to the thakbust map, and did not include a survey map which differed from it. RADHA PERSHAD SINGH *v* TORAB ALI . I. L. R., 18 Calc., 108

(*b*) ACCOUNT, DECREE FOR

176. ——— Decree for account, Nature of—*Rights of parties insufficiently defined—Parties.*—A decree for an account is not a mere direc-

[illegible]

Hindu family bank and for a dissolution of the

[illegible]

177. ——— Decree for account—*Amendment of clerical error in decree by Appellate Court.*—The decree of the Court of first

[illegible]

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

establish his position. It was found on the evidence that no conveyance in pursuance of the decree had actually been executed by *R*, and the decree itself had not been registered. *Held* that the decree merely vested in the defendants 1, 2, 3, 4, and 5 the immediate right to have a conveyance of the property executed, but such right was merely inchoate which it was within their power to complete. The plaintiff's right, therefore, overrides the interest of the defendants 1, 2, 3, 4, and 5. ATUL KRISTO MITTER *v.* MUTTY LAL MUKERJEE . 3 C. W. N., 30

(*f*) EJECTMENT.

191. ———— **Suit for arrears of rent**—*Ejectment in default of payment—Act X of 1859, s. 78.*—Where a plaintiff sued for arrears of rent, praying that, if they were not paid, defendant should be ejected, and the Deputy Collector gave him a decree setting forth that the prayer was a proceeding under s. 78, Act X of 1859, and ordering that there should be such a proceeding to execute, the order was held to be an order for ejectment. GUNEL MAHOMED *v.* BAHAROOLLAH . . 13 W. R., 240

(*g*) ENDOWMENT.

192. ———— **Construction of a decree as to the appointment of a manager of the property of a religious institution.**—A decree of the Hight Court declared its holder entitled, as the pandara sannadhi, or religious chief, of an adhinam, to see that a competent person, from among the tambirans who had received initiation at that institution, was appointed to fill the then vacant office of tambiran, managing certain matts. The decree directed that the pandara should name a tambiran of his adhinam for the office, whom, after inquiry as to his fitness, the subordinate Court should appoint. If that Court found him unfit, it was to appoint a tambiran of that adhinam upon its own selection. In execution, the pandara named a tambiram for the office, but died before the inquiry as to his fitness. His successor, as head of the adhinam, petitioned to withdraw the nomination, naming another tambiran. The subordinate Court made an order disallowing the withdrawal, and, after inquiry as to the fitness of the first-named tambiran, appointed him to the office. The High Court, on the pandara's appeal, decided that the first nomination had been competently withdrawn, and directed an inquiry as to the fitness of the person secondly named, finding on the evidence that the first-named was not fit. *Held* that on the construction of the decree the first nomination could not be withdrawn and a second one substituted before the inquiry, and that the person first named was entitled to the Court's decision as to his fitness. On the facts, the finding of the High Court that the first-named tambiran was unfit was not affirmed, and the order of the Subordinate Judge was maintained. PONNAMBALA TAMBIRAN *v.* SIVAGNANA DESIKA GNANA SAMBANDHA PANDARA SANNADHI

[I. L. R., 17 Mad., 343
L. R., 21 I. A., 71

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

193. ———— **Jujmani right.**—The phrase "jujmani right" in a decree was construed to mean the right to participate in the offerings made to the idol, and not the offerings or presents which were made to the priest himself. JADUB CHUNDER CHUCKERBUTTY *v.* BHUBO SOONDUREE DABEE

[20 W. R., 331

(*h*) FORFEITURE.

194. ———— **Stipulation involving forfeiture**—*Penalty—Consent decree.*—A consent decree provided that the defendant should retain possession of certain land in perpetuity on payment of a fixed annual rent to the plaintiff, but that the plaintiff might re-enter in case the defendant failed to pay the rent. The rent was not paid, and the transferee of the plaintiff's interest under the decree sued for possession. The defendant contended that the above clause in the decree was a penal stipulation which the Court would not enforce. *Held* that the doctrine of penalties was not applicable to stipulations contained in decrees, and that the plaintiff was entitled to recover. SHIREKULI TIMAPA HEGDA *v.* MAHABLYA . . I. L. R., 10 Bom., 435

(*i*) HEIR.

195. ———— **Liability of heir of mortgagor from assets**—*Assets of estate.*—A decree declaring the heir of a mortgagor liable to pay the mortgage-debt out of such assets as he had received from the estate of his father (the mortgagor) was held not to include assets which came to him after passing through the hands of another heir (his brother) in right of inheritance from that brother. HAJEE ALI *v.* ALI NUKEE . . . 12 W. R., 240

(*j*) HINDU WIDOW.

196. ———— **Hindu widow**—*Construction of order made by Settlement Officer awarding estate to a Hindu widow—Transfer by widow, Effect of.*—The plaintiffs obtained a declaratory decree that they were the reversioners and heirs apparent, expectant on the future death of a widow who, at the time of suit, had survived two co-widows, and that they, the plaintiffs, would be entitled to inherit at her death the estate that had belonged to the deceased husband. All parties had proceeded, as far as to the present appeal, on the view that the surviving widow had the widow's estate only. But an order made in the course of the settlement operations in 1865 had conferred the estate of the deceased on the three widows as well as on his mother, in equal shares of one-fourth each. *Held* that there was nothing in this order to show an intention to give to the mother and widows anything more than an interest, such as that which a Hindu widow takes; and that the inheritance would devolve in due course of law, an alienation which the widow had made operating only for her lifetime. MUNNALAL CHAODRI *v.* GAJRAJ SINGH

[I. L. R., 17 Calc., 246

DECREE—*continued*

2 CONSTRUCTION OF DECREE—*continued*

which did not deprive the decree-holder of the right which the first part of the decree gave him of executing the order for costs in the same manner as any other money-decree ADJIN MULLAH MOODEEN v. CRUIKSHANK . 21 W. R., 299

184. ——— **Decree on mortgage-bond** —*Execution of decree—Costs against judgment-debtors personally*—Certain plaintiffs were the holders of the following decree obtained on a mortgage bond "It is ordered that the defendants shall pay to the plaintiffs the sum of R2,550 and costs R312, total R2 862 within two months from the date of the signing of the decree, interest will run on the said amount at the rate of 6 per cent per annum up to realization If the defendants do not pay the amount within the time prescribed, they will lose their right of redeeming the property mortgaged,

RUTNESSUR SEIN v. JUSODA [I. L. R., 14 Calc., 185

185. ——— **Decree on mortgage**—*Decree for foreclosure—Order absolute for foreclosure—Mortgagee obtaining possession—Subsequent application by mortgagee to execute order for costs—Civil Procedure Code, s 220*—A decree for foreclosure containing a distinct and separate order for costs was afterwards confirmed by an order absolute for foreclosure, and the mortgagee under such order obtained possession. Subsequently he applied for execution of the order for costs *Held* that the costs awarded could not be considered part of the money due upon the mortgage, and as such, superseded by the order absolute and the mortgagee's possession thereunder, and the application must, therefore, be allowed. *Rutnessur Sein v. Jusoda, I. L R, 14 Calc, 185,* referred to DAMODAR DAS v BUDH KUAR . . I. L. R., 10 All, 179

186. ——— **Decree under s 88 of Transfer of Property Act (IV of 1882)**—*Civil Procedure Code (1882), ss. 219, 220—Decree appa-*

scribed contents of such a decree, contained a clause to the following effect —"It is further ordered that the defendant aforesaid do pay to the plaintiffs aforesaid the sum of R876 8 0, the amount of costs incurred by them in this Court" *Held* that this latter clause was merely a formal compliance with the provisions of the Code of Civil Procedure, and was not intended to be a direction for the recovery of costs personally from the judgment-debtor *Chiranji*

DECREE—*continued*

2 CONSTRUCTION OF DECREE—*continued*

v. *Moti Ram, All W. N, 1898, p 33,* on this point overruled MAQBUL FATIMA v LALTA PRASAD [I. L. R., 20 All., 523

187. ——— **Order for costs in remand order directing "Costs to abide result"**—*Execution for such costs when same not specified in Court below—Materials necessary for ascertaining result of remand for purpose of giving costs*—

the result of the remand are the judgment and the decree made in the case. FANI BHUSAN ROY CHOWDHRY v BAMA SUNDARI DEBI 4 C. W. N., 343

188. ——— **Decree for costs in suit against minor**—*Liability of guardian*—In a suit against a minor, if the Court considers that the guardian should be personally ordered to pay the costs, it should be so stated in the decree or order Where the guardian is simply declared liable for them as the defendant in the case, the liability must be taken to refer to him as the representative of the minor and representing his estate KOMUL CHUNDER SEN v SURBESSUR DOSS GOOPTO [21 W. R., 298

BRIJESSUREE DOSSIA v KISHORE DOSS [25 W. R, 316

sion of opinion in a judgment can import any such liability for costs into the decree BRIJESSUREE DOSSIA v KISHORE DOSS 25 W. R., 316

(e) DEED, EXECUTION OF.

190 ——— **Decree directing execution of conveyance**—*Consent decree—Effect of such decree where directions not carried out*—In

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

profits claimed. TOONDUN SINGH *v.* POKLEE NARAIN SINGH . . . . **20 W. R., 54**

205. ——— *Ascertainment, Date of—Interest on mesne profits.*—A decree for interest upon mesne profits from the date on which they are ascertained was held to mean from the date they are ascertained by the Court, and not by an ameen. DOORGA SOONDERI DEBIA *v.* SIBESSUREE DABIA **[10 W. R., 391**

206. ——— *Execution of decree—Interest on mesne profits.*—A decree stated that mesne profits were to be recovered "with interest from the date of their ascertainment." *Held* that the Court executing this decree had no authority to allow interest year by year upon the collections which ought to have been received. HURRO DURGA CHOWDHRAIN *v.* SURUT SUNDARI DEBI **[I. L. R., 8 Calc., 332**

207. ——— **Decree for possession and mesne profits**—*Local enquiry.*—A decree declared the plaintiff entitled to the possession of land with wasilat from a date named, directing "the amount thereof to be ascertained on local enquiry," and to bear interest from the date of its ascertainment until payment, without saying more. *Held* that the decree-holder was entitled to wasilat until the date of delivery of possession to him. *Semble*—It was not necessary for the judicial officer who made the enquiry to hold a Court on the spot. FAKHARUDDIN MAHOMED AHSAN *v.* OFFICIAL TRUSTEE OF BENGAL . . . **I. L. R., 8 Calc., 178 [10 C. L. R., 176 L. R., 8 I. A., 197**

208. ——— *Liability for mesne profits—Intervenor.*—In a suit for possession and wasilat, *N* was originally the answering defendant; but when the suit had to be determined, *U* intervened of her own accord, and her name was, at her own request, substituted in the decree for that of *N*. *Held* that, on the wording of the decree, *U* was the person responsible for mesne profits and costs under the decree. UMBIKA DASSIA *v.* CHIRUNJEEB PERSHAD BOSE . . . . **13 W. R., 81**

209. ——— **Decree of Privy Council reversing decree declaratory of title**—*Mesne profits realized before reversal of decree.*—Objections having been successfully raised under s. 246, Act VIII of 1869, against a decree-holder's attachment of a tenure, as the property of his judgment-debtor, he brought a regular suit, and obtained a declaratory decree that the property belonged to his debtor. He then took out execution, attached, sold, and himself purchased the property in question. The objector in the meantime appealed to the Privy Council, and, having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and wasilat. The opposite party objected, but the Judge allowed the execution to proceed, and deputed an ameen to ascertain the amount of mesne profits collected. *Held* that the decree of the Privy Council could not be held to include restitution of everything that the decree-holder would have enjoyed had the property not been sold in execution. GOPAL CHUNDER CHUCKERBUTTY *v.* OODOY LALL DEY . . . . . . **12 W. R., 411**

210. ——— **Declaratory decree**—*Separate suit—Mesne profits, Meaning of—Decree awarding mesne profits.*—In 1878 the plaintiff obtained a decree declaring that he was entitled to receive, every year, from the defendant 12 per cent. of the rents and profits of a certain inam village. The decree also awarded mesne profits from the date of the institution of the suit. In 1884 the plaintiff sought, in execution of this decree, to recover his share of the profits of the village for the years 1882-83 and 1883-84. *Held* that the plaintiff could not proceed to enforce his rights under the decree by way of execution. His remedy was by a suit on the right established by the decree. The decree had merely declared the right of the plaintiff to a certain share of produce, and payment was ordered of mesne profits computed according to certain principles. Such an award was not an award of a periodical payment *in æternum.* The very word "mesne" implied a terminus *ad quem* as well as *á quo*, and, in the absence of a special order, the terminus was the date of the decree. VINAYAK AMRIT DESHPANDE *v.* ABAJI HAIBATRAV . . **I. L. R., 12 Bom., 416**

211. ——— **Interpretation of decree awarding "future mesne profits"**—*Civil Procedure Code (1882), s. 211.*—A decree for possession of immoveable property was passed by the District Judge of Mirzapur on the 12th of November 1887 in favour of a plaintiff declaring that "the plaintiff is also entitled to mesne profits." That decree was affirmed by an order of Her Majesty in Council, dated the 11th of May 1895, without variation in respect of the order as to mesne profits. Possession of the immoveable property to which the decree related was obtained by the decree-holder on the 30th of November 1895. *Held* that the decree of the Privy Council was to be construed as a decree awarding mesne profits up to the date when possession was obtained and from the date of the institution of the suit. *Fakharuddin Mahomed Ahsan* v. *Official Trustee of Bengal, I. L. R., 8 Calc., 178 : L. R., 8 I. A., 197,* and *Paran Chand* v. *Roy Radha Kishen, I. L. R., 19 Calc., 132,* referred to. BIJAI BAHADUR SINGH *v.* BHUP INDAR BAHADUR **[I. L. R., 19 All., 296**

Held by the Privy Council on appeal that mesne profits were recoverable up to 11th May 1895 and (see s. 211 of the Civil Procedure Code, 1882) for a further period not exceeding three years until recovery of possession. BHUP INDAR BAHADUR SINGH *v.* BIJAI BAHADUR SINGH . **L. R., 27 I. A., 209**

212. ——— **Decree for mesne profits**—*Decree silent as to the time down to which mesne profits were given—Construction of such decree—Civil Procedure Code (Act X of 1877), s. 211.*—A decree, dated 3rd July 1878, awarded possession of certain land with mesne profits to be ascertained in execution, but specified no time down to which the

DECREE—*continued*

2 CONSTRUCTION OF DECREE—*continued*

(*k*) INSTALMENTS

197. ———— Money payable by instalments—*Provisions for default in payment*—A decree of which the terms had been arranged by solehnamah between the parties, for payment of money by instalments with interest at six per cent, was construed to provide also for three contingencies, *viz*, non payment at due date (*a*) of the first instalment, two consecutive instalments being in arrear at the same time, (*b*) of instalments other than the first,

... The decree holder ... instalment on ... had not by any admission or settlement precluded himself from insisting on the above construction as to (*b*) BALKISHEN DAS *v* RUN BAHADUR SINGH

I. L. R., 10 Calc, 305 13 C L. R, 418 L. R., 10 I. A, 162

198 ———— *Construction of decree for money payable by instalments—Term making the entire sum payable on default in payment of some of the instalments at certain dates*—A decree for money payable by yearly instalments made the full amount payable on both the first instalment being unpaid on the due date and two consecutive instalments being in default and unpaid at the same time Defaults were made, and questions as to the rate of interest, on what amounts and for what

entitled on the adjustment of accounts between the parties The accounts having been taken in the Court executing the order, the decree holder applied for execution to the full amount *Held* that the instal-

thereto had not happened SHAM KISHEN DAS *v* RUN BAHADUR SINGH . I. L. R., 15 Calc, 751

(*l*) INTEREST

199 ———— **Modification of decree on appeal**—*Omission to give interest*—Where the lower Court gave a decree for R911 with interest

200 ———— **Decree for sum covered by bond**—*Bond providing for interest*—Where a bond provided for the payment of interest from the date of the bond on failure of payment of the principal on a certain date, and the decree awarded "the entire sum of money covered by the bond,"—*Held* that the de-

201. ———— **Mortgage decree directing accounts, etc., to be taken and report given**—*Tender of principal and interest before report*—*Refusal to accept tender and subsequent charge of interest*—A decree directed accounts to be taken of what was due for principal and interest under a mortgage, such interest to be allowed "up to the time of payment hereinafter mentioned or until six months from the date of the decree," whichever first should happen and further directed the plaintiff to pay what should be reported due for principal and interest up to the date of payment and costs with interest at six per cent from the date of taxation until payment, within six months after the Registrar should make his report The plaintiff tendered a sum sufficient to cover the principal and interest due, but insufficient to cover costs at a time prior to the drawing up of the Registrar's report *Held* that the payment of principal and interest "hereinafter mentioned" referred to a time after the Registrar had made his report, because the sum to be paid was a sum reported to be due by the Registrar, and that therefore, a tender, made before the Registrar's report was given, was not a sufficient tender to stop interest from the date of the tender ADMINISTRATOR GENERAL OF BENGAL *v* AHMED BEGG I. L. R., 9 Calc., 33

(*m*) MAINTENANCE

... N. W., 41

(*n*) MESNE PROFITS

203 ———— **Mesne profits, Decree for**—*Indefinite decree*—*Mesne profits after institution of suit*—Where a plaintiff clearly asked in his claim for mesne profits subsequent to the institution of the suit, a decree in effect (though obscurely worded) for his full claim will extend to such profits SKINNER *v* ALDWELL . . 2 N. W., 3

204. ———— *Civil Procedure Code, 1859, ss 196, 197*—Where the words of

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

bond under which certain lands were mortgaged, the decree ordered "that the amount claimed together with costs be caused to be paid by the defendants to the plaintiffs in this way, that the property pledged under the bond be held bound by the decree, and that the decree be realized by the sale of the pledged property," no provision being made for realization from the other estate of the judgment-debtor in the event of the proceeds of the pledged property failing to satisfy the decree. *Held* that, under the circumstances, it must be presumed that the Court meant to limit the right of the plaintiff to recover to the mortgaged property, and to that alone, and that the judgment-creditor could not in execution of his decree, proceed against the other estate of the judgment-debtor. SOLANO *v.* MORAN & Co. . 4 C. L. R., 11

221. ———— Mortgage-decree—*Right of debtor to pay off mortgage-debt at once so as to avoid payment of high rate of interest.*—Where a plaintiff sued upon a mortgage, bearing interest at R2-8 per cent. per mensem, it was directed that the usual mortgage-decree should be made. *Held* that the defendant was entitled, at any time before the expiration of the usual six months ordinarily allowed by such decree, to satisfy the decree by payment of the principal and interest. CHOTOOLALL *v.* MILLER [7 C. L. R., 267

See MOONZOORAD DOWLAH *v.* MEHIDI BEGUM [7 C. L. R., 206

222. ———— *Practice—Decree for redemption directing payment of mortgage-debt within a specified time—Computation of time allowed for payment when the decree is affirmed on appeal.*—Where a decree of a lower Court is confirmed on appeal, and that decree directs something to be done within a specified time, time is to be counted from the date of the appellate decree. Where, therefore, in a suit by a mortgagee on a mortgage, the decree of the Court of first instance directed payment of the mortgage-debt within two months from the date of the decree from which the defendants appealed, but which was confirmed by the Appellate Court,—*Held*, under the circumstances of the case, that it was the intention of the Appellate Court that the term of two months allowed for payment should be counted from the date of its own decision, and not from the date of the original decree. DAULAT JAGJIVAN *v.* BHUKANDAS MANEKCHAND [I. L. R., 11 Bom., 172

223. ———— Consent decree—*Decree in foreclosure suit—Redemption, Extension of time for—Appeal, Consent decree on—Interest Transfer of Property Act (IV of 1882), ss. 86, 87.*—The plaintiffs obtained a decree for foreclosure. On appeal. the lower Appellate Court made a decree in terms of s. 86 of the Transfer of Property Act, ordering the defendant to pay the amount due with interest and costs calculated up to the 28th February 1890, or in default to be foreclosed his right to redeem. Upon second appeal on the 30th January 1891, it was "ordered and decreed with consent of the parties that the defendants be allowed one month's time to redeem," and in other respects the appeal was dismissed. On the 28th February 1891 the defendant deposited in Court a sum calculated so as to include interest up to that date, but subsequently objected to pay interest after the 28th February 1890. *Held* by PETHERAM, *C.J.*, and BEVERLEY, *J.* (MACPHERSON, *J.*, dissenting), that the effect of the consent decree was to extend the time for redemption to the 28th February 1891, and that interest should be allowed to that date. RAFIKUNNESSA BIBI *v.* TARINI CHURN SARKAR . I. L. R., 20 Calc., 279

224. ———— Decree absolute for foreclosure—*Transfer of Property Act (IV of 1882), ss. 87 and 88—Whether time to redeem would run from the date of the preliminary decree or from the date of the decree of the Appellate Court, when it simply confirms the decree of the first Court.*—Where, in a suit on a mortgage, the decree of the Appellate Court simply dismisses the appeal, leaving the decree of the first Court untouched, the time for redemption would run from the date of the decree of the first Court. BHOLA NATH BHUTTACHARJEE *v.* KANTI CHUNDRA BHUTTACHARJEE [I. L. R., 25 Calc., 311 1 C. W. N., 671

225. ———— Decree for possession after expiry of period of grace—*Transfer of Property Act (IV of 1882), s. 58—Right of redemption.*—On default made in payment on a simple mortgage, a Court, instead of decreeing the proper relief, had made a decree (which, however, had afterwards become final, and had been executed) for possession by the mortgagee after a period of grace. That decree would rightly have been for a judicial sale (Transfer of Property Act, 1882, s. 58). In this suit brought by the mortgagor for an account to be rendered by the mortgagee, and for re-delivery of possession, alleging that the account would show payment of the debt already made out of the rents and profits,—*Held* that the decree for possession did not amount to a decree for foreclosure or preclude redemption, the possession of the decree-holder having only been as mortgagee, and having involved liability to account to the mortgagor. PAPAMMA RAO *v.* VIRA PRATAPA H. V. RAMACHANDRA RAZU [I. L. R., 19 Mad., 249 L. R., 23 I. A., 32

226. ———— Decree for sale—*Transfer of Property Act (IV of 1882), ss. 88 and 99.*—In November 1882, a decree was passed on a hypothecation-bond for the payment of the secured debt, and it contained the following words:—"The property hypothecated in the bond being also held liable for the whole amount thus awarded." *Held* that the decree was in reality a decree for sale, and could be executed as such. ANNA PILLAI *v.* THANGATHAMMAL . . . I. L. R., 20 Mad., 78

(*g*) PAYMENT INTO COURT.

227. ———— Payment of money, Decree for, "in accordance with written statement"—*Interest.*—A decree for money directed

DECREE—*continued*

2. CONSTRUCTION OF DECREE—*continued*

mesne profits were to be computed *Held* that, under s. 211 of the Code of Civil Procedure (Act X of 1877), the decree could not be construed as giving mesne profits for a period longer than three years from the date of the decree UTTAMRAM *v* KISHORDAS . . I. L. R., 24 Bom, 149

NARAYAN GOVIND MANIK *v* SONO SADASHIV [I. L. R., 24 Bom., 345

(*o*) MONEY.

213. ———— **Decree for money**—*Civil Procedure Code, 1877, s. 320—Rules prescribed by the Local Government under s. 320—Meaning of "decrees for the recovery of money"*—*Held* that a decree for the sale of ancestral land or of an interest in such land, in enforcement of an hypothecation on such land, is a decree for money within the meaning of the rules prescribed by the Local Government under s 320 of Act X of 1877 BIRCH *v* RATI RAM [I. L. R, 4 All., 115

(*p*) MORTGAGE

214. ———— **Decree on bond pledging immoveable property**—*Right to execute*—Where a decree for a bond debt contained a clause to the effect that, if the money due was not paid, the property pledged in the bond might be sold, the clause was construed to mean that the property was liable for the debt decreed. *Held* also that the decree-holder could get at the property only in execution of the decree, in which case he would be in the position of any other judgment-creditor, and be bound by the provisions of the Civil Procedure Code, and the judgment creditor would be entitled to the benefit of s 243 RAM RUCHA DASS *v* DOORGA DUTT MISSER . . . 13 W. R., 453

215. ———— *Civil Procedure Code, 1877, s 206*—The plaintiff sued on a bond in

as simply for money, and not for enforcement of lien. THAMMAN SINGH *v* GANGA RAM [I. L. R., 2 All., 342

216. ———— **Suit for money and for lien on immoveable property**—*Civil Procedure Code, 1877, s 206*—Where the plaintiff by his claim

hypothecated,—*Held* that such a decree was a decree for money only, and did not enforce the charge on the property. *Muluk Fukeer Bukhsh v. Manohur Das, 2 N. W., 79*, followed. HARSUKH *v* MEGHRAJ [I. L. R., 2 All, 345

217. ———— **Decree enforcing hypothecation**—*Money-decree.*—A suit on a bond in which

DECREE—*continued*

2 CONSTRUCTION OF DECREE—*continued*

interest, "in accordance with" such agreement *Held* (TURNER, *J*, and OLDFIELD, *J*, dissenting) that such decree was a mere money-decree, and not one which gave the plaintiff a lien on such property JANKI PRASAD *v* BALDEO NARAIN [I. L. R., 3 All, 216

218 ———— *Money-decree*—The obligee of a bond for the payment of money, in which immoveable property was hypothecated as collateral security, sued the obligor upon such bond *claiming to recover the moneys due thereunder from* the obligor personally and by the sale of the hypothecated property He obtained a decree in such suit in these terms "That the claim of the plaintiff, with costs of the suit and future interest at eight annas per cent per mensem, be decreed." *Held* by the majority of the Full Bench that such decree was not merely a money-decree, but was also one for the enforcement of a lien *Janki Prasad v Baldeo Narain, I L. R, 3 All, 216*, distinguished by STUART, C J *Per* SPANKIE, *J*, and STRAIGHT, *J*—That such decree was a mere money-decree *Muluq Fuqeer Buksh v Lala Manohur Doss, 2 N. W., 79*, and *Thamman Singh v Ganga Ram, I L R, 2 All, 342*, followed DEBI CHARAN *v* PIRBHU DIN RAM . . I. L. R., 3 All, 388

219

Court's signatures, such decree was not a mere money-decree, but one enforcing the hypothecation of immoveable property RAM PRASAD RAM *v* RAGHUNANDAN RAM . . . I. L. R, 3 All., 239

220. ———— **Decree on mortgage-bond**—*Right to execution against property of judgment-debtor other than that mortgaged*—In a suit upon a

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

234. ——— *Conditional decree—"Final" judgment and decree.*—The Court granting a decree to the plaintiff in a pre-emption suit is competent to grant the decree, subject to the payment of the purchase-money, within a fixed period, and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. When a direction contained in a decree referred to the time at which such decree should become *final,—Held* (the case being one in which a special appeal lay) that such decree does not become final on being affirmed by the lower Appellate Court, but on the expiry of the period of special appeal, or where such an appeal was instituted when the decision of the lower Appellate Court was effirmed by the High Court. EWAZ *v.* MOKUNA BIBI

[I. L. R., 1 All., 132

235. ——— *Conditional decree—"Finality" of decree—Holiday—Limitation Act, XV of 1877, s. 5.*—A decree in a suit to enforce a right of pre-emption directed that the purchase-money should be paid within a certain period from the date the decree became "final." The period of limitation prescribed for an appeal from this decree expired on a day when the Court was closed. *Held* that the decree did not become "final" before the day the Court re-opened. *Ewaz* v. *Mokuna Bibi, I, L. R., 1 All., 132,* followed. RAM SAHAI *v.* GAYA

[I. L. R., 7 All., 107

236. ——— *Conditional decree—"Final" judgment and decree—Execution of decree.*—Where the plaintiff in a suit for pre-emption was granted a decree, subject to the payment of the purchase-money, within a fixed period, and failed to comply with the condition imposed on him by the decree,—*Held* that he had lost the benefit of the same. When a direction contained in a decree referred to the time at which such decree should become *final,—Held* that such decree became final on being affirmed by the lower Appellate Court, where, although a special appeal was preferred by the plaintiff against the decree of the lower Appellate Court, the same was subsequently allowed to be withdrawn. HINGAN KHAN *v.* GANGA PERSHAD . **I. L. R., 1 All., 293**

237. ——— *Execution of conditional decree.*—The decree of the original Court in a suit to enforce a right of pre-emption, dated the 18th February 1879, directed that, on the deposit of the purchase-money within one month of the date on which the decree became final, the decree-holder (plaintiff) should obtain possession of the property in suit, and that, if the decree-holder failed to make such deposit within such period, the decree should become null and void. The vendee (defendant) preferred an appeal from this decree, which the Appellate Court, on the vendee's application, struck off on the 18th September 1879. *Held* that, assuming that the order of the Appellate Court, by reason that it did not award costs to the decree-holder (respondent), might have been made the subject of a second appeal to the High Court, inasmuch as the decree of the 18th February 1879 could not have been affected by the result of such an appeal. That decree became final on the 18th September 1879, when the appeal from it was withdrawn and struck off, and not on the expiry of one month and ninety days from the date of the Appellate Court's order of the 18th September 1879. NARAIN DAS *v.* LACHMAN SINGH . . . . **I. L. R., 3 All., 135**

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*concluded.*

238. ——— *Conditional decree—Act X of 1877 (Civil Procedure Code), s. 214—Computation of period specified for payment of purchase-money—Holiday.*—The decree in a suit to enforce a right of pre-emption, dated the 12th December 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but *that, if such money was not so paid, the suit should* stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money into Court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree. *Semble*—That if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final. DABI DIN RAI *v.* MUHAMMAD ALI

[I. L. R., 3 All., 850

239. ——— *Decree for pre-emption conditioned on payment within fixed time—Omission to state consequence of non-payment—Limitation.*—Where in a suit for pre-emption the decree, while decreeing the plaintiff's right to pre-emption upon payment of the pre-emptive price within one month from the date of the decree, omitted to state what would be the effect on the plaintiff's suit of non-payment within the prescribed period,—*Held* that the plaintiff, unless he had paid the pre-emptive price before the expiry of the said month, could not enforce his decree for pre-emption. *Kodai Singh* v. *Jaisri Singh, I. L. R., 13 All., 376,* referred to. *Bandhu Bhagat* v. *Shah Muhammad Taqi, All. W. N., 1892, p. 40,* dissented from. JAI KISHEN *v.* BHOLA NATH . . **I. L. R., 14 All., 529**

3. ALTERATION OR AMENDMENT OF DECREE.

240. ——— **Duty of Court to amend decree**—*Limitation—Civil Procedure Code, 1882, s. 206.*—There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. KALU *v.* LATU **I. L. R., 21 Calc., 259**

DECREE—*continued.*

2 CONSTRUCTION OF DECREE—*continued.*

Debi Charan v *Pirbhu Din, I L R, 3 All, 388,* that the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount RAM NANDAN RAI v LAL DHAR RAI

[I. L. R, 3 All, 775

228. ——— Payment of money into Court, Decree for—*Performance of order—Departmental rules directing all moneys to be paid into the treasury—Rule No 9, High Court Rules, and Circular No 4, 1881, p 37—Beng Act VIII of 1869, s 52.*—Where a decree directs the payment of money into Court within a limited time, it is a sufficient compliance with such decree if the judg-

(*r*) POSSESSION

229. ——— Decree for possession—

on appeal to the High Court obtained a decree After a review of its judgment, the High Court decreed that the plaintiff should hold possession of the one-third share, subject however, as owner thereof, to the

terms of the decree passed on review of judgment. ALI HOSSEIN KHAN v DWARKA DASS

[5 N. W., 134

230. ——— *Imperfect decree—Omission to ascertain amount of rent*—Where the final decree upon a suit for possession declared that the defendant had a right of occupancy on payment of a proper rent, and was liable for rent from the date of suit, without defining the rate of rent,—*Held* that the decree was imperfect, and that the rent could not be ascertained in execution, and that another suit was necessary for the determination of the proper rent,—*i e*, to carry out the decree KALEE NARAIN SINGH BUROOA v CHUNDER NARAIN BUKSHEE . . . . 23 W. R., 228

231. ——— *Civil Procedure Code, 1859, s 200—Direction to enquire into value of property*—The District Court gave a decree for certain immoveable and moveable property specified in the schedule annexed to the plaint and made an order that the ameen was to ascertain the extent of the moveable property. In execution, the Court

DECREE—*continued*

2 CONSTRUCTION OF DECREE—*continued.*

ordered the ameen to give possession to the decree-holder of such of the said moveables as he could find, and to enquire into the nature, amount, and value of such as he could not find. *Held* that it was not necessary to construe this order as giving in execution what had not been given in the decree,—*i.e.*, alternative damages,—but that the enquiry ordered was obviously necessary in order to guide the Court in the exercise of its discretion under Act VIII of 1859, s 200, and that the order must be assumed to have been made for lawful purposes and with a view to such further order as might seem just. BHOOBUN MOHINEE DEBIA v GOBIND CHUNDER MOJOOMDAR

[19 W. R., 82

232. ——— *Decree for possession of a village—Right of the holders of*

and other documents relating to the management of the village The defendants refused Thereupon the plaintiffs presented a darkhast in execution, praying

the account books and documents in question, as being essential to the proper and effectual enjoyment and management of the village awarded by the decree. Such books and documents were properly to be regarded as accessory to the estate and as claimable by those to whom it had been awarded. The title-deeds of an estate, counterpart leases, and other documents of the like kind, such as kabuliats in India, ought to be regarded as accessory to the estate, and to pass with it whether the transfer is made a conveyance, a decree, or a certificate of sale BHAVANI DEVI v. DEVRAV MADHAVRAV . I. L. R., 11 Bom., 485

(*s*) PRE EMPTION.

233 ——— Decree for pre-emption—

petition with which the money was tendered asked

had been satisfied. AJOODHIA SHOOKOOL v JEWBOODH SHOOKOOL . . . . 6 N. W., 48

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

252. ——— *Decree for costs—Execution of decree.*—In the lower Appeal Court, the plaintiff obtained a decree which directed parties to bear their own costs in proportion in both the Courts, while the judgment directed that the parties should bear each other's costs in proportion in both the Courts. The decree was confirmed by the High Court in cross second appeals without writing a judgment. There was no point taken in either of the appeals as to costs. The plaintiff subsequently applied to the High Court for the amendment of the decree under s. 206 of the Civil Procedure Code (Act XIV of 1882). It was contended for the defendant that the application should have been made to the lower Appeal Court. *Held* that the only decree which existed for the purposes of execution after the High Court confirmed the decree of the Court below was the decree of the High Court into which that of the lower Court became incorporated. The application was, therefore, properly made to the High Court. *Held* further that, that being so and there having been no appeal by either party against the order as to costs, the Court might properly look at the judgment of the Court below with a view to making the decree as to costs agree with it. SHIVLAL KALIDAS *v.* JUMAKLAL NATHIJI DESAI

[I. L. R., 18 Bom., 542

253. ——— *Power of Court of first instance to amend its decree after appeal.*—In a suit for land with mesne profits, the District Munsif delivered judgment for the plaintiff, and recorded therein a finding that he was entitled to mesne profits as from a certain date, it having previously been arranged that the amount, if any, awarded for mesne profits should be determined in execution. In the decree no mention was made of the date from which the mesne profits were to be calculated, but it was stated merely that the amount was to be determined in execution. The case went on appeal before the District Judge, who modified the decree in certain particulars unconnected with mesne profits. With a view to execution, the plaintiff applied to the Court of first instance to bring the decree into conformity with the judgment. The Court having made an order accordingly, it was objected in the High Court on revision that the order was made without jurisdiction. *Held* that the jurisdiction of the Court of first instance to amend the decree under s. 206 was ousted by the confirmation of his decree on appeal. PICHUVAYYANGAR *v.* SESHAYYANGAR . . . I. L. R., 18 Mad., 214

254. ——— *Power of Court of first instance to amend appeal—Civil Procedure Code, s. 551.*—On the hearing of an appeal by a District Court, certain special costs were directed to be paid by the defendant, but, by a clerical error, that direction was omitted from the decree when it was drawn up. Plaintiff applied to the District Judge under s. 206 of the Code of Civil Procedure for rectification of the error in the decree, but the Court refused to amend, it appearing that defendant had appealed to the High Court, which had dismissed his appeal and confirmed the decree of the District Court. The appeal had in fact been dismissed under s. 551 of the Code of Civil Procedure. Plaintiff then petitioned the District Court to review its order refusing to amend. This was rejected, the District Court holding that the decree, of which amendment was asked, was the decree of the High Court, which a District Court had no power to amend. On plaintiff petitioning the High Court to revise this order of the District Court,—*Held* (1) that the case was governed by the ruling of the Full Bench in *Pichuvayyangar* v. *Seshayyangar (I. L. R., 18 Mad., 214)*, where it was held that the jurisdiction of a Court of first instance to amend a decree under s. 206 was ousted by the confirmation of that decree on appeal; (2) that the decision referred to applies equally to second appeals dismissed under s. 551 of the Code of Civil Procedure, and to the second appeals tried after notice to the respondent. MUNISAMI NAIDU *v.* MUNISAMI REDDI

[I. L. R., 22 Mad., 293

255. ——— *Decree affirmed on appeal—Jurisdiction—Civil Procedure Code, ss. 579, 623, 624—Review of judgment.*—The effect of s. 579 of the Civil Procedure Code is to cause the decree of the Appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree, and does not reverse or modify it. Where a decree has been affirmed on appeal, the only decree which can be amended under s. 206 of the Code is the decree to be executed, and the decree to be executed is that of the Appellate Court and not the superseded decree of the first Court, though the latter may, if necessary, be referred to for the purpose of executing the appellate decree. The only Court which has jurisdiction to amend the appellate decree is the Court of Appeal. So *held* by the Full Bench, MAHMOOD, J., dissenting, *Shohrat Singh* v. *Bridgman, I. L. R., 4 All., 376,* explained and followed. *Kisto Kinkur Roy* v. *Burrodacaunt Roy, 14 Moore's I. A., 465,* discussed. The insertion of the word "not" in the last line but one of the judgment and also in the head-note in *Shohrat Singh* v. *Bridgman* was a clerical error. *Per* MAHMOOD, J. —Where a decree has been simply affirmed on appeal, s. 579 of the Code does not imply that the appellate decree supersedes the original decree so as to render it ineffective for purposes of execution. In such a case the lower Court continues to have jurisdiction to entertain an application for amendment of its own decree under s. 206 of the Code; and such application is not governed by any article of the Limitation Act, and may be made at any time. It may be granted under s. 206, even where an application for review of judgment under s. 623 upon the same grounds would be barred by s. 624. A decree awarding the plaintiffs possession of immoveable property did not comply with s. 206 of the Code by containing the particulars of the claim or specifying clearly the relief granted. On appeal by the defendant, the High Court, in general terms, confirmed the decree and dismissed the

DECREE—*continued*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

241. ———— Power to amend decree—*Decree differing from judgment*—It is a power which all Courts possess to amend their record when there is anything to amend by. Consequently, when a Judge finds that the decree varies from his judgment, he can set the decree right. TOONA *v* KUREEMUN . . 6 W. R., Mis, 31

242. ———— *Decree differing from judgment*—Every Court has a right to correct its formal records in such a way, if needed, as will make them represent truly the decision which was intended to be judicially expressed. LUCAS *v* STEPHEN . . . 9 W. R, 301

PEAREE MOHUN DUTT *v.* GOOROO DASS DUTT [20 W. R, 401

243. ———— *Civil Procedure Code (1882), s 206—Application to bring decree into accordance with the judgment—Decree erroneous, but in accordance with judgment*—Where a decree [illegible]

[illegible] accordance with the judgment. LAKHO BIBI *v* SALAMAT ALI . . I. L. R, 20 All., 337

244. ———— *Power of Court* [illegible]

[illegible] TOR OF SARUN . . 13 W. R., 256

HAMEEDA BIBI *v* NOOR BIBEE . 9 W. R., 394

245. [illegible] *to ame*[illegible] cation [illegible] *propri*[illegible]

PORESH NARAIN MONDUL *v.* KHETTRO MONEE DEBIA . . . 20 W. R., 284

246. ———— [illegible]

[illegible] tion in it. OVRAET *v* SANKAR DUTT SINGH [5 B L. R., Ap, 60. 14 W. R, 26

BHANUSHANKAR GOPALRAM *v* RAGHUNATH RAM MANGALRAM . 2 Bom., 106. 2nd Ed., 101

247. ———— *Confirmation of decree by High Court on appeal—Mistake*—*A* obtained a decree for costs in a suit brought by *B* against *A*, and the decree was confirmed on appeal to the High Court on 18th June 1869. On 13th December 1871, *A* applied for execution of the decree, but it [illegible] from w[illegible] held th[illegible] the decr[illegible] passed [illegible] the decr[illegible] serting [illegible]

A then made a fresh application for execution, which was allowed. *Held* that the Judge had power to amend the decree, notwithstanding it had been appealed from and confirmed by the High Court, and such order was appealable. CHOWDHRY GOLUCK CHUNDER *v* CHOWDHRY GANGA NARAIN [11 B L. R., 363, and 11 B. L. R., 368 note

S C GOLUCK CHUNDER MUSSUNT *v* GUNGA NARAIN MUSSUNT 20 W. R, 111 18 W. R., 111

ZUHOOR HOSSEIN *v* SYEDUN [11 B L. R., 367 note: 11 W. R., 142

248. ———— Court to amend decree—*Confirmation of decree by High Court on appeal*—Where a decree given by the first Court and affirmed by the Court of appeal is found to need amendment with a view to its meaning being made clear, application should be made for that purpose to the lower Appellate Court and not by way of appeal to the High Court. BUNWAREE CHAND THAKOOR *v* MUDUN MOHUN CHUTTORAJ . 21 W. R., 41

249. ———— *Civil Procedure Code, s 206—Power of lower Court to amend decree affirmed on appeal*—Where a decree [illegible]

[illegible] cedure Code, by inserting the required specification,—*Held* that inasmuch as the effect of the amendment was not to alter the effect of the High Court's decree, or to affect property other than that actually claimed and decreed, the amendment was not contrary to law. *Shohrat Singh* v *Bridgman, I L R, 4 All, 376, Gobardhan Das* v *Gopal Ram, I L R, 7 All, 366, Kisto Kinkur Roy* v *Burrodacaunt Roy, 14 Moore's I A., 465* and *Sundara* v *Subbana, I L. R., 9 Mad, 354*, referred to. RAM SARAN *v* PERSI DHAR RAI . . I. L. R, 10 All., 51

250. ———— Civil Procedure Code, 1882, s 206—*Jurisdiction of Court to amend its decree after appeal*—Under s 206 of the Code of Civil Procedure, a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal. SUNDARA *v* SUBBANNA . I. L. R., 9 Mad., 354

251. ———— *Amendment of decree after confirmation of decree on appeal—Quære*—Whether the rule in *Sundara* v *Subbanna, I L R, 9 Mad, 354* as to the amendment of decrees, *viz*, that a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal, is correct. CHATHAPPAN *v* PYDEL [I. L. R., 15 Mad., 403

See PYDEL *v* CHATHAPPAN [I. L. R., 14 Mad., 150

252. ——————— *Decree for costs —Execution of decree.*—In the lower Appeal Court, the plaintiff obtained a decree which directed parties to bear their own costs in proportion in both the Courts, while the judgment directed that the parties should bear each other's costs in proportion in both the Courts. The decree was confirmed by the High Court in cross second appeals without writing a judgment. There was no point taken in either of the appeals as to costs. The plaintiff subsequently applied to the High Court for the amendment of the decree under s. 206 of the Civil Procedure Code (Act XIV of 1882). It was contended for the defendant that the application should have been made to the lower Appeal Court. *Held* that the only decree which existed for the purposes of execution after the High Court confirmed the decree of the Court below was the decree of the High Court into which that of the lower Court became incorporated. The application was, therefore, properly made to the High Court. *Held* further that, that being so and there having been no appeal by either party against the order as to costs, the Court might properly look at the judgment of the Court below with a view to making the decree as to costs agree with it. SHIVLAL KALIDAS *v.* JUMAKLAL NATHIJI DESAI

[I. L. R., 18 Bom., 542

253. ——————— *Power of Court of first instance to amend its decree after appeal.*—In a suit for land with mesne profits, the District Munsif delivered judgment for the plaintiff, and recorded therein a finding that he was entitled to mesne profits as from a certain date, it having previously been arranged that the amount, if any, awarded for mesne profits should be determined in execution. In the decree no mention was made of the date from which the mesne profits were to be calculated, but it was stated merely that the amount was to be determined in execution. The case went on appeal before the District Judge, who modified the decree in certain particulars unconnected with mesne profits. With a view to execution, the plaintiff applied to the Court of first instance to bring the decree into conformity with the judgment. The Court having made an order accordingly, it was objected in the High Court on revision that the order was made without jurisdiction. *Held* that the jurisdiction of the Court of first instance to amend the decree under s. 206 was ousted by the confirmation of his decree on appeal. PICHUVAYYANGAR *v.* SESHAYYANGAR . . . . **I. L. R., 18 Mad., 214**

254. ——————— *Power of Court of first instance to amend appeal—Civil Procedure Code, s. 551.*—On the hearing of an appeal by a District Court, certain special costs were directed to be paid by the defendant, but, by a clerical error, that direction was omitted from the decree when it was drawn up. Plaintiff applied to the District Judge under s. 206 of the Code of Civil Procedure for rectification of the error in the decree, but the Court refused to amend, it appearing that defendant had appealed to the High Court, which had dismissed his appeal and confirmed the decree of the District Court. The appeal had in fact been dismissed under s. 551 of the Code of Civil Procedure. Plaintiff then petitioned the District Court to review its order refusing to amend. This was rejected, the District Court holding that the decree, of which amendment was asked, was the decree of the High Court, which a District Court had no power to amend. On plaintiff petitioning the High Court to revise this order of the District Court,—*Held* (1) that the case was governed by the ruling of the Full Bench in *Pichuvayyangar* v. *Seshayyangar* (*I. L. R., 18 Mad., 214*), where it was held that the jurisdiction of a Court of first instance to amend a decree under s. 206 was ousted by the confirmation of that decree on appeal; (2) that the decision referred to applies equally to second appeals dismissed under s. 551 of the Code of Civil Procedure, and to the second appeals tried after notice to the respondent. MUNISAMI NAIDU *v.* MUNISAMI REDDI

[I. L. R., 22 Mad., 293

255. ——————— *Decree affirmed on appeal—Jurisdiction—Civil Procedure Code, ss. 579, 623, 624—Review of judgment.*—The effect of s. 579 of the Civil Procedure Code is to cause the decree of the Appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree, and does not reverse or modify it. Where a decree has been affirmed on appeal, the only decree which can be amended under s. 206 of the Code is the decree to be executed, and the decree to be executed is the decree of the Appellate Court and not the superseded decree of the first Court, though the latter may, if necessary, be referred to for the purpose of executing the appellate decree. The only Court which has jurisdiction to amend the appellate decree is the Court of Appeal. So *held* by the Full Bench, MAHMOOD, J., dissenting, *Shohrat Singh* v. *Bridgman, I. L. R., 4 All., 376*, explained and followed. *Kisto Kinkur Roy* v. *Burrodacaunt Roy, 14 Moore's I. A., 465*, discussed. The insertion of the word "not" in the last line but one of the judgment and also in the head-note in *Shohrat Singh* v. *Bridgman* was a clerical error. *Per* MAHMOOD, J. —Where a decree has been simply affirmed on appeal, s. 579 of the Code does not imply that the appellate decree supersedes the original decree so as to render it ineffective for purposes of execution. In such a case the lower Court continues to have jurisdiction to entertain an application for amendment of its own decree under s. 206 of the Code; and such application is not governed by any article of the Limitation Act, and may be made at any time. It may be granted under s. 206, even where an application for review of judgment under s. 623 upon the same grounds would be barred by s. 624. A decree awarding the plaintiffs possession of immoveable property did not comply with s. 206 of the Code by containing the particulars of the claim or specifying clearly the relief granted. On appeal by the defendant, the High Court, in general terms, confirmed the decree and dismissed

DECREE—*continued.*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

appeal The decree-holders then applying for exe-

dissenting) that the Court below had no jurisdiction to make such amendment, the original decree having been superseded by the High Court's appellate decree. *Held* by MAHMOOD, J, *contra*, that the Court below had jurisdiction to make such amendment, and could make it any time; that the High Court's decree could not be amended, because the former order refusing amendment had become final and operated as *res judicata*, that the amendment of the original decree under s 206 was not barred by s 624, and that it would be denying justice on account of technicalities to hold that the original decree, though affirmed on appeal, could be neither executed nor amended MUHAMMAD SULAIMAN KHAN v MUHAMMAD YAR KHAN

[I. L. R., 11 All., 267

See MUHAMMAD SULAIMAN KHAN v FATIMA

[I. L. R., 11 All., 314

256. ——— *Finding in judgment not embodied in decree—Amendment of decree—Appeal against amended decree—Time how calculated*—In a suit for a declaration of title to land and for possession, which was based upon a will alleged to have been made in plaintiff's favour, the Subordinate Judge, finding the document to be a forgery, dismissed the suit. The

defendant He held that it had been made for no consideration, and found the issue against the fourth defendant. The decree dismissing the suit, which bore date the 22nd of June 1896, contained no reference to the finding against the fourth defendant on that issue The fourth defendant applied for a

to the decree a clause to the effect that the issue referred to had been found against the fourth defen-

DECREE—*continued.*

3 ALTERATION OR AMENDMENT OF DECREE—*continued.*

dant. On 12th December 1896, fourth defendant preferred an appeal against the decree of the Subordinate Judge, but the District Judge rejected it as being out of time *Held* that, the decree being in conformity with the judgment, the Subordinate Judge had no power to vary it, and that the words which had been added must be expunged, and the decree restored to its original state. Also that the finding on the issue against the fourth defendant was, in fact, no finding except with regard to the question of consideration. *Per* SUBRAMANIA AYYAR, J.—That where a decree which is at variance with the judg-

preferred against such decree But where a decree is wrongly varied, a party affected by such variation should be entitled to calculate the time during which an appeal may be preferred as commencing from the date of the variation PARAMESHRAYA v SESHAGIRIAPPA . I. L. R., 22 Mad., 364

257.——— *Compromise after decree—Power of High Court to amend or review decree Civil Procedure Code, s 623—Proceeding in execution barred by time—Limitation Act—Act XV of 1877, sch II, art 179*—The High Court has no power to alter its own decree, except under the provisions of either s 206 or s 623 of the Code of Civil Procedure The ground of review must have been existing at the time of the decree, the s 623 not authorizing review of a decree, which was right, on the happening of a subsequent event After a decree for land against four defendants, a compromise was

the decree holder afterwards obtained an order This order was reversed by the High Court Hence this appeal *Held* that the order directing the amendment of the decree in the terms of the compromise was beyond the powers of the High Court, and was without operation either in favour of or against those defendants who had not been parties to the petition for that amendment *Held* also, on the decree-holder's petition for execution of the decree, that the period of limitation commenced from the

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

proceedings against the defendant, who was a party to it, except for the purpose of enforcing it against him. KOTAGHIRI VENKATA SUBBAMMA RAO *v.* VELLANKI VENKATARAMA RAO I. L. R., 24 Mad., 1 [L. R., 27 I. A., 197 4 C. W. N., 725

258. ——— *Proceedings to set aside decree—Application for review.*—The proper course for a party desiring to set aside a decree passed against him by a competent Court, which he alleges to have been obtained by fraud, is to apply to the Court which passed the decree to review and alter it, and not to bring a suit for declaration of his right by setting aside such decree. MEWA LALL THAKUR *v.* BHUJHUN LALL . . 13 B. L. R., Ap., 11

259. ——— *Court passing decree.*—A decree should be amended, if necessary, by the Court which passed it. BHUGGOBUTTY CHURN HALDAR *v.* NIROPUNAH DABEE 1 W. R., Mis., 8

BANGSEERAM SHAHA *v.* JUGGERNATH SHAHA [W. R., 1864, Act X, 11

NILKOMUL ROY *v.* ROHINEE DOSSIA [13 W. R., 330

260. ——— *Amendment made by wrong Court.*—But where the amendment was made by the Court executing it, the High Court disallowed the error as a ground of appeal, as no injustice had been done by it. BANGSEERAM SHAHA *v.* JUGGURNATH SHAHA . W. R., 1864, Act X, 11

261. ——— *Mode of obtaining correction of error—Review.*—Any error that may have crept into a decree can be corrected by that Court only which passed the decree. *Semble*—Such a correction should be obtained by a review of judgment. RAO OOMRAO SINGH *v.* SUTUN LALL [1 N. W., Pt. 6, p. 77: Ed. 1873, 168

BUNSEEDHUR *v.* KUDDEY LALL [1 N. W., Ed. 1873, 198

DWARKA PERSHAD *v.* BANKUT NURSEYA [2 N. W., 184

RAM NATH *v.* GOWHUR . . 2 W. R., 230

AKBUR ALI *v.* MULLICK MUKDOOM BUKSH [25 W. R., 63

262. ——— *Court executing decree.*—A Court executing the decree of a superior Court has no power to alter the terms of the decree. RAO OOMRAO SINGH *v.* SUTUN LALL [1 N. W., Pt. 6, p. 77: Ed. 1873, 168

SHEO PERSHAD *v.* SHIVA RAM . 2 N. W., 59

263. ——— *Appellate Court.*—It is not competent to the Appellate Court in a matter arising in execution to add to, or alter, the decree. BECHARAM PAUL *v.* BHUGWAN CHUNDER GHOSE . . . . . 5 C. L. R., 522

264. ——— *Execution of decree—Mode of payment of decree.*—In a case of execution of decree pending in a Munsif's Court, the Judge is not the person to sanction a proposition for a temporary alienation of the judgment-debtor's property to provide for payment of the decree, but the Court which passed the decree. Such an arrangement should provide for the whole amount payable under the decree, including interest. GOOMAN SINGH *v.* MAKHUN SINGH . . 2 N. W., 145

265. ——— **Time for amendment**—*Clerical error in decree.*—A clerical error in the decree appealed against was ordered to be rectified at the hearing of the appeal. HIRJI JINA *v.* NARAN MULJI . . . . I. L. R., 1 Bom., 1

266. ——— *Kistbundi—Instalment decree.*—A kistbundi is part of, or incidental to, the decree of the Court, and cannot be altered after the decree is finally given unless for the purpose of the correction of errors. LALL MAHOMED *v.* SHONA JOLLA GHAZEE [2 W. R., S. C. C. Ref., 3

267. ——— *Omission to award costs—Clerical error.*—An omission to award costs cannot be considered merely as a clerical error, but must be rectified by way of review within the prescribed time. RAM SAHAY SINGH *v.* ROOKHOO SINGH . . . . . 15 W. R., 414

268. ——— *Decree awarding costs.*—A decree which contains a distinct specification of costs, whether rightly or wrongly calculated, cannot be amended in appeal. BIJOY GOBIND NAIK *v.* KALEE PROSSUNNO NAIK 16 W. R., 294

269. ——— **Decree of High Court on appeal from Recorder of Rangoon**—*Order for execution of conveyance.*—The High Court, on appeal from a judgment of the Recorder of Rangoon, directed that an account should be taken between the parties, and that in default of payment of the amount thereby found to be due from the defendant to the plaintiff within three months, a sale of the mortgaged property should be effected. On the 18th March 1872, an order was passed by the Recorder of Rangoon, which was as follows: "By consent the property subject to the equitable mortgage to be given up to the plaintiff in satisfaction of all claims and demands against the defendant under the decree of the High Court." On the 3rd July 1872 the Recorder directed the defendant to execute within six days a conveyance of the mortgaged property to the plaintiff. On the 11th July 1872 the Recorder declared that, if the conveyance was not executed within twenty-four hours by the defendant, the Court would execute it, and accordingly on the 12th July 1872 the Court executed the conveyance. *Held* that the Recorder had no power to pass the order of the 18th March 1872, and that the defendant could not be required to execute the conveyance. AZIMNULLAH MOODEEN *v.* CRUIKSHANK [11 B. L. R., 67

270. ——— **Decree of predecessor**—*Amendment of clerical error.*—Where a Judge finds

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued*

appeal. The decree holders then applying for exe-

dissenting) that the Court below had no jurisdiction to make such amendment, the original decree having been superseded by the High Court's appellate decree *Held* by MAHMOOD, *J*, *contra*, that the Court below had jurisdiction to make such amendment, and could make it any time; that the High Court's decree could not be amended, because the former order refusing amendment had become final and operated as *res judicata*, that the amendment of the original decree under s 206 was not barred by s 624, and that it would be denying justice on account of technicalities to hold that the original decree, though affirmed on appeal, could be neither executed nor amended. MUHAMMAD SULAIMAN KHAN *v* MUHAMMAD YAR KHAN

[I. L. R., 11 All., 267

See MUHAMMAD SULAIMAN KHAN *v* FATIMA

[I. L. R., 11 All., 314

256 ———— *Finding in judgment not embodied in decree—Amendment of decree—Appeal against amended decree—Time how calculated*—In a suit for a declaration of title to land and for possession, which was based upon a will alleged to have been made in plaintiff's favour, the Subordinate Judge, finding the document to be a forgery, dismissed the suit. The

defendant He held that it had been made for no consideration, and found the issue against the fourth defendant. The decree dismissing the suit, which bore date the 22nd of June 1896, contained no

an order was made on 27th October 1896, adding to the decree a clause to the effect that the issue referred to had been found against the fourth defendant On 12th December 1896, fourth defendant preferred an appeal against the decree of the Subordinate Judge, but the District Judge rejected it as being out of time *Held* that, the decree being in conformity with the judgment, the Subordinate Judge had no power to vary it, and that the words which had been added must be expunged, and the decree restored to its original state Also that the finding on the issue against the fourth defendant was, in fact, no finding except with regard to the question of consideration *Per* SUBRAMANIA AYYAR, *J*—That where a decree which is at variance with the judg-

preferred against such decree But where a decree is wrongly varied, a party affected by such variation

257.———— *Compromise after decree—Power of High Court to amend or review decree Civil Procedure Code, s 623—Proceeding*

Procedure The ground of review must have been existing at the time of the decree, the s 623 not authorizing review of a decree, which was right, on the happening of a subsequent event After a decree

the decree holder afterwards obtained an order This order was reversed by the High Court Hence this appeal *Held* that the order directing the

that the period of limitation commenced from the

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

the amount of wasilat should be ascertained. As the parties did not choose to go into the enquiry as to mesne profits, the Court, on a motion by Government, called upon the parties to appear, and, on their refusing to do so, altered its original order with respect to the payment of the stamp duty, and declared that it should be realized from both the parties jointly. *Held* that the Court had no authority to make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation. SHOSTEE CHURN ROY *v.* COLLECTOR OF CHITTAGONG . . . **13 W. R., 155**

280. ——— **Decree of Special Commissioners under Act IX of 1859**—*Revision of, by Government.*—*Held* that a decree of the Court of special commission under Act IX of 1859, though adjudging a right to the plaintiff other than that sued for, cannot for this reason be treated as a nullity, and as one conferring no right; that the appropriation in satisfaction of the decree once made, a proprietary right in the assigned villages would arise in the plaintiff under the decree, of which she could not afterwards be lawfully deprived on any such allegation as that of incorrect valuation, the Government under the circumstances having no power of revision. KHANZADEE *v.* COLLECTOR OF BOOLUNDSHUHUR [**1 Agra, 57**

281. ——— **Application to amend by person not party to the suit** - *Application by Government to protect revenue—Omission to specify costs in decree in pauper suit.*—*A* instituted a suit *in formâ pauperis* against *B*, to which the Government was not a party. The claim was decreed in the Court of first instance, but this decision was reversed by the High Court in regular appeal, and the plaintiff's suit dismissed. The decree of the High Court did not contain any order as to the payment of the stamp fees, and the Government applied to have the decree amended in that respect. *Held* that the application must be refused on the ground that the Government, not being a party to the suit, had no right to be heard in the matter. IN THE MATTER OF THE PETITION OF SECRETARY OF STATE FOR INDIA IN COUNCIL [**2 C. L. R., 461**

282. ——— *Decree in accordance with judgment—Notice to parties.*—The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of R1,282. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree and made it for a sum of R1,460. The decree-holder took out execution, and the judgment-debtor objected that the decree was for R1,282 and had been improperly altered. The Court executing the decree disallowed the objection on the ground that it was not such as could be entertained in the execution department. *Held* that the decree, as it originally stood, was in accordance with the judgment, and the Court had no power to alter it as it did; and the proceeding was further irregular, in that no notice was given to the opposite party as required by s. 206 of the Code. ABDUL HAYAI KHAN *v.* CHUNIA KUAR . . . . . **I. L. R., 8 All., 377**

283. ——— Observations by MAHMOOD, *J.*, on the amendment of decrees and s. 206 of the Civil Procedure Code. TARSI RAM *v.* MAN SINGH . . . . **I. L. R., 8 All., 492**

284. ——— *Suit for possession of immoveable property—List of properties sued for appended to plaint—Omission to specify in decree properties decreed.*—The plaintiff in a suit claimed possession of villages said in the plaint to be "detailed below." No details of the villages were given in the plaint itself, but a separate paper containing a list of villages was filed with the plaint. The plaintiff obtained a decree for possession of "all the villages claimed," but there was no indication in the decree what those villages were. *Held* that the Court executing the decree was not justified in reading the contents of the list of villages attached to the plaint into the decree, and awarding the decree-holder possession of the villages named in such list. *S. A. No. 310 of 1882, decided on 11th August 1882,* followed. *Debi Charan* v. *Pirbhu Din Ram, I. L. R., 3 All.,* 388, referred to. MUHAMMAD SULAIMAN *v.* MUHAMMAD YAR . . . . **I. L. R., 6 All., 30**

285. ——— *Amendment of decree—Judgment awarding interest for period prior to suit—Decree directing interest to be paid from date of suit.*—The judgment in an appeal adjudged interest to be paid for the period prior to the institution of the suit only. The decree contained an order for payment of interest from the date of the suit onwards. *Held* that no variance with the judgment, within the meaning of s. 206 of the Civil Procedure Code, was involved in the additional order contained in the decree. KOLAI RAM *v.* PALI RAM [**I. L. R., 7 All., 755**

286. ——— *Order amending decree.*—A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say he accepted the appeal, and that the decree, as it stood, failed to give effect to the judgment. *Held,* on appeal under the Letters Patent, that an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was, therefore, a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismiss" his predecessor had meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206; that he had, therefore, exercised his jurisdiction

DECREE—*continued*

3 ALTERATION OR AMENDMENT OF DECREE—*continued.*

competent to alter the decree so as to bring it into conformity with the judgment The limitation for reviews does not apply to an application for alteration of a clerical error in a decree MODOOSUDUN GHOSE v. ROMANATH GHOSE . 12 W. R., 65

271. ———— **Modification of decree in execution**—*Power of Court to make alteration in*

portion. BEBEE DOSS v LULLIT MOHUN SHAH CHOWDHRY . . . . . 23 W. R., 195

272. ———— **Mode of amendment**—*Notice to parties—Presence of parties*—A decree

BULORAM DOSS v JOGENDRO NATH MULLIC [19 W. R., 349

273 ———— *Absence of party—Recall of ex-parte decree*—If a Judge makes an *ex-parte* order, unless in cases in which he is expressly empowered to make such an order, the

[16 W. R., 1..

274. ———— *Evidence to amend uncertainty in decree*—In the execution of

275 ———— *Evidence to amend uncertainty in decree—Execution*—Where

tainty in the decree The law allows certain matters

DECREE—*continued.*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

the Judge intended to decree The necessity of certainty in decrees discussed DWARKANATH HALDAR v KAMALA KANTH HALDAR

[3 B. L. R., Ap., 128: S. C., 12 W. R., 99

276. ———— *Decree for maintenance—Charge on estate—Necessity to alter*

the sum allowed cannot be questioned in execution. RAM KULLEE KOER v COURT OF WARDS [16 W. R., 474

277. ———— *Alteration of*

conduct was not fraudulent. *Held* that such a petition as that presented by the vakil, even if within the scope of his duty, should not be permitted to alter the terms of a final decree VENKATARAMMANNA v CHAVELA ATCHIYAMMA . 6 Mad., 127

278 ———— *Mistake in decree—Discovery of mistake on appeal.*—A compromise set up by the defendants in the present suit hav-

279. ———— *Irregular alteration of order in favour of Government*—A pauper suit for possession was decreed with mesne profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Sahu v. *Bhubun Gir, I. L. R., 11 Calc., 143,* dissented from. ABDUL RAHMAN SODAGUR *v.* DULLARAM MARWARI . . **I. L. R., 14 Calc., 348**

295. ———— **Specific performance**—*Practice—Liberty to apply—Relief after judgment—Damages—Review—Alternative relief.*—On the 27th April 1886, a plaintiff brought a suit praying for specific performance of a contract, or in the alternative for damages; and, on the 24th November 1886, obtained therein a decree for specific performance with the usual liberty to apply. On the 6th December 1886, the plaintiff discovered that it was out of the defendant's power to specifically perform his contract, and he thereupon, on the 13th April 1887, applied to the Court which had granted the decree for a re-hearing of the suit on the question of damages, asking that, in lieu of the decree for specific performance, a decree for damages, when assessed, might be entered up. *Held* that he was entitled to ask for such relief. PEARISUNDARI DASSEE *v.* HARI CHARAN MOZUMDAR CHOWDHRY . . . **I. L. R., 15 Calc., 211**

296. ———— *Decree in favour of plaintiff—Rectification of decree on application of defendant—Practice—Objection taken at hearing that application made to Court was not the application of which notice had been given to opposite party—Preliminary point.*—The plaintiffs sued in 1877 for specific performance of an agreement, dated 27th September 1871, by which certain landed properties were to be divided, as specified in the agreement between them and the defendants. The case came on for hearing on the 13th September 1878. The defendants did not appear, and a decree *ex-parte* was made, which declared that the plaintiffs were entitled to have the agreement of the 27th September 1871 specifically performed, and referred the suit to the commissioner for the preparation of conveyances, etc. The decree was sealed on the 9th October 1878. No further steps were taken by any of the parties for six years, and in September 1884 the matter was first brought before the commissioner. He then directed the defendants to lodge with him all the title-deeds of the properties which by the agreement were to go to the plaintiffs as their share. The defendants thereupon applied that the plaintiffs should be directed to lodge the title-deeds of the properties which by the agreement were to go to them, but the commissioner refused to make this order, being of opinion that he was not authorized to do so under the decree, which contained no direction to him in respect thereof. The defendants on the 10th November 1884 gave notice to the plaintiffs that they would apply to the Court—(1) "to set aside or vary its order of the 13th September 1878, so far as it related to the lodging of title-deeds, etc.; (2) to appoint a receiver of certain properties mentioned in the agreement; (3) to order the plaintiffs to deliver up to the defendants the properties which belonged to their share under the agreement; (4) to order certain accounts to be taken." This motion was not brought on until the 10th September 1885, on which day it was dismissed with costs; the Judge holding that the defendants had not shown sufficient cause to justify the setting aside of the decree under s. 108 of the Civil Procedure Code (Act XIV of 1882). The plaintiffs having still kept possession of certain of the properties which by the agreement were to go to the defendants, notice was given by the defendants to the plaintiffs on the 28th April 1887 that they would apply to the Court for an order that the plaintiffs should perform their part of the agreement of the 27th September 1871, so far as it remained unperformed by them, by giving up to the defendants possession of certain properties and by accounting for the rents thereof, etc., etc. At the hearing of this motion, counsel for the defendants asked that the decree should be rectified, by directing that the agreement should be specifically performed by the plaintiffs and defendants respectively. *Held* that the defendants were entitled to have the decree rectified. The fact that the decree declared that the plaintiffs were entitled to have the agreement of the 27th September 1871 specifically performed implied an order for specific performance of that agreement by all the parties to it. The mandatory words, however, as against the plaintiffs, having been, in the first instance, omitted, might now be inserted in the decree, so as to put the decree into the ordinary and usual form of decree in cases of this nature. The Court has inherent power over its own records so long as those records are within its power, and it can set right any mistake in them. Counsel for the plaintiffs contended that the defendants were not entitled, in the present motion, to ask for a rectification of the decree, inasmuch as their notice of motion did not intimate that the point would be raised. *Held* that such an objection ought to be taken at once as a preliminary point. As it was not made until the argument of counsel for the defendants was concluded, it should be taken that the form of the motion as made to Court was acquiesced in. The objection was then too late. KARIM MAHOMED *v.* RAJOOMA . **I. L. R., 12 Bom., 174**

297. ———— *Decree for redemption within specified time—Appeal against decree—Power of Court in execution to extend time for redemption allowed by decree—Special ground for enlarging time.*—The plaintiffs sued for the redemption of certain mortgaged property. On the 1st March 1886, a decree was passed declaring the plaintiffs entitled to redeem on payment by them to the defendants of R649-11-0 within three months from the date of the decree. Against this decree the defendants (the mortgagees) appealed on the ground that a much larger sum than R649-11-0 was due to them on the mortgage. The plaintiffs also filed objections to this decree under s. 561 of the Civil Procedure Code (XIV of 1882), on the ground that the mortgage-debt had been long ago paid off, and that now a large sum was due to them from the mortgagees, who had been in receipt of the profits of the property. Under these circumstances, the plaintiffs did not pay the R649-11-0 within three months as ordered by the decree. On the 12th October 1886, they presented an application for execution, and paid into Court the R649-11-0. The lower Court granted their application, and ordered

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

"illegally and with material irregularity" within the meaning of s 622 of the Code, and that the High Court was consequently competent to reverse his order SURTA *v.* GANGA

[I. L. R., 7 All., 875

Reversing judgment of OLDFIELD, *J* (differing from MAHMOOD, *J*), in SURTA *v* GANGA

[I. L. R., 7 All., 412

287. ———— Order for payment by

should not be exercised without sufficient reason MOHESSUR BUKSH SINGH *v* THUBBOO CHOWDHRY

[2 Hay, 68

288 ———— *Civil Procedure Code, 1859, s 194*—It should not be applied to an action for money due on an instalment bond the terms of which had been broken LUCHMENAUTH DOOGUR *v* HARADHUN MOOKERJEE 2 Hay, 95

289. ———— *Civil Procedure Code, 1859, s. 194*—*Held* that, when the not ordering the amount of the decree to be paid by instalments has arisen from any error or omission, or it is otherwise requisite for the ends of justice, the Court which passed the decree has power to review it and to make an order for payment by instalments Otherwise the Court has no power to make such an order subsequent to the decree without the consent of the judgment-creditor RAVICHAND DALICHAND *v* MOTILAL NARBHERAM 4 Bom., A. C, 77

290 ———— *Civil Procedure Code, 1859, s 194 (1877, s 210)*—*Quære*—Whether "a decree for the payment of money" means merely what is commonly known as a money decree, or includes a decree in which a sale is ordered of immoveable property, in pursuance of a contract specifically affecting such property, within the meaning of s. 194 of Act VIII of 1859 and s 210 of Act X of 1877 Where a Court, on the ground that the defendant was "hard pressed," directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one-half of the usual rate of interest,—*Held* that there was no "sufficient reason" for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff by the length of the period over which instalments were extended, and by allowing a rate of interest less than the ordinary rate. BINDA PRASAD *v* MADHO PRASAD

[I. L. R, 2 All., 129

291. ———— *Civil Procedure*

HARDEO DAS *v.* HUKAM SINGH

[I. L. R., 2 All., 320

DECREE—*continued*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

292. ———— *Civil Procedure Code, 1877, s 210*—*Decree for money*—There is nothing in s. 210 of Act X of 1877, or elsewhere in

"nankar" allowance hypothecated by such bond BACHCHU *v* MADAD ALI I. L. R., 2 All., 649

See TATA CHARLU *v* KONADULA RAMACHANDRA REDDI . I. L. R, 7 Mad., 152

293 ———— *Civil Procedure Code, Act XIV of 1882, s 210, Decree under*—

applied for time to pay the balance due till the 8th

alleging that he had come to an arrangement with the decree holder for the payment of the amount due by

stipulated in the petitions, and that, this being so, there was a decree passed on that date under the provisions of the second paragraph of s 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution JHOTI SAHU *v* BHUGUN GIR . I. L. R, 11 Calc, 143

294 ———— *Limitation Act, 1877, art*

—*Civil*

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decree-holder consenting to this, the Court made the following order:—"According to the application of both parties, it is ordered that the case be struck off, and the decree returned" The details of the instalments mentioned in the petition were endorsed on

made the order, had no power to make any order for instalments, any application for that purpose being then barred by art 175 of Act XV of 1887. *Jhoti*

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Application to insert in decree an order to pay value of such moveable property in event of failure to deliver—Civil Procedure Code (XIV of 1882), ss. 206-8.—A partition suit brought by a son against his father was referred to arbitration. On the 9th January 1890, the award was published, and on the 27th March 1890 the defendant moved for and obtained a decree in terms of the award. By this decree it was ordered that in satisfaction of the plaintiff's claim the defendant should pay to him R1,05,000 in the manner therein stated, *viz.*, R40,000 to be paid forthwith and the balance of R65,000 to be paid "upon the plaintiff's delivering to the defendant certain specified property, which included two vessels or buglows, called respectively the *Nasri* and *Sambuk*." In no event was defendant to be required to pay the R65,000 before the 15th November 1890. At the date of the decree the vessel *Sambuk* was at sea on a voyage, and on the 18th June 1890, while still on the voyage, she was lost. On the 15th November 1890, the plaintiffs' attorneys demanded payment of the balance of R65,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambuk* had been lost. They offered to pay its value, which they estimated at R1,000. The defendants, however, demanded the delivery of the buglows, which they stated to be worth a very large sum. The defendants having, under the circumstances, refused to pay the R65,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative if delivery of the vessel *Sambuk* could not be made, such delivery having become impossible. *Held* that the rule must be discharged. The objection was an objection to an award, not to a decree. Possibly it might have been open to the parties to object to the award before it was filed on the ground that it ought to have stated a sum to be paid to the defendant in case some of the property could not be delivered to him. If such an objection had been made, the Court might possibly have remitted the award or refused to file it. No such objection, however, was taken, and the award was filed and a decree obtained in accordance with the award. The award could not be modified by the Court, nor could the decree, which must be in accordance with the award. AHMED BIN ESSA KHALIFFA *v.* ESSA BIN KHALIFFA
[I. L. R., 17 Bom., 657

304. ———— **Rectifying decree**—*Practice —Clerical error.*—By a written agreement the defendants agreed to purchase from the plaintiff certain land comprising 5,280 square yards or thereabouts at the rate of R1-1-6 per square yard. The sum of R1,000 was paid on the date of the agreement in part payment of the price. The plaintiff sued for specific performance of the agreement. The plaint set forth the facts and the part payment, and prayed that the defendant might be ordered specifically to perform the agreement and to pay to the plaintiff the balance of the purchase-money, *viz.*, the sum of R4,475. On the 9th September 1897, judgment was given for the plaintiff ordering "specific performance as prayed and costs." The decree was accordingly drawn up in terms of the prayer of the plaint. It was afterwards discovered that the sum mentioned in the prayer (*viz.*, R4,475) and inserted in the decree was incorrect, and ought to have been R4,775, the latter being the real balance due at the rate mentioned in the agreement after deducting the R1,000 paid as earnest. On 6th November 1897, the plaintiff gave notice of motion to rectify the decree by altering the figure R4,475 to R4,775. On motion to rectify the decree,—*Held* that the decree should be rectified. PHEROZSHA PESTONJI RANDERIA *v.* SUN MILLS
[I. L. R., 22 Bom., 370

4. EFFECT OF DECREE.

305. ———— **Decree made with jurisdiction**—*Estoppel.*—A decree made with jurisdiction, until it is set aside, is, as between the parties to it, conclusive both as to the rights of those parties and the character in which they sue. BHAWABAL SINGH *v.* RAJENDRA PRATAP SAHOY
[5 B. L. R., 321 : 13 W. R., 157

306. ———— *Illegal decree —Void decree.*—Where a Court has jurisdiction over the subject-matter of a suit, its judgment or decree, even though irregular or illegal, cannot be said to be null and void. PHOOL KOOER *v.* SHEOBURUN SINGH . . . . . . 12 W. R., 489

307. ———— **Decree made without jurisdiction.**—A decree made without jurisdiction is of no effect in creating any charge on immoveable property. LUCHMEENATH SINGH *v.* MADHO DASS SAHOO . . . . . . 2 N. W., 70

308. ———— **Decrees, Priority of.**—A decree takes priority over other decrees in respect of the date on which it was passed, and not in respect of the priority of the debt which it enforced. GHERAN *v.* KUNJ BEHARI . . I. L. R., 9 All., 413

309. ———— **Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants**—*Civil Procedure Code (Act VIII of 1859), ss. 240, 270, 271.*—In 1872 the plaintiff obtained a money-decree against two brothers, *P* and *K*. In execution of that decree, he attached their one-half share in certain fields in 1874. The attachment was removed at the instance of two claimants, *S* and *B*. In 1875 the plaintiff sued the claimants and obtained a decree in his favour in 1878. Meanwhile, in December 1874, after the plaintiff's attachment had been removed, one *V* obtained a decree against one of the brothers, *P*. In 1867, while the plaintiff's suit against *S* and *B* was pending, *P*'s right, title, and

DECREE—*continued*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

possession of the property to be given to them The defendant appealed to the High Court *Held*, reversing the order of the Court below, that the Court in executing the decree had no power to alter the language of the decree, which it would virtually do if it enlarged the time mentioned in it by accepting the R619 11 0 paid into Court by the plaintiffs on the 12th October 1886 *Held* also that, even if the Court

[I. L. R., 13 Bom., 106

298 ——— Extending time for payment mentioned in decree—*Decree conditioned on payment of a sum certain within a fixed time—Payment after time specified in decree*—A Court, having framed a decree conditioned on the payment by the plaintiff of a sum certain within a specified time, has no power to extend the time for payment after the period mentioned in the decree has elapsed *Har Narain Singh* v *Chaudhrain Bhagwant Kuar, I L R, 13 All, 300*, referred to RAM LAL DUBE v HAR NARAIN I. L. R., 13 All., 400

See KODAI SINGH v JAISRI SINGH

[I. L. R., 13 All., 376

299 ——— Time fixed by decree for assumption of character of sannyasi—*Enlargement on appeal of that time*—The plaintiff sued for a declaration of his right as jheer of a muth and for possession of the property of the muth and obtained a decree, which was, however, made contingent upon his assuming the character of a sannyasi, which he had been directed to do on being nominated as jheer within the period of four months The defendant preferred an appeal against this decree and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a sannyasi pending the disposal of the appeal preferred by the defendant On the plaintiff s appeal—*Held* the Court had power to extend the time as prayed. RANGACHARIAR v YEGNA DIKSHATUR I. L. R., 13 Mad., 524

300 ——— Power of Court to rectify its own mistake in order—*Civil Procedure Code (Act XIV of 1882), s 370—Insolvency of plaintiff*—On the 3rd of August a case came on for hearing Prior to that date, the plaintiff in this suit had been adjudicated an insolvent, and did not appear, but the official assignee appeared and applied for a postponement The Court accordingly made the following order—It is ordered that the suit be dismissed under s 370 of the Civil Procedure Code unless the official assignee elects, on or before the fifth day of October next to continue the suit and give security for the defendants' costs The time for complying with the order was subsequently extended,

DECREE—*continued*

3 ALTERATION OR AMENDMENT OF DECREE—*continued*

order The plaintiff objected, as he was now no longer an adjudged insolvent, and was ready to prosecute the suit *Held* that the order had been made in an improper form, inasmuch as s 370 gives the Court no power to order the dismissal of the suit

SHAMLAL NARRONDAS I. L. R., 16 Bom., 404

301. ——— Interest given by amendment in decree which was not given by the judgment—*Civil Procedure Code, ss 206, 209 622—Superintendence of High Court*—The plaintiffs sued for recovery of a certain sum of

the plaintiffs a specified sum of money, and ordered that the rest of the plaintiff s claim should stand dismissed. Subsequently the Court amended its decree by adding a decretal order for the payment to the plaintiffs by the defendant of interest during the pendency of the suit and after decree until the satisfaction of the debt *Held* that it was illegal for the Court to decree the claim for interest by way of amendment of its decree, and that the order so amending the decree was open to revision HASAN SHAH v SHEO PRASAD I. L. R., 15 All., 121

302 ——— Alteration of decree made

matter, made an order as to costs in favour of the defendants in the following terms — As the case has not been contested to the bitter end, half the pleader's fees are allowed and the process expenses etc, incurred in the case, except those already refused to the defendants For travelling and incidental expenses defendants to put in a bill in one

been transferred before taxation was completed—*Held* that it was competent to his successor at taxation and before granting payment of the pleader's fees to consider whether the certificate given by a pleader as to the fee paid to him in the case was according to rule, and to disallow payment of any fee not duly certified as paid. DICK v DICK

[I. L. R., 15 All., 169

303 ——— Decree in terms of an award ordering (inter alia) delivery of moveable property—*Loss of part of such moveable property and consequent failure to deliver*—

DECREE-HOLDER—*concluded.*

——— Meaning of—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 2 Mad., 216
I. L. R., 18 Calc., 639

——— Purchase by—

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES.

DEDUCTION OF TIME IN CALCULATING LIMITATION PROSECUTED IN COURT WITHOUT JURISDICTION.

See CASES UNDER LIMITATION ACT, 1877, s. 14 (1871, s. 15; 1859, s. 14).

DEED.

——— Attestation of—

See EVIDENCE ACT, s. 68
[I. L. R., 18 Mad., 29
I. L. R., 26 Calc., 222
3 C. W. N., 228

——— Construction of—

See CASES UNDER COMPROMISE—CONSTRUCTION, ETC.

See CASES UNDER GRANT—CONSTRUCTION OF GRANTS.

See CASES UNDER MORTGAGE—CONSTRUCTION.

See CASES UNDER SETTLEMENT—CONSTRUCTION.

——— Decision as to genuineness of—

See CIVIL PROCEDURE CODE, s. 244—QUESTION IN EXECUTION OF DECREE.
[I. L. R., 21 All., 356
I. L. R., 22 Bom., 475
I. L. R., 23 Calc., 639

See REGISTRATION ACT, s. 77.
[I. L. R., 24 Calc., 668

See RES JUDICATA—MATTERS IN ISSUE.
[3 Mad., 120
12 B. L. R., P. C., 304
L. R., I. A., Sup. Vol., 212
I. L. R., 23 Bom., 536
I. L. R., 4 All., 65
I. L. R., 21 Calc., 430

DEED—*continued.*

——— Effect of—

See ONUS OF PROOF—DEED, EFFECT AND OPERATION OF I. L. R., 25 Calc., 78
[L. R., 24 I. A., 186
1 C. W. N., 594

——— Enforcing or cancelling—

See CASES UNDER ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE.

——— Execution of—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
[I. L. R., 21 Bom., 126

——— of Sale.

See CASES UNDER EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

——— Registration of—

See CASES UNDER REGISTRATION ACT.

——— Suit to set aside—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

See CASES UNDER DECREE—FORM OF DECREE—DEEDS, SUITS TO SET ASIDE.

See DURESS . 7 B. L. R., P. C., 630
[7 Mad., 378

See CASES UNDER LIMITATION ACT, 1877, ARTS. 91, 92, 93 (1871, ARTS. 92, 93).

See CASES UNDER ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE.

1. EXECUTION.

1. ——— Completion of deed of sale—*Delay in delivery.*—A deed of sale is complete on the day when it is signed and attested by the Cazee and consideration is paid for it. Delay in the delivery of the deed does not invalidate it. BHIKUN SINGH *v.* JUMEELA KOONWAR . W. R., 1864, 62

2. ——— Proof of execution—*Admissibility in evidence.*—A deed of conveyance was tendered in evidence which purported to bear the mark of *G* as vendor, and which was duly attested by four witnesses. *G*, however, denied that she had ever executed the deed, and said that the mark was not hers. All the attesting witnesses were dead. A witness was called who knew the handwriting of one of the attesting witnesses, and who swore that the signature of that witness to the attestation clause of the deed was genuine. *Held,* on the authority of *Whitelocke* v. *Musgrove, 2 Cr. and M., 511,* that the deed was admissible in evidence, its execution by *G* being sufficiently proved. ABDULLA PARU *v.* GANNIBAI
[I. L. R., 11 Bom., 690

3. ——— *Evidence Act (I of 1872), s. 68—Attesting witness—Scribe of a*

DECREE—*continued.*

4. EFFECT OF DECREE—*continued.*

interest in the one-half share of the fields belonging to himself and *K* was sold in execution of *V*'s decree and purchased by the defendant In 1881 the plain-

V's share which was in due course sold The plain-

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310. ———— Effect of setting aside a decree on the ground of fraud and collusion.—*A* filed a suit against *B,* in which a consent decree was passed. This decree was set aside in a

decree having been set aside, the suit remained undecided. *Held,* refusing the application, that *A*'s

311. ———— Decree determining rights of rival religious sects—*Decree whether executory or declaratory—Limitation—How far a sect*

sect was not entitled to a place in a certain temple or

DECREE—*concluded.*

4 EFFECT OF DECREE—*concluded.*

District Court. *Held* the petition was rightly dismissed, since the execution of the decree was barred by limitation, and the decree, if it was capable of execution at all, could not be executed against the parties to the present petition. SADAGOPACHARI *v.* KRISHNAMACHARI . . I. L. R., 12 Mad., 356

312. ———— Decree for redemption not providing for payment in fixed time.—A

foreclosure decree if not executed within three years. MALOGI *v.* SAGAJI . . I. L. R., 13 Bom., 567

5. REVIVAL OF DECREE.

313. ———— Jurisdiction to revive decree.—In a suit for recovery of a sum of money expended towards improvement of a joint property, the Court passed a decree that, if the defendant would contribute towards payment of the expenses for the improvement, he would be entitled to a proportionate share of the profits. No steps were taken by the plaintiff from 1863 to revive the decree; but on the

judgment-debtor. NILAMBAR SEN *v.* KALI KISHOR SEN . . 3 B. L. R., Ap., 94: 12 W. R., 28

DECREE-HOLDER.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 15 All., 318, 407
I. L. R., 20 Calc., 673
4 C. W. N., 542

———— Death of—

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF DECREE-HOLDER BEFORE SALE.
[I. L. R., 3 All., 759

———— Liability of—

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.
[3 B. L. R., A. C., 413
12 B. L. R., 208 note
I. L. R., 3 Bom., 74

See SALE IN EXECUTION OF DECREE—WRONGFUL SALES
[5 B. L. R., Ap., 71, 73 note
3 B. L. R., A. C., 413
5 N. W., 211
7 W. R., 355

DEED—*continued.*

2. ATTESTATION—*concluded.*

Gokul Chandra Chowdhry, 3 B. L. R., P. C., 57, Matadeen Roy v. *Musoodun Singh, 10 W. R., 293,* and *Ram Chunder Paddar* v. *Haridas Sen, I. L. R., 9 Calc., 463,* is that, though the mere attestation of a deed by a relative does not necessarily import concurrence, yet where it is shown by other evidence that, when becoming an attesting witness, he must have fully understood what the transaction was, his attestation may support the inference that he was a consenting party. The question whether attestation of a document should be held to imply assent is a question of fact which has to be determined with reference to the circumstances of each case. CHUNDER DUTT MISSER *v.* BHAGWAT NARAIN [3 C. W. N., 207

15. ——— *Suit for possession—Estoppel.*—In a suit for possession, the fact of plaintiff having been a subscribing witness to a pottah which is set up by the defendant is not conclusive against the former. HOSSEINEE KHANUM *v.* TIJUN LALL . . . . 14 W. R., 293

16. ——— **Necessity of attestation**—*Maurasi pottah.*—Documents of the description of a maurasi pottah are not required by law to be attested. GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY . . . . . 13 W. R., 191

3. CONSTRUCTION.

17. ——— **Danger of deciding case upon a document by construction put on another document in another suit.**—The danger pointed out of deciding one case relating to a bond by the construction placed in another suit on another and a different bond. BHAGWANT SINGH *v.* DARYAO SINGH . . I. L. R., 11 All., 416

18. ——— **Intention of parties**—*Rights at time of execution.*—In construing a document the situation of the parties and their rights at the time of the execution must be looked at. DINO NATH MUKERJEE *v.* GOPAL CHUNDER MOOKERJEE [8 C. L. R., 57

19. ——— *Evidence of intention.*—The intentions of parties in deeds must be taken from the words they use, where those words are plain. RADHA JEEBUN MOSTOOFEE *v.* BISSESSUR MOSTOOFEE . . . . . . 2 Hay, 178

20. ——— In construing deeds, where their terms are doubtful, it should be ascertained in what manner the terms of the deed were understood and acted upon by the parties during the years immediately succeeding the grant. SHUNKER LALL *v.* POORUN MULL . . 2 Agra, 150

21. ——— **Native documents**—*Mode of construing.*—Native deeds and contracts ought to be construed liberally, regard being had to the real meaning of the parties, rather than to the form of expression. In this view a person was held to be a manager, who was in a deed inaccurately and erroneously described as a proprietor or heir. HUNOOMAN PERSHAD PANDEY *v.* BABOOEE MUNDRAJ KOONWEREE [6 Moore's I. A., 393: 18 W. R., 81 note

DEED—*continued.*

3. CONSTRUCTION—*continued.*

22. ——— **Deed of sale**—*Evidence of price of land.*—In construing a deed of sale where the terms are ambiguous, the conduct of the parties immediately after and acting upon the deed is very important, such conduct being sometimes (as in this instance) the only means by which the Court can know how the price of land was fixed. CHEETUN LALL *v.* CHUTTERDHAREE LALL . 19 W. R., 432

23. ——— **Use of general words in document**—*Limit on implication.*—*Per* MAHMOOD, *J.*—When general words are used in a document, they must be understood in a general sense, unless they are accompanied by any expression limiting or restricting their ordinary meaning, or unless such limitation or restriction arises from necessary implication. SHEORATAN KUAR *v.* MAHIPAL KUAR [I. L. R., 7 All., 258

24. ——— **Circumstances attending execution**—*Conduct of parties after execution.*—If, in order properly to apply and understand the provisions of a deed, it be necessary to enquire into the circumstances under which it was executed, a Court may rightly make such enquiry. The conduct of the parties after the making of an instrument affords a clue to their intentions in regard to its effect only where they are voluntary actors in the execution of the conveyance, not where it is made against their will by coercion of a Civil Court. LOOTF ALI *v.* BUDROOL HUQ . 21 W. R., 119

25. ——— **Construction irreconcileable with other documents.**—If a particular construction of a part of a document renders a contract evidenced by it inoperative, and another construction renders it operative and is reconcileable with other portions of the document, the first should give way to the second. DHERAJ MAHTAB CHAND BAHADOOR *v.* HURDEO NARAIN SAHOO [16 W. R., 119

26. ——— **"Sontan"**—*"Issue"—Male issue.*—The word "sontan" occurring in a deed of agreement between co-sharers, members of a Hindu family, was construed to mean issue generally, and not male issue merely. KRISTO KISHORE BHUTTACHARJEE *v.* SEETAMONEE BHUTTACHARJEE [7 W. R., 320

27. ——— **Absolute conveyance**—*Property in possession and expectancy.*—When several persons join in a conveyance and convey "the whole and entire property absolutely," they must be taken to have exercised every power which they possess, and to have parted with their whole interest, whether in possession or expectation. KISHEN GEER *v.* BUSGEET ROY . . . . . 14 W. R., 379

28. ——— **Covenants as to title and quiet possession**—*Protection against dispossession.*—In a kobala by which certain landed property was conveyed, the vendor bound herself in the following terms: "If any one objects to my sale and gives

DEED—*continued*

1. EXECUTION—*continued*

deed—Transfer of Property Act (IV of 1882), s 59 —*Held* that a deed may be legally proved by the evidence of the scribe thereof who has signed his name, but not explicitly as an attesting witness on the margin, and has been present when the deed was executed *Muhammad Ali v Jafar Khan All W N, 1897, p 146,* followed RADHA KISHEN *v* FATEH ALI RAM . I. L. R., 20 All, 532

4 ———— **Transfer of Property Act (IV of 1882), s 59**—*Mortgage deed signed by the mortgagor attested by one witness and contain*

[illegible]

including the admission of the execution by the executant, therefore such a mortgage is not valid in

[illegible]

5 ———— *Security bond*

[illegible]

son for the purpose of securing a future debt, is a mortgage-bond within the meaning of s 58 of the Transfer of Property Act, and in order to create a valid mortgage, it must be signed by the executant

[illegible]

signatures of the Sub Registrar and of the identifier a suit is not maintainable, inasmuch as the bond is

[illegible]

3 C W. N, 84

6. ———— *Attestation of mortgage bond—Meaning of the word "attested"—Evidence Act (I of 1872), s 70—Admission of execution*—The attestation required by s. 59 of the Transfer of Property Act is an attestation by wit-

[illegible]

DEED—*continued*

1 EXECUTION—*concluded*

Bejoy Gopal Mukerjee, I L R, 26 Calc, 246, followed. ABDUL KARIM *v* SALIMUN [I. L R., 27 Calc., 190

7. ———— *Mortgage deed attested by only one witness*—Where a mortgage-deed was executed but there was only one attesting witness it was *held* not to create any charge on the property, because it was a mortgage within s 58 of the Transfer of Property Act and because such a transaction was expressly excluded from the operation of s 100 of the Act, and that, the provisions of s. 59 not having been complied with the mortgage could not be proved RAM KUMARI BIBI *v* SRINATH ROY [1 C W N., 81

8 ———— *Evidence Act (I of 1872), s 68—Attestation of marksman*—The attestation of a marksman to a mortgage bond is a sufficient attestation within the meaning of s 59 of the Transfer of Property Act and s 68 of the Evidence Act. PRANKRISHNA TEWARY *v* JADU NATH TRIVEDY . 2 C W. N, 603

2 ATTESTATION

9 ———— **Attesting witness unable to write**—*Name written or mark added by another person.*—Where an attesting witness is unable to write, and either makes a mark or has his name written for him in a deed the style of execution of the attestation cannot invalidate the deed. AGUM MISRA *v* PULLUKDHAREE MISRA W R., 1864, 187

10 ———— **Effect of deed on witness**

[illegible]

[1 W. R., 66

11. ———— *Reversioner—Consent*—A reversioner attesting a conveyance by Hindu widow cannot impeach the sale on the ground of waste by such alienation. GOPAUL CHUNDER MANNA *v.* GOURMONEE DOSSEE 6 W. R., 52

12. ———— *Evidence of as*

[illegible]

KHODA BUKSH 1 Agra, 50

MATADEEN ROY *v* MUSSOODUN SINGH [10 W. R., 293

13. ————The attestation of a deed by a relative does not necessarily import his concurrence RAJLAKHI DEBI *v* GOKUL CHANDRA CHOWDHRY [3 B. L. R., P. C, 57: 13 Moore's I. A., 209

RAM CHUNDER PODDAR *v* HARI DAS SEN [I. L. R., 9 Calc, 463

14. ———— *Evidence of concurrence or consent to deed attested.*—The true rule deducible from the cases of *Rajlakhi Debia v*

DEED—*continued.*

3. CONSTRUCTION—*continued.*

(as malikana), which he has agreed to pay." *M* mortgaged the property to *B*, who obtained possession; and after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued *M* and *B* to recover arrears of malikana. *Held* that the words "as malikana" in the deed of sale could not be rejected as surplusage; that they showed an intention that the payment of the R25 should be an annual charge upon the property and the profits arising therefrom analogous to that of a malikana reserved on a settlement by a Government settlement officer for a zamindar; that the use of these words was intended to reserve and create a perpetual and heritable charge upon the property; and that the Court was not prevented from coming to this conclusion by the omission of specific words of inheritance. *Heeranand Sahoo* v. *Ozeerun 9 W. R., 102, Bhoalee Singh* v. *Neemoo Behoo, 10 W. R., 302, Hurmuzi Begum* v. *Hirday Narain, I. L. R., 5 Calc., 921, Mahomed Karamatollah* v. *Abdool Majeed, 1 N. W., 205, Kooldeep Narain Singh* v. *Government, 14 Moore's I. A., 247, Tulshi Pershad Singh* v. *Ram Nárain Singh, I. L. R., 12 Calc., 117, Gaya* v. *Samjiwan Ram, I. L. R., 8 All., 569,* and *Giyān Singh* v. *Kooer Peetum Singh, 1 N. W., 73,* referred to. CHURAMAN *v.* BALLI . . . . I. L. R., 9 All., 591

36. ———— Debtor and creditor—*Assignment or appropriation of rent till payment of debt—Intention to appropriate rent as distinguished from the lands—Aivaj (money)—Usufructuary mortgage—Right to take kabuliats from tenants and make recoveries.*—Where under an instrument a debtor allotted to his creditor his aivaj on account of deshpande hak and inam recoverable from the villages and undertook not to meddle till the aivaj was paid, and the instrument did not describe the lands mentioned therein by metes and bounds, but only as being in the occupation of certain persons paying so much rent, and contained a clause that the aivaj of R63 (the sum total of rents) had been allotted, and that the creditor might take kabuliats from the occupants and make the recoveries,—*Held* that the term aivaj, although capable of meaning property generally, must, from the context of the document, mean moneys or sums. *Held* further that the language of the instrument showed a clear intention to appropriate rents as distinguished from the lands themselves. *Held* also that, even if the transaction were regarded as a mortgage, it could only be a usufructuary mortgage, which would confer no right to have the property sold. HANMANT RAMCHANDRA DESHPANDE *v.* BABAJI ABAJI DESHPANDE

[I. L. R., 16 Bom., 172

37. ———— Construction of documents of sale and of agreement for re-sale—*Sale, with right reserved of re-purchase within a period, distinguished from mortgage.*—A document purporting to be one of sale, though it is accompanied by a contract reserving to the vendor a right to re-purchase the property sold, on re-paying the purchase-money within a certain time, is not on that account to be construed as if it were a mortgage. *Alderson* v. *White, 2 DeG. and J., 105,* referred to and followed, the law of India and of England being the same on this point. BHAGWAN SAHAI *v.* BHAGWAN DIN

[I. L. R., 12 All., 387
L. R., 17 I. A., 98

38. ———— Sale-deed or deed of gift—*Mahomedan law, gift.*—A deed which purported on the face of it to be a deed of sale contained a recital that the consideration had been received by the vendor and returned as a gift to the vendee. The words used were—"Hath * * * nawasi apne ki bai katai karke zar-i-saman tamam wo kamal wasul pakar bakhsh diya aur hiba kardiya." The deed was stamped as a sale-deed and was duly registered, but no possession was given under it, and there was apparently no evidence external to the deed that any consideration has passed between the parties. *Held* by EDGE, *C.J.*, and TYRRELL and KNOX, *JJ.*, that in the absence of any evidence external to the deed itself of the intention of the parties, the deed in question must be taken to be a deed of sale. *Per* MAHMOOD, *J.*, *contra.* The lower Appellate Court having found that no consideration had passed, the deed must be considered as a deed of gift, though wearing the appearance of a sale-deed, and, possession not having been given, under Mahomedan law the gift was invalid. ANGAN LAL *v.* MUHAMMAD HUSAIN

[I. L. R., 13 All., 409

39. ———— Deeds releasing future and contingent interests—*Agreement excluding a possible question between the parties as to the effect of words in a will, under which they took their rights.*—Three brothers, under their father's will, were entitled, each on attaining full age, to the testator's residuary estate in equal shares. When all had attained full age, two having been minors at the testator's death, they effected a separation of their interests derived from the will, and executed to one another instruments of compromise and partition containing words relating to possible claims which they gave up. One of the two younger brothers afterwards died, having taken, under the will of the other younger one, all the estate of the latter, who had died without issue before him. The eldest then attempted to raise the question whether, on the one hand, the brothers had taken under their fathers' will absolute interests, or on the other, interests that were divested, and went over to a surviving brother in the event of death without issue. As to this, the Court below differed, but the Appellate Court decided, and on this appeal the decision was affirmed, that the above instruments relinquished future demands, this claim included, relating to the brothers' estates under their father's will. GREENDER CHUNDER GHOSE *v.* TROYLUCKHO NATH GHOSE

[I. L. R., 20 Calc., 373

40. ———— Title under a will followed by a family arrangement adding to the property devised.—The will of a proprietor, who died in 1864, disposed of a zamindari, and of one village within it, as two distinct properties, giving the zamindari to the testator's two widows, and, on the

DEED—*continued.*

3. CONSTRUCTION—*continued*

you any sort of trouble, I will arrange it, and if I fail to do so, I will restore the purchase money, in default you may realize it by an action" *Held* that it was intended to provide not only against defect in the power of the vendor as a Hindu widow, but against any disturbance of the purchaser, and to protect him against dispossession BISSESSUREE DEBIA *v* GOBIND PERSHAD TEWARI

[21 W. R., 398

Varied on appeal by decision of Privy Council by making more parties liable under the decree BISSESSURI DEBYA *v* GOBIND PRASAD TEWAREE

[L R, 3 I. A., 194: 26 W. R., 32

29. ——— Interest passing to purchaser—*Deed of sale*—It was held that the words "the arrears of past years due by asamis" in a deed of sale did not pass to the purchasers decrees for arrears of rent held by the vendors BALAM DAS *v.* DWARKA DAS . . . 7 N. W., 88

in lieu thereof, I do hereby grant and alienate to *A* and *B* out of the whole and entire profits of my proper share in mouzah *X* the sum of R600 per annum, in equal proportion, free from all incumbrances, and constitute them part owners thereof The said *A* and *B* shall be at liberty to make joint-collection with me, and to receive and enjoy in perpetuity R600, or upon division and partition of as much land as may yield to them R600, to make separate collection as from their own property. If in any way by sale, etc., the said mouzah shall cease to be my property, I agree to set apart, upon partition and division for *A* and *B*, as much land as

charge on the property MAHOMED ZAHUR ALUM *v* CHUNDER CUMAR . . 5 C. L. R., 449

31. ——— Maxim, Expressio unius est exclusio alterius—*Mistake in deed*—*Suit*

deed of sale expressly provided for the payment of the tax on the field by the defendant, but was silent as to the tax on the well Government recovered the amount of the tax on the well from the plaintiff

on the well by the defendant should have arisen from a mistake, his only remedy was a suit for

reforming the deed so as to make it in accord with the actual agreement between the parties at the time of the sale Amount and value of proof required of the plaintiff in such a suit pointed out GULABHAI MONDAR *v* DAYABHAI GOVARDHANDAS

[10 Bom., 51

32. ——— Mistake in boundaries in deed—*Intention of parties*—Where by mistake a part only of the premises intended to be mortgaged is described in the deed, and would alone pass under a bill of sale in execution to the auction purchaser,—*Held* that the Court ought to interfere for the

v. DWARKANATH BISWAS . 25 W. R., 335

33. ——— "Fasli year"—"Agricultural year"—*N.-W. P. Land Revenue Act (XIX of 1873), s 3, cl 8*—*Inconsistent clause*—The practice, adopted by patwaris in some parts of

calendar fasli year In interpreting a document, a clause which is inconsistent in any construction thereof with the remaining provisions of the document must be rejected. *Yad Ram v Amir Singh, W N, All (1882), 174,* and *Sheobaran Singh v. Bisheshar Dayal Singh, W. N, All. (1892), 236,* referred to CHATARBHUJ *v* DWARKA PRASAD

[I. L. R., 18 All., 388

34. ——— Construction of razinama disposing of estate with words "naslan bad naslan."—In cases decided on the construction of documents, in which the expressions mokurari, istemrari, istemrari mokurari, have been considered upon the question whether an absolute interest has been conferred by such documents, or not, it has been taken for certain that, if the words "naslan bad naslan" had been added, an absolute interest would have been clearly conferred Accordingly, in construing a razinama between parties dividing family estate and expressly declaring that the shares should descend "naslan bad naslan,"—*Held* that the insertion of these words was conclusive in itself; the expressed object of this razinama pointing to the same construction, *viz*, that the estate taken under it was absolute. HARIHAR BAKSH *v* UMAN PRASHAD . . I. L. R., 14 Calc., 296

[L. R., 14 I. A., 7

35. ——— Malikana—*Heritable charge*—*Suit for arrears of malikana allowance*—*S sold*

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

suspicion of perjury and forgery. KALI CHANDRA CHOWDRY *v.* SHIB CHANDRA BHADURI [6 B. L. R., 501: 15 W. R., P. C., 12

See BHUGWAN DOSS *v.* HUNNOOMAN PERSHAD SAHOO . . . . . . 18 W. R., 184

45. ———— **Inadequacy of consideration**—*Evidence of want of genuineness in deed—Party wanting deed said to be executed by him declared a forgery.*—Where a deed has been proved and attested in due form, a Court is not justified, without any evidence of its fabrication, in finding from such circumstances as inadequacy of the consideration-money that the deed has been fabricated. Where a person asks to have a deed which is said to have been executed by him declared to be a forgery, he ought to present himself for examination.—WISE *v.* RADHA GOBIND SHAHA . 20 W. R., 181

46. ———— **Attestation by Registrar and proof by witnesses**—*Evidence of genuineness.*—A finding by a Court that a mortgage-deed has been attested by the Registrar of Deeds and proved by witnesses is a sufficiently distinct finding on the *bonâ fides* of the deed. MOORUL SINGH *v.* MOHUN KOOER . . . . . . 9 W. R., 167

47. ———— **Registration of deed**—*Proof of genuineness.*—Registration of a deed does not affect the question of *bonâ fides*, nor is a conveyance to be considered *bonâ fide* simply because there is proof of its execution and some statement that money was on the occasion actually paid by the vendee into the hands of the vendor in the presence of witnesses unacquainted with the circumstances of the parties and the relation they bear to each other. BHOOBUN CHUNDER BURRAL *v.* NAGOREE DOSSIA [15 W. R., 15

MUTHOOROOLLAH *v.* TORABOODDEEN [15 W. R., 305

48. ———————— *Registration—Registered document, Proof of execution of.*—Mere registration of a document is not in itself sufficient proof of its execution. *Kristo Nath Koondoo* v. *Brown, I. L. R., 14 Calc., 176, at p. 180,* dissented from. SALIMATUL FATIMA *alias* BIBI HOSSAINI *v.* KOYLASHPOTI NARAIN SINGH [I. L. R., 17 Calc., 903

49. ———————— *Kabuliat—Primâ facie proof of genuineness.*—A Subordinate Judge having set aside the decision of a Munsif on the ground, *inter aliâ*, that it was improbable that the defendant would have executed a kabuliat in which his rent was suddenly raised to about three times the rate at which he had formerly paid, the Munsif's order was restored on the ground that the registration of the kabuliat with all the due formalities was *primâ facie* proof of the truth of its contents, and that, as this proof was not rebutted by defendant, the Munsif had been right in acting on it. NITTYANUND KUR *v.* RAJ BULLUBH ADYA [25 W. R., 267

50. ———————— *Proof of execution of.*—Although the Court can assume from the certificate of the Registrar that certain persons appeared before him, and that, after satisfying him that they were the persons they represented themselves to be, they admitted execution of a deed presented for registration, yet where the execution of a document is in issue, the circumstance of its having been registered does not dispense with the necessity for independent proof of its genuineness. FUZAL ALI *v.* BIA BIBI CHOWDHRAIN . 7 C. L. R., 276

See KRIPANATH TULLAPATTUR *v.* BHASHAYE MOLLAH . . . . . . 6 W. R., 105

51. ———— **Validity of transfer**—*Benami transactions.*—A transfer by registered deed, admitted to have been executed, but alleged to have been benami and merely colourable, was held on the evidence to have been valid and effective in the absence of evidence showing the contrary. UMAN PRASHAD *v.* GANDHARP SINGH [I. L. R., 15 Calc., 20
L. R., 14 I. A., 127

52. ———— **Deed on two pieces of paper of different dates**—*Suspicion of forgery.*—Where the Judge of first instance doubted the authenticity of a deed, it being written on two pieces of stamped paper of different dates,—*Held*, under the circumstances, not to be a paper deduction. KURALI PRASAD MISSER *v.* ANANTARAM HAJRA [8 B. L. R., 490: 16 W. R., P. C., 16

53. ———— **Evidence of intention with which documents were executed to ascertain their bonâ fides**—*Proceedings against third person.*—*A* and *B*, two undivided Hindu brothers, conveyed to their mother, *C*, one-third share in the ancestral property of the family by a deed of sale, dated 29th August 1851. Subsequently, *A* sold his one-third share in the joint ancestral property to *B* by a deed dated the 4th August 1852. In a suit brought by a judgment-creditor of *A* in 1868 to recover *A*'s half share in the joint property from *B* and *C*, the plaintiff gave in evidence proceedings taken by *A* jointly with his brother *B* in 1856 against a third person, relating to the joint property with a view to show that the two documents were illusory, and intended to screen *A*'s share from execution by his creditors. *Held* that such proceedings were important and relevant evidence, in order to test the *bonâ fides* with which *A* executed the two documents, as it was important to ascertain how *A* subsequently demeaned himself with regard to the property, his share or interest in which he purported to convey by those documents. GIRDHAR NAGJISHET *v.* GANPAT MAROBA . . . 11 Bom., 129

54. ———— **Deeds not intended to operate according to their tenor**—*Nullity of transaction apart from fraud.*—Documents, principally a pottah and a kobala, executed between a Mahomedan parda-nashin lady and one of her relations, purported to represent, the one a patni lease from her of her lands, and the other a sale of her house and ground from the date of the execution. That she received the consideration was

DEED—*continued*

3. CONSTRUCTION—*continued*

other hand, giving the village in equal shares, in perpetuity, to the two brothers of his junior wife Neither of the two brothers took possession of their respective moieties on the testator's death, and the whole village was treated for some time as part of the zamindari, the profits of it being received by, or on behalf of, the widows In 1869 one of the brothers having died, leaving a son, who succeeded to his rights in the village, a family arrangement was made that the entirety of it should be made over to the surviving brother, the present claimant, the son of the other receiving from the widows satisfaction in lieu of his moiety The junior widow having died, the senior got possession of the village, alleging that the surviving brother had merely been appointed to act as manager of it on behalf of herself and her co-widow [illegible]

[illegible] making over the village was not a revocable one, and the interest in the additional half conferred [illegible] was [illegible] to [illegible] was [illegible] he [illegible] ige VELLANKI VENKATA RAMA RAU *v* PAPAMMA RAU

[I. L. R., 21 Mad., 299
L. R., 25 I. A., 84

41. ———— **Trust—Beneficiary**—*Proviso for forfeiture of interest in case of insolvency—* [illegible]

[illegible] sons, in equal shares, for the maintenance of them and their respective families The deed provided that, in case any beneficiary became insolvent, "or do or suffer anything whereby his share or any part thereof would through his act or default or by operation of law" become vested in or payable to other persons, then the share and interest of such person [illegible]

[illegible] be paid by the trustees his share of the income of the trust property. HORMUSJI NOWROJI DAVUR *v* DADABHOY NOWROJI DAVUR

[I. L. R., 20 Bom., 310

42. ———— **Sale-deed with counter-deed undertaking to re-transfer land in event of payments being made**—In a document described as a sale-deed, plaintiff's father professed to give, "in absolute sale," certain lands to the defendant, inasmuch as he was unable to pay a debt owing by him to the defendant On the same day defendant executed a counter deed in which he referred to the said sale-deed and undertook to get the said lands [illegible]

[illegible] that event to cancel the said sale-deed and deliver the same to plaintiff's father The counter deed further provided the plaintiff's father should pay the principal and interest of the said debt by instalments, and that, in default of payment of any instalment due, plaintiff's father should pay the whole amount due, and in default of payment in that manner, defendant should credit the land to himself according to the sale deed, after getting the counter-deed cancelled *Held* that on their true construction the documents showed nothing more than an intention to secure repayment of the debt, that though the provisions for payment by instalments and of the whole amount in default of instalments were contained in the counter-deed signed only by the transferee of the land, they were equivalent to a covenant by the transferor so to [illegible]

[illegible] regarded as having been entered into with reference to the law as propounded in the course of Madras decisions commencing in 1858 and referred to in *Thumbusamy Madelly v Hossain Rowthen, L R, 2 I. A, 241 I L R., 1 Mad, 1*, and that the documents must be construed accordingly RAMAYYA *v* KRISHNAMMA I. L. R., 23 Mad., 114

DEED—*continued*

3 CONSTRUCTION—*concluded*

4 PROOF OF GENUINENESS

43 ———— **Mode of proof**—*Evidence as to similarity of handwriting*—When it becomes necessary to establish the genuineness of a [illegible] me per- [illegible] is not, [illegible] Evi- [illegible]

44. ———— **Suspicion**—*Unregistered deeds.*—Deeds, though unregistered (registration not being compulsory), when proved by all the attesting witnesses and against which there is no evidence on the other side, ought not to be set aside on mere

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

examine the evidence with a view to determine whether such a document be genuine or not; nor will it consider the question whether there is any evidence to connect the plaintiffs with the parties to the deed, when the suit appears to have been conducted in the Courts below as if this was admitted. DEVAJI GOYAJI *v.* GODADBHAI GODEBHAI [2 Bom., 28: 2nd Ed., 27

63. ———— **Property after execution of deed treated as vendor's**—*Deed of sale.*—Where it was shown that for twenty years the plaintiff had enjoyed the profits of an estate made over to her by her husband for her maintenance, and subsequently conveyed to her by a deed purporting to be a deed of sale in part payment of dower,—*Held* that the deed of sale or hibba-bil-awaz was not vitiated merely by the fact of the property being managed by the lady's husband or his agents, or that in the mutiny it was attached and released as her husband's property, and was subsequently recorded in his name. LADO BEGUM *v.* ACHPUL *alias* AMEEROOLNISSA . . . . . 2 Agra, 153

64. ———— **Custody of deed**—*Evidence of genuineness of deed—Ancient deed—Possession.*—Where a kobala upwards of thirty years old was produced from proper custody and offered in evidence, but rejected by the lower Appellate Court as not genuine, because evidence had not been given that it had remained in the custody of the parties after the death of their father, and because it had not been filed in any public office, and no mention made of the purchase in the mofussil or at the sudder station,—*Held* that it was erroneous to require such proof, and to overlook the evidence of possession under the kobala. ANUND CHUNDER POOSHALEE *v.* MOOKTA KESHEE DEBIA . . . . 21 W. R., 130

65. ———— **Failure to prove payment of consideration**—*Evidence of want of bonâ fides of deed—Purchase by pleader.*—In a suit to recover possession with mesne profits of property alleged to have been purchased by the plaintiff from *A* where the defendant *U* was a daughter of *A*'s sister, *R*, who claimed the property through her son, *V*, the question was whether the plaintiff had obtained the property by a valid deed of sale. The plaintiff was a pleader, and while a suit was in progress in which on behalf of his step-mother and another client he contended that *V* had no property at all in the mouzah, he obtained a conveyance from *A*, whose sole title was derived from *V*, which conveyance nominally made to *S T* was never asserted by the plaintiff until seven years later, when he commenced the present suit. The evidence for the payment by the plaintiff of the consideration-money was so unsatisfactory that the High Court summoned him and examined him. *Held* that it was somewhat dangerous to allow the plaintiff, a professional man, who did not give evidence in his own suit in his own behalf, to be called for the purpose of supporting his case which had broken down; that the plaintiff's evidence as to payment of the consideration-money was very unsatisfactory and at variance with his previous deposition, and that, though the mere *factum* of his deed was proved, it was not a *bonâ fide* conveyance. USHRUFOONISSA BEGUM *v.* GRIDHAREE LALL . . . 19 W. R., 118

DEED—*continued.*

4. PROOF OF GENUINENESS—*concluded.*

66. ———— **Deed fraudulent against decree-holder**—*Deed of sale.*—*Held* that the circumstances proved justified the Court in holding that a sale deed relied on by the plaintiff was fraudulent and void as against decree-holders. BEHAREE LALL SAHOO *v.* JUGGERNATH PERSHAD [1 Agra, 41

5. RECTIFICATION.

67. ———— **Rectification of instrument**—*Specific Relief Act (I of 1877), s. 31.*—A mortgagor alleged that a sum in excess of his debt to the mortgagee had been inserted in the instrument; but, on the facts, there being no reason to suppose that there was any fraud or deceit on the part of the mortgagee, or that there was any mutual mistake of the parties as to the amount stated as that for which the security was given, a suit under s. 31 of Act I of 1877 (the Specific Relief Act) to have the instrument rectified was held to have been rightly dismissed. AMANAT BIBI *v.* LACHMAN PERSHAD [I. L. R., 14 Calc., 308
L. R., 14 I. A., 18

6. CANCELLATION.

68. ———— **Cancellation of deed for fraud and collusion**—*Equitable conditions.*—Upon the cancellation of instruments of hypothecation and sale on proof of fraud and collusion between the grantee, who had advanced money, and the manager of the grantor's estate, the grantor having been unduly influenced in the transaction,—*Held* that the condition of cancellation should be, not the repayment of all money received by the manager, but only of sums shown to have been paid to the grantor personally, and of such sums received by the manager as he would have been justified in borrowing in the course of a prudent management of the estate. AJIT SINGH *v.* BIJAI BAHADUR SINGH [I. L. R., 11 Calc., 61: L. R., 11 I. A., 211

69. ———— **Ground for cancellation**—*Mahomedan law—Plea that the deed was inoperative according to the personal law of the parties.*—*Held* in the case of a deed of gift between Mahomedans that it was no ground for cancellation of the deed that possession of the property, the subject of the deed, not having been made over to the donee, the deed might be, according to the Mahomedan law, inoperative. UMRAO BIBI *v.* JAN ALI SHAH . . . . . I. L. R., 20 All., 465

70. ———— **Voluntary transfer—Undue influence**—*Act IX of 1872 (Contract Act), s. 16.*—In a transaction between two persons where one is so situated as to be under the control and influence of the other, the Courts in this country have to see that such other does not unduly and unfairly

DEED—*continued*

4. PROOF OF GENUINENESS—*continued.*

not proved, but had it passed, it would have been distributed between the two deeds, which formed part of one and the same transaction From the acts of the parties it was established that her intent was to deprive her heirs, not herself, and that she had no intention to part with the property *in præsenti*, as the deeds represented that she did. *Held* that, the latter not being intended to operate according to their tenor, the whole transaction was a nullity JIBUN NISSA *v.* ASGAI ALI

[I. L. R., 17 Calc, 937

55. ——— **Deed of sale**—*Evidence that a deed is not intended to have the ordinary operation.*—When a conveyance has been duly executed and registered by a competent person, it requires stro
in holding tl
legal effect
proved that
the deed should be a mere sham, and in order to establish this proof, it needs to be shown for what purpose other than the ostensible one the deed was executed RANGA AYYAR *v* SRINIVASA AYYANGAR

[I. L. R., 21 Mad, 56

56. ——— **Discussion of evidence and its effect**—*Evidence of want of genuineness in deed* —Case in which evidence was discussed and its true effect pointed out, and in which it was held, reversing a decree of the High Court, that an ikrar-

MARI RODESHWAR *v.* MANROOP KOER

[L. R., 13 I. A, 20

57. ——— **Alterations in documents**—*Evidence of want of genuineness.*—A person who presents a document as evidence in an altered and suspicious state must explain the existing state of

KOONWUR *v* MOODNARAIN SINGH

[1 W. R., P. C, 36: 9 Moore's I. A, 1

58. ——— **Production when most**

ness is a fact legally of the utmost importance in determining its genuineness GUNEE BISWAS *v* SREE GOPAL PAUL CHOWDHRY . 8 W. R., 395

59 ——— **Failure to raise objection to deed in former suit**—*Evidence of genuineness of deeds* —Where no issue was raised in former suits as regards certain pottahs filed in those suits, the *bonâ fides* of such pottahs cannot be regarded as a *res judicata* yet (*per* JACKSON, *J.*) where the pottahs (about half a century old) were put forward in suits to which the representatives of the present litigants were parties and no objection was raised then or since, their conduct was held to amount to an admission of, or acquiescence in, the *bonâ fides* of the pottahs KAILAS CHANDRA ROY *v* HIRA LAL SEAL. FAKIR CHAND GHOSE *v* HIRA LAL SEAL

[2 B L. R., A C, 93: 10 W. R., 403

60. ——— **Delay in bringing forward**

RADHAMADHUB GOSSAIN *v* RADHABULLUB GOSSAIN

[2 Ind. Jur., O. S., 5

successfully disputed in a former suit brought during the infancy of the predecessor of the present appellant, who was the son of the alleged original debtor The respondent having failed to account satisfactorily for the non-production of the agreement before, and the probabilities of the case being against the genuineness of the agreement, the suit was dismissed KATCHY KULLYANA RUNGAPPA KALAKA THOLA OODIAR, ZAMINDAR OF OODIAR-PALLIAM *v* BALOOSAMY CHETTY

[3 W. R., P. C, 50: 7 Moore's I. A., 224

62. ——— **Lapse of time between production and necessity for proving**—*Evidence of bonâ fides—Admission* —*A* sued *B* in 1841 to recover possession of certain villages in Gujrat *B* produced a deed purporting to be a conveyance by way of mortgage by *A*'s ancestors of their six-sixteenths share in villages to *B*'s ancestors *A* at

in the present suit brought in 1859 by *A* against *B* to recover the same villages. *Held*, in the absence

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

examine the evidence with a view to determine whether such a document be genuine or not; nor will it consider the question whether there is any evidence to connect the plaintiffs with the parties to the deed, when the suit appears to have been conducted in the Courts below as if this was admitted. DEVAJI GOVAJI *v.* GODADBHAI GODEBHAI [2 Bom., 28: 2nd Ed., 27

63. ———— **Property after execution of deed treated as vendor's**—*Deed of sale.*—Where it was shown that for twenty years the plaintiff had enjoyed the profits of an estate made over to her by her husband for her maintenance, and subsequently conveyed to her by a deed purporting to be a deed of sale in part payment of dower,—*Held* that the deed of sale or hibba-bil-awaz was not vitiated merely by the fact of the property being managed by the lady's husband or his agents, or that in the mutiny it was attached and released as her husband's property, and was subsequently recorded in his name. LADO BEGUM *v.* ACHPUL *alias* AMEEROOLNISSA . . . . . . 2 Agra, 153

64. ———— **Custody of deed**—*Evidence of genuineness of deed—Ancient deed—Possession.*—Where a kobala upwards of thirty years old was produced from proper custody and offered in evidence, but rejected by the lower Appellate Court as not genuine, because evidence had not been given that it had remained in the custody of the parties after the death of their father, and because it had not been filed in any public office, and no mention made of the purchase in the mofussil or at the sudder station,—*Held* that it was erroneous to require such proof, and to overlook the evidence of possession under the kobala. ANUND CHUNDER POOSHALEE *v.* MOOKTA KESHEE DEBIA . . . . 21 W. R., 130

65. ———— **Failure to prove payment of consideration**—*Evidence of want of bonâ fides of deed—Purchase by pleader.*—In a suit to recover possession with mesne profits of property alleged to have been purchased by the plaintiff from *A* where the defendant *U* was a daughter of *A*'s sister, *R*, who claimed the property through her son, *V*, the question was whether the plaintiff had obtained the property by a valid deed of sale. The plaintiff was a pleader, and while a suit was in progress in which on behalf of his step-mother and another client he contended that *V* had no property at all in the mouzah, he obtained a conveyance from *A*, whose sole title was derived from *V*, which conveyance nominally made to *S T* was never asserted by the plaintiff until seven years later, when he commenced the present suit. The evidence for the payment by the plaintiff of the consideration-money was so unsatisfactory that the High Court summoned him and examined him. *Held* that it was somewhat dangerous to allow the plaintiff, a professional man, who did not give evidence in his own suit in his own behalf, to be called for the purpose of supporting his case which had broken down; that the plaintiff's evidence as to payment of the consideration-money was very unsatisfactory and at variance with his previous deposition, and that, though the mere *factum* of his deed was proved, it was not a *bonâ fide* conveyance. USHRUFOONISSA BEGUM *v.* GRIDHAREE LALL . . . . 19 W. R., 118

66. ———— **Deed fraudulent against decree-holder**—*Deed of sale.*—*Held* that the circumstances proved justified the Court in holding that a sale deed relied on by the plaintiff was fraudulent and void as against decree-holders. BEHAREE LALL SAHOO *v.* JUGGERNATH PERSHAD [1 Agra, 41

5. RECTIFICATION.

67. ———— **Rectification of instrument**—*Specific Relief Act (I of 1877), s. 31.*—A mortgagor alleged that a sum in excess of his debt to the mortgagee had been inserted in the instrument; but, on the facts, there being no reason to suppose that there was any fraud or deceit on the part of the mortgagee, or that there was any mutual mistake of the parties as to the amount stated as that for which the security was given, a suit under s. 31 of Act I of 1877 (the Specific Relief Act) to have the instrument rectified was held to have been rightly dismissed. AMANAT BIBI *v.* LACHMAN PERSHAD [I. L. R., 14 Calc., 308
L. R., 14 I. A., 18

6. CANCELLATION.

68. ———— **Cancellation of deed for fraud and collusion**—*Equitable conditions.*—Upon the cancellation of instruments of hypothecation and sale on proof of fraud and collusion between the grantee, who had advanced money, and the manager of the grantor's estate, the grantor having been unduly influenced in the transaction,—*Held* that the condition of cancellation should be, not the repayment of all money received by the manager, but only of sums shown to have been paid to the grantor personally, and of such sums received by the manager as he would have been justified in borrowing in the course of a prudent management of the estate. AJIT SINGH *v.* BIJAI BAHADUR SINGH
[I. L. R., 11 Calc., 61: L. R., 11 I. A., 211

69. ———— **Ground for cancellation**—*Mahomedan law—Plea that the deed was inoperative according to the personal law of the parties.*—*Held* in the case of a deed of gift between Mahomedans that it was no ground for cancellation of the deed that possession of the property, the subject of the deed, not having been made over to the donee, the deed might be, according to the Mahomedan law, inoperative. UMRAO BIBI *v.* JAN ALI SHAH . . . . I. L. R., 20 All., 465

70. ———— **Voluntary transfer—Undue influence**—*Act IX of 1872 (Contract Act), s. 16.*—In a transaction between two persons where one is so situated as to be under the control and influence of the other, the Courts in this country have to see that such other does not unduly and unfairly

DEED—*concluded*

6. CANCELLATION—*concluded*

exercise that influence and control over such person for his own advantage or benefit, or for the advantage or benefit of some religious object in which he is interested, and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognize Where a fiduciary or *quasi*-fiduciary relation had existed, Courts of Equity have invariably placed the burden of sustaining the transaction upon the party benefited by it, requiring him to show that it was of an unobjectionable character and one which it ought not to disturb The exercise of this beneficial jurisdiction is not confined to cases only between guardian and ward, attorney and client, father and son, but the relief thus granted stands upon a general principle, applying to all variety of relations in which dominion may be exercised by one person over another The plaintiff, who on the death of the widow of his brother became entitled to the estate of the deceased, found himself resisted in his claim by wealthy relatives He was a man without means The defendant took him to his house, kept him there, and found him all the money for the purpose of carrying on his litigation with his relatives, in which the plaintiff succeeded While the litigation for mutation of names in respect of the property was pending in

again shortly after the mutation case had terminated in his favour, he executed a deed of endowment of the remaining half in favour of a temple founded by the ancestor of the defendant, and in which the defendant was interested, and the result was that plaintiff was left as poor as he was when he first came into the defendant's hands. Plaintiff sued for cancellation of the deed of endowment, on the ground that the same had been obtained from him by the exercise of undue influence and by means of fraud, and obtained a decree On appeal by the defendant it was *held* that, looking at all the facts, such a

the deed of endowment, was an honest *bond fide* transaction and one that ought to be upheld SITAL PRASAD *v* PARBHU LALL I. L R, 10 All, 535

DEFAMATION.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—DEFAMATION 9 Bom, 451

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES [I. L. R, 10 All., 39
I. L. R., 14 Mad., 379

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS

See JURISDICTION OF CIVIL COURT—COSTS . . I. L R., 15 Bom., 599

DEFAMATION—*continued.*

See CASES UNDER LIBEL.

See LIMITATION ACT, 1877, ART 24 (1859, s 1, cl 2) 2 Agra, 47

See MALICIOUS PROSECUTION. [I. L R., 19 Bom, 717

See PRIVILEGED COMMUNICATION [1 Agra, 33
I. L. R., 7 Mad., 36
I. L. R., 12 Mad., 374
I. L R., 14 Mad., 51

See RIGHT OF SUIT—WITNESS [I. L. R., 10 Mad., 87
I. L. R., 10 All., 425
I. L. R., 15 Calc., 264

See WITNESS—CIVIL CASES—PRIVILEGES OF WITNESSES I. L. R., 10 All., 425
[I. L. R, 10 Mad, 87
I. L. R, 11 Mad., 477
I. L. R, 15 Calc, 264

———— Suit for—

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—DAMAGES 4 B L. R., Ap., 59
[12 W. R, 372

Upheld on review 3 W. R., Cr, 45

2. ———— *Penal Code, s 499, explanation 4—Words per se defamatory*—Explanation 4 of s 499 of the Penal Code does not apply where the words used and forming the basis of charge are *per se* defamatory, though when the meaning of words spoken or written is doubtful, and evidence is necessary to determine the effect of such words and whether they are calculated to harm a particular person's reputation, it is possible that the principle enunciated in the explanation might and would with propriety be applied QUEEN EMPRESS *v* MCCARTHY I. L. R., 9 All., 420

3 ———— **Defamation of a deceased person**—*Suit by surviving member of family of*

for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family,—*Held* not maintainable LUCKUMSEY ROWJI *v* HURBUN NURSEY [I. L. R., 5 Bom, 580

4. ———— **Suit by father in his own right for defamation of daughter.**—A suit for defamation of his daughter cannot be maintained by a Hindu father suing in his own right and not as general attorney or on behalf of the daughter.

DEFAMATION—*continued.*

A suit for defamation can only be brought by the person actually defamed, if the person is *sui juris*, and if not *sui juris*, then under the provisions of the Civil Procedure Code, by his guardian or next friend. *Dawan Singh* v. *Mahip Singh, I. L. R., 10 All., 425,* and *Parvathi* v. *Mannar, I. L. R., 8 Mad., 175,* distinguished. *Subbaiyar* v. *Kristnaiyar, I. L. R., 1 Mad., 383,* and *Luckumsey Rawji* v. *Hurbun Nursey, I. L. R., 5 Bom., 580,* referred to. DAYA *v.* PARAM SUKH **I. L. R., 11 All., 104**

5. ———— **Imputation on a wife—Suit by husband**—*Right of suit.*—In a suit for damages for defamation, it appeared that the words complained of were spoken by the defendant to the plaintiff in the presence of a third party, and were to the effect that the plaintiff's wife had committed adultery with a pariah and that her children had been born to the pariah. *Held* that the suit was not maintainable by the plaintiff. BRAHMANNA *v.* RAMAKRISHNAMA . . **I. L. R., 18 Mad., 250**

6. ———— **Liability for defamation**—*Failure to prove bonâ fide charge.*—The mere failure of a complainant in proving a *bonâ fide* criminal charge does not make him liable to an action for damages for defamation. BROJONATH ROY *v.* KISHEN LALL ROY . **5 W. R., 282**

MOHENDRONATH DUTT *v.* KOYLASH CHUNDER DUTT . . . . . **6 W. R., 245**

7. ———— *Malice—Unprivileged publication.*—The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged. PETER *v.* DUFOUR **[6 W. R., 92**

8. ———— **Nature of defamation**—*Penal Code, s. 499—"Publishing" defamatory matter—Filing petition in Court.*—The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of s. 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of s. 499 of the Penal Code, and not on what may be the English law on the same subject. GREENE *v.* DELANNEY . . . . **14 W. R., Cr., 27**

9. ———— *Untrue statement—Penal Code, s. 499.*—The accused, an inspector of police, was sent to enquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added: "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 of the Penal Code supported under the circumstances of the case. IN THE MATTER OF THE PETITION OF RAJNARAIN SEIN . . . . . **6 B. L. R., Ap., 42**

S. C. RAJNARAIN SEIN *v.* DEEGOBUR PAUL **[14 W. R., Cr., 22**

DEFAMATION—*continued.*

10. ———— *Expression of suspicion—Slander by a railway guard—De minimis non curat lex.*—A railway guard, having reason to suppose that a passenger travelling by a certain train from Madras to Chingleput had purchased his ticket at an intermediate station, called upon the plaintiff and others of the passengers to produce their tickets. As a reason for demanding the production of the plaintiff's ticket, he said to him in the presence of the other passengers, "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bonâ fide*. *Held* the plaintiff was not entitled to a decree for damages. SOUTH INDIAN RAILWAY COMPANY *v.* RAMAKARISTNA **[I. L. R., 13 Mad., 34**

11. ———— *Penal Code, s. 499, excep. 10—Privilege—"Mala fides."*—The complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers in which the complainant was described as a doshi or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice. *Held* that the accused had not acted in good faith, and that the publication was not under the circumstances privileged and protected by Penal Code, s. 499, excep. 10, and that the accused were accordingly guilty of defamation. THIAGARAYA *v.* KRISHNASAMI **[I. L. R., 15 Mad., 214**

12. ———— *Privileged communication—Excommunication from caste—Presumption of bonâ fides.*—Plaintiff was a Hindu widow of the Modh Wánia caste. Defendant was the head of the caste. He received anonymous letters imputing bad conduct to the plaintiff. He was requested to call a caste meeting to consider the matter; he did so, and placed the letters before the meeting, and it was then resolved to warn the plaintiff. The warning was, however, unheeded. So a second meeting was called by the defendant. Plaintiff sent her brother and sister's husband to the meeting in order that they might defend her. But they offered no explanation on her behalf. Witnesses were then heard and ten persons selected to decide what should be done. Defendant was one of those ten, and he communicated to the general meeting the decision they had come to—namely, that the plaintiff should be excommunicated. The meeting unanimously adopted this decision, and the defendant announced the decision of the caste to the gor for him to promulgate. The plaintiff thereupon sued to recover from the defendant R5,249 as damages for defamation. *Held* that the defendant was not guilty of defamation. He acted in the matter honestly, and as he was bound to act in the interests of the caste, and in the discharge of his duties as leader of the caste. *Per* RANADE, J.—The defendant's act was privileged. Defendant was

DEED—*concluded*

6. CANCELLATION—*concluded*

exercise that influence and control over such person for his own advantage or benefit, or for the advantage or benefit of some religious object in which he is interested, and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognize Where a fiduciary or *quasi*-fiduciary relation had existed, Courts of Equity have invariably placed the burden of sustaining the transaction upon the party benefited by it, requiring him to show that it was of an unobjectionable character and one which it ought not to disturb The exercise of this beneficial jurisdiction is not confined to cases only between guardian and ward, attorney and client, father and son, but the relief thus granted stands upon a general principle, applying to all variety of relations in which dominion may be exercised by one person over another The plaintiff, who on the death of the widow of his brother became entitled to the estate of the deceased, found himself resisted in his claim by wealthy relatives He was a man without means The defendant took him to his house, kept him there, and found him all the money for the purpose of carrying on his litigation with his relatives in which the plaintiff succeeded While the litigation for mutation of names in respect of the property was pending in the Revenue Court, and while plaintiff was residing with the defendant, he executed a sale deed in favour of defendant's brother for the nominal consideration of R9,500, or half the property he claimed, and again shortly after the mutation case had terminated in his favour, he executed a deed of endowment of the remaining half in favour of a temple founded by the ancestor of the defendant, and in which the defendant was interested, and the result was that plaintiff was left as poor as he was when he first came into the defendant's hands Plaintiff sued for cancellation of the deed of endowment, on the ground that the same had been obtained from him by the exercise of undue influence and by means of fraud, and obtained a decree On appeal by the defendant it was *held* that, looking at all the facts, such a relation between plaintiff and defendant in the course of the year 1885 had been established as to cast upon the latter the obligation of satisfying the Court that the transaction, which was given effect to by the deed of endowment, was an honest *bonâ fide* transaction and one that ought to be upheld SITAL PRASAD *v* PARBHU LALL I. L. R., 10 All, 535

DEFAMATION.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—DEFAMATION . 9 Bom., 451

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES [I. L. R., 10 All., 39
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DEFAMATION—*continued.*

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See LIMITATION ACT, 1877, ART. 24 (1859, s 1, CL 2) 2 Agra, 47

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[12 W. R, 372

[illegible]

Upheld on review 3 W. R, Cr, 45

2. ———— *Penal Code, s. 499, explanation 4—Words per se defamatory*—Explanation 4 of s 499 of the Penal Code does not apply where the words used and forming the basis of charge are *per se* defamatory, though when the meaning of words spoken or written is doubtful, and evidence is necessary to determine the effect [illegible]

3 ———— **Defamation of a deceased person**—*Suit by surviving member of family of deceased—Cause of action—Damage to reputation of family of deceased by reason of defamation of deceased*—A suit for defamation can only be brought by the person who has been defamed. The fact that [illegible] tainable LUCKUMSEY ROWJI *v*. HURBUN NURSEY [I. L. R., 5 Bom, 580

4. ———— **Suit by father in his own right for defamation of daughter.**—A suit for defamation of his daughter cannot be maintained by a Hindu father suing in his own right and not as general attorney or on behalf of the daughter.

DEFAMATION—*continued.*

Held that the accused was not guilty of defamation. QUEEN-EMPRESS *v.* SADASHIV ATMARAM

[I. L. R., 18 Bom., 205

19. ———— *Privilege—Penal Code, s. 499, exceps. 8 and 10—Letter written to protect religious interests of writer.*—A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within exceps. 8 and 10 of s. 499 of the Penal Code. REG. *v.* KASHINATH BACHAJI BAGUL . . . . . **8 Bom., Cr., 168**

20. ———— Good faith—*Penal Code, s. 499, excep. 8—Privileged communication—Justification—Practice—Cross-examination of complainant.*—*Held* on the evidence in this case, in which the question was whether a person accused of defamation was protected by the eighth exception to s. 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. *Abdul Hakim* v. *Tej Chandar Mukarji, I. L. R., 3 All., 815,* referred to. Where the accused in a case of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross-examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof as to the material incidents of which he was not cross-examined. QUEEN-EMPRESS *v.* DHUM SINGH . . . **I. L. R., 6 All., 220**

21. ———— *Statement in pleading made in good faith—Penal Code, s. 500, excep. (9).*—A pleader or mookhtear relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the ninth exception to s. 500 of the Penal Code, but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith. QUEEN *v.* CHRESTIEN

[2 N. W., 473

22. ———— *Statement made by an accused person in an application to a Court—Statement made in good faith for the protection of the interests of the person making it.*—In an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one Umrao Singh in order to prejudice them in their defence in a civil suit which Umrao Singh had caused to be brought against them,—*Held* that this statement did not amount to defamation—not because of the application of any principles of English law, for such principles did not apply to prosecutions for defamation under the Indian Penal Code—but because the statement fell within the ninth exception to s. 499 of the Indian Penal Code. *Queen-Empress* v. *Balkrishna Vithal, I. L. R., 17 Bom., 573, In re Nagarji Trikamji, I. L. R., 19 Bom., 340, Queen* v. *Pursoram Doss, 3 W. R., Cr., 45, Greene* v. *Delanney, 14 W. R., Cr., 27,* and *Abdul Hakim* v. *Tej Chandar Mukarji, I. L. R., 3 All., 815,* referred to. ISURI PRASAD SINGH *v.* UMRAO SINGH

[I. L. R., 22 All., 234

23. ———— *Penal Code—(Act XLV of 1860), ss. 499 (excep. 9) and 500—Privilege of counsel or pleader—Prosecution by witness—Construction of statute.*—A pleader, in addressing a mamlatdar on behalf of his client, who was charged under s. 125 of the Bombay Land Revenue Code (Bombay Act V of 1879) with wilfully removing boundary marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the offence, and convicted the pleader, and sentenced him to pay a fine of R15 under s. 500 of the Penal Code. *Held,* reversing the conviction and sentence, that in the absence of express malice (which was not to be presumed) the pleader was protected by excep. 9 to s. 499 of the Penal Code. *Held* also that, in considering whether there was good faith (*i.e.,* due care and attention), the position of the person making the imputation must be taken into consideration. In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of excep. 9 to s. 499 of the Penal Code. *Semble*—S. 499 of the Penal Code should be construed without reference to the English law. IN RE NAGARJI TRIKAMJI . **I. L. R., 19 Bom., 340**

24. ———— Newspaper libel—*Penal Code, s. 500—Act XXV of 1867, ss. 5, 7—Burden of proof.*—On the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV of 1867, to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the complainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction on the ground that there was no evidence that the editor was the writer of the libel or permitted its publication. *Held* that, in the absence of proof to the contrary, the declaration was *primâ facie* proof of publication by the editor. *Held* also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. RAMASAMI *v.* LOKANADA

[I. L. R., 9 Mad., 387

25. ———— Intention to injure reputation—*Absence of actual injury to good name.*—To sustain a charge of defamation, it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the

DEFAMATION—*continued.*

the head of the caste, and the caste men assembled were interested in the matter along with the defendant. Anonymous letters were received and the defendant had a duty to perform. The matter was discussed at a properly convened meeting, where the plaintiff's near relations were duly summoned and were in fact present The occasion was lawful and properly exercised to protect mutual interests The privilege was, therefore, complete, and good faith was to be presumed, unless express malice could be shown KESHAVLAL *v.* BAI GIRJA

[I. L. R., 24 Bom., 13

13. ——————— *Good faith—Privilege—Letter written by guru outcasting member of his caste—Penal Code, s 499—B*, the guru or

she should be outcasted. *K* proceeded against *B* for

was proved that the letter was issued after *B* had made an inquiry into the truth of the allegation. The lower Court convicted *Held* that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for

exception to s 499 BASUMATI ADHIKARINI *v* BUDRAM KOLITA I. L. R., 22 Calc., 46

14. ——————— *Publishing order*

respect *Held* that the letter contained no expressions defamatory *per se.* If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged; and if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation. ANONYMOUS

[6 Mad., Ap., 47

15. —— *Publishing order of priest excommunicating person from caste—Penal Code, ss 500, 503, 508—Injury—Privilege—Unnecessary publication —N* having attended a Hindu widow marriage (legalized by Act XV of 1856),

DEFAMATION—*continued.*

a notice lding the which *N* ted to the prescribed penance and obtained a certificate of purification from *S* *S* also sent by post a registered post-card of similar purport to *N* In consequence of the interdict vows in the and was criminal induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation *Held* that the first two charges were unfounded, but that *S*, by communicating the sentence of excommunication by a registered post-card to *N*, was guilty of defamation QUEEN *v.* SANKARA I. L. R., 6 Mad., 381

16. ——————— *Illegal declaration that one is outcasted*—According to the usage of certain Nambudris, a caste enquiry is held when a Nambudri woman is suspected of adultery, and if she is found guilty, she and her paramour are put out of caste. An enquiry was held into the conduct of a certain woman so suspected, she confessed that the plaintiff had had illicit intercourse with her, and

a suit for damages for defamation by the plaintiff against those who had declared him an outcaste,—*Held* the declaration that the plaintiff was an outcaste was illegal, and it having been found that the defendants had not acted *bonâ fide* in making that declaration, the plaintiff was entitled to recover damages. VALLABHA *v.* MADUSUDANAN

[I. L. R., 12 Mad., 495

17. ———— **Publication**—*Penal Code, s 499—Communication of defamatory matter to complainant only—"Making"—Held* by the Full

or publishing of the matter complained of as to constitute an offence within the terms of s 499 of the Penal Code. QUEEN EMPRESS *v* TAKI HUSAIN

[I. L. R., 7 All., 205

18 ——————— *Penal Code (Act XLV of 1860), ss 499 and 500—Sending a notice containing defamatory matter to the complainant.* —The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed." When the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation under s. 500 of the Penal Code,—

DEFAMATION—*continued.*

charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court,—*Held* that the occasion was not privileged; the words complained of, being used maliciously and not in the ordinary course of the proceedings, were uttered maliciously; and the conviction was right. HAYES v. CHRISTIAN

[I. L. R., 15 Mad., 414

33. ——— **Statement by witness**—*Penal Code, s. 500—Privilege of witness.*—*M S* was convicted under s. 500 of the Indian Penal Code of defaming *S S* by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held* that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury and not for defamation. MANJAYA v. SESHA SHETTI

[I. L. R., 11 Mad., 477

34. ——— *Penal Code (Act XLV of 1860), s. 500—Privilege.*—A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding. QUEEN-EMPRESS v. BABAJI

[I. L. R., 17 Bom., 127

QUEEN-EMPRESS v. BALKRISHNA VITHAL

[I. L. R., 17 Bom., 573

35. ——— **True statement but not made in good faith or for the public good**—*Penal Code (Act XLV of 1860), s. 499, exceps. 2 and 9.*—The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. *Held* that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith, or for the public good. EMPRESS v. KAKDE . . . I. L. R., 4 Bom., 298

36. ——— **Statements made by persons in the course of their evidence as witnesses in Court of Justice**—*Relevancy of statements to issue in case—Penal Code (Act XLV of 1860), s. 500.*—Where certain statements alleged to be defamatory were made by certain persons in the course of their evidence as witnesses in a Court of Justice and were relevant to the issue in the case under enquiry,—*Held* that such persons could not be prosecuted for defamation in respect of those statements. WOOLFUN BIBI v. JESARAT SHEIKH

[I. L. R., 27 Calc., 262

DEFAMATION—*continued.*

37. ——— **Defamatory statement made by a person examined in the course of an official or departmental inquiry**—*Witness—Privilege—Qualified privilege—Criminal Procedure Code (1882), ss. 191 and 197—Penal Code (XLV of 1860), ss. 211 and 500—Falsely charging a person with an offence.*—The complainant was Deputy Collector and first class Magistrate of Bijapur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to enquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his enquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation under s. 500 of the Penal Code in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500, and convicted the accused under s. 211 of making a false charge. On appeal the Joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that in making the statement to Mr. Monteath, the accused had acted in good faith, and that his case fell under excep. 8 to s. 499 of the Penal Code. He therefore reversed the conviction under s. 211 and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal, Government appealed to the High Court. *Held* that the accused was guilty of defamation. *Held* also that, in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a "taking cognizance" of the offence. *Held* further that, as Mr. Monteath was not sitting as a "Court" when he made the inquiry and examined the accused, the accused was not entitled to claim an absolute protection from a charge of defamation as a witness in a judicial proceeding. The accused was only entitled to a qualified privilege depending on the exceptions to s. 499 of the Penal Code. QUEEN-EMPRESS v. KARIGOWDA

[I. L. R., 19 Bom., 51

38. ——— **Imputation made in good faith by a person for the protection of his interest**—*Penal Code (Act XLV of 1860), s. 499, excep. 9—Privileged communication.*—In order to substantiate a defence under the ninth exception

EJECTMENT, SUIT FOR—*continued.*

title to the land, and was in possession of it within twelve years before the suit was brought. KRISNAJI NARAYAN v. GOBIND BHASKAR . 9 Bom., 275

9. ———— Right to sue to setaside sale in execution of decree—*Right to sue for ejectment—Title, Sufficiency of.*—In a suit to recover possession of land acquired by plaintiff's vendor by purchase at an auction-sale of the rights and interests of one *S*, where defendant claimed under a deed

plaintiff without a decree first obtained BUNGSHEE DHUR DOSS v. BHUGWAN DOSS . 24 W. R., 117

10. ———— Failure to prove title—*Possession by defendants under void decree.*—*V* mortgaged to the plaintiff his house and certain undivided land in which *H* and others, Hindu co-parceners, had a share. *R* bought the interest of *H* in the land at a Court sale, and let it to *H* and *V*, who, failing to pay rent, were sued by *R*, who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land and rateably distributed the proceeds, except to *V*, who declined to take the amount tendered as his share. In a suit

under the mortgage. *Held* that the defendants, being

[I. L. R., 8 Bom., 539

11. ———— Right to eject mortgagee of raiyat with right of occupancy.—The sons of a zamindar, whose zamindari estate is held on mortgage by a third party, are not justified in ousting the mortgagee of a raiyat having a right of occupancy. KHOSHALEE v. BULJEET . . 3 Agra, 70

KALLY DASSEE . . I. L. R., 4 Calc., 330

13. ———— Fraudulent transfer of property—*Defendant not in possession.*—In a suit for possession by parties claiming as mortgagors against who sets of defendants, (1) the representatives of the original mortgagees, and (2) certain persons who were alleged to have effected in collusion with the first

EJECTMENT, SUIT FOR—*continued.*

defendants a fraudulent transfer of the property from their hands in another name,—*Held* with reference to the nature of the suit, which was one in the nature of ejectment, and which was found to be

possession. AMEENA BEGUM v. DOORDANAH KHANUM . . . . 19 W. R., 44

14. ———— Mortgage—*Redemption, Decree for.*—If a suit is brought in ejectment, and the defendant proves that he holds a mortgage, a decree for redemption cannot be made without his consent. CHANDU v. KOMBI . . I. L. R., 9 Mad., 199

15. ———— Misstatement of area of land—*Precise definition by other description.*—In a suit for ejectment a mere misstatement of the area of the land sought to be recovered ought not to be regarded as anything more than a "false demonstration." If the space is precisely defined by other description, the statement of its measurement in square yards may be treated as surplusage and of no consequence VIRJIVANDAS MADHAVDAS v. MAHOMED ALI KHAN . . I. L. R., 5 Bom., 208

16. ———— Obligation of plaintiff to accept compensation—The Court will not oblige the plaintiff in a suit in the nature of an action of ejectment to accept compensation. SORABJI NASSARVANJI DUNDAS v. JUSTICES OF THE PEACE FOR CITY OF BOMBAY . . . 12 Bom., 250

17. ———— Intervenor—*Issue, Power of Judge to try.*—Where, in a suit brought by a zamindar to eject a raiyat, a person intervenes claiming to be a mortgagee of a portion of the raiyat's tenure, the Judge is competent to try the mortgagee's right to oppose the ejectment. GOPAUL v. RAM SUROOP LALL . . . . 1 Agra, Rev., 51

18. ———— Ejectment for non performance of services—*Rate of rent where service is commuted.*—Where a plaintiff sues for the ejectment . . . has . . . the . . . pay- . . . . .ing, the Court, in deciding against the plaintiff, is not bound to take evidence as to the rate of rent to which the service ought to be commuted. BALINDUR NARAIN v. KALLA MESSOO KOOS . 18 W. R., 340

19. ———— Right to bring ejectment suit—*Suit by lessee while lessor is out of possession.*—A lessee is entitled to maintain a suit for ejectment against the party in possession, notwithstanding the fact that, at the date of the lease, his lessor was not in possession of the property. *Prankrishna Dey* v. *Biswambhar Sein*, 3 *B. L. R., A. C.*, 207, and *Tiery* v. *Kristo Mohun Bose*, *L. R.*, 1 *I. A.*, 76, referred to. ACHAYYA v. HANUMANTRAYUDU . . I. L. R., 14 Mad., 269

20 ———— Suit by second mortgagee to eject first mortgagee in possession—*Right of occupancy, Transfer of—Suit for possession by*

EJECTMENT, SUIT FOR—*continued.*

See CASES UNDER LANDLORD AND TENANT—EJECTMENT.

See CASES UNDER ONUS OF PROOF—EJECTMENT.

See PARTIES—PARTIES TO SUITS—BENAMIDAR . **I. L. R., 25 Calc., 98, 874**
[3 C. W. N., 12, 20
I. L. R., 18 All., 69

See PARTIES—PARTIES TO SUITS—EJECTMENT, SUITS FOR.
[I. L. R., 21 Bom., 229
I. L. R., 20 Mad., 375

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.
[I. L. R., 5 Bom., 295
I. L. R., 10 Bom., 30
I. L. R., 17 Mad., 216

1. ——— **Title, Proof of**—*Necessity for plaintiff to prove superior title.*—In a suit for ejectment the plaintiff must make out a title superior to that of the defendant before he can obtain a decree. MOHESH CHUNDER LAHOORY *v.* SUMBHOO CHUNDER ROY CHOWDHRY . . **2 Hay, 303**

2. ——— *Necessity for plaintiff to prove superior title.*—In a case of ejectment (even though the dispute be merely as to which of the two parties the land belongs) the plaintiff must succeed by the strength of his title only, and not by the weakness of the defence. SUTTO SURN GHOSAL *v.* DHONE KRISTNO SIRCAR **1 W. R., 88**

CHUNDER MONEE CHOWDHRAIN *v.* RAJ KISHORE SHAHA . . . . . . **5 W. R., 246**

See BHOOBUN MOHUN MUNDLE *v.* RASH BEHAREE PAL . . . . **15 W. R., 84**

SHAM NARAIN *v.* COURT OF WARDS
[20 W. R., 197

3. ——— *Necessity for plaintiff to prove superior title.*—It is essential that a claimant, seeking to oust a party in possession of an estate, should establish his own right to the estate, and not rely upon the failure of the title impeached. A decree of the Sudder Court held that, although the title set up by the plaintiff was wholly bad, yet that a party defendant with whom the plaintiff had, by a deed of compromise, agreed to divide the estate, had shown his title, and on that ground decreed possession against the other defendant. Such decree reversed by the Privy Council on appeal, as the effect of the decree would be (1) to defeat the defendant's possessory title without giving him an opportunity of contesting the title of the party by whom he is turned out of possession, and (2) as it was a violation of legal principles which protect possession and of the substantial principles of justice which regulate the joinder of parties and union of titles to sue in one suit. JOWALA BUKSH *v.* DHARUM SINGH . . . . **10 Moore's I. A., 511**

4. ——— *Proof of title of vendor where plaintiff is a purchaser.*—In a suit for ejectment, strict proof of title must be adduced by a plaintiff. It is not sufficient for him to prove that the deed under which he claims was duly executed; he must be put to proof of the title of his vendor. KALEE PERSHAD MOITRA *v.* ITCHA MOYEE
[24 W. R., 337

TIERY *v.* KRISTO MOHUN BOSE. HORENDRO *v.* AKBAR ALI . . . . **L. R., 1 I. A., 76**

5. ——— *Suit for possession of chur land—Onus probandi.*—Where a party seeks to turn out another in possession of chur land which the plaintiff claims as a part of a mehal purchased by him from Government, the suit is in the nature of an ejectment suit, and the plaintiff must recover upon the strength of his own title, and not on the weakness of that of his adversary. It is immaterial in such a case to consider whether or not the land is the property of the defendant; because, unless it is proved to be the property of the plaintiff, the latter is not entitled to turn out the former. SHORNOMOYEE *v.* WATSON & CO.
[20 W. R., P. C., 211

affirming decision of High Court in WATSON & CO. *v.* SHORNOMOYEE . . . . . **9 W. R., 259**

6. ——— **Present right to possession**—*Suit by reversioner against widow for possession.*—A plaintiff who has not a present right to possession cannot sue to eject. Where therefore plaintiffs, divided members of the family of defendant's husband, sued the defendant, a widow, for possession of property which she had received from her husband on the ground that she was improperly alienating it,—*Held* that the Court could not grant the relief asked for. BANGARAIYA *v.* BALABHADRA RAZU
[2 Mad., 386

RAMAN AMMAL *v.* SUBBAN ANNAVI *alias* SUBBAMAMAYAN ANNAVI . . . . **2 Mad., 399**

7. ——— **Ejectment suit by owner of "inter esse termini"**—*Landlord and tenant—Tenant remaining in occupation after passing a razinama—Effect of the razinama.*—The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of *D.* In 1883 the third defendant executed a razinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village:—"Up to the present time my father and I have been cultivating the land, but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases." Shortly after the date of this razinama, the inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession. *Held* that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. BHUTIA DHONDU *v.* AMBO . **I. L. R., 13 Bom., 294**

8. ——— **Right to possession**—*Hindu mortgagee—Want of possession—Sufficient possession to maintain suit.*—In order that a Hindu mortgagee may successfully maintain an action of ejectment against third persons wrongfully in possession of

EMBANKMENT—*concluded.*

bear all losses incurred on that account; and also that he should do embankment work at the proper time and should be liable for loss from negligence. ... was ... it was ... sum ... epairs of embankments, but such payment was not provided for in the kabuliat, and no evidence was given as to the terms of the agreement under which it was paid. *Held* that there was no common law liability to repair imposed on the defendants; that

and Acts relating to embankments in Bengal considered. NUFFER CHUNDER BHOTTO *v.* JOTINDRO MOHUN TAGORE

[I. L. R., 7 Calc., 505: 8 C. L. R., 553

EMBLEMENTS, RIGHT TO—

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHT OF—EMBLEMENTS

[I. L. R., 2 Bom., 670
I. L. R., 13 Mad., 15

EMIGRATION OF NATIVE LABOURERS.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—EMIGRANTS, ETC.

[4 Mad., Ap., 4

ENCROACHMENT.

See LANDLORD AND TENANT—ACCRETION TO TENURE 1 B. L. R., A. C., 21
[22 W. R., 246
I. L. R., 10 Calc., 820
I. L. R., 16 Bom., 552
I. L. R., 25 Calc., 302

See LANDLORD AND TENANT—OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT
[9 C. L. R., 347

See LIMITATION ACT, ART. 149
[I. L. R., 19 Mad., 154

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I. L. R., 20 Mad., 433

See RIGHT OF SUIT—BUILDING, SUIT TO RESTRAIN . . 22 W. R., 73
[25 W. R., 524

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[I. L. R., 18 Bom., 690

ENCROACHMENT—*concluded.*

———— on vacant land.

See POSSESSION—ADVERSE POSSESSION
[1 Agra, Rev., 38
I. L. R., 18 Bom., 338

See RIGHT OF WAY.
[I. L. R., 17 Bom., 648

1. ———— **Legal rights of owner of land**—*Owner not compellable to accept compensation instead of removal of encroachment*—In a suit to recover land adjacent to a temple belonging to the defendants, on which land the defendants had encroached by building verandahs, the lower Courts found that the land sued for was the property of the plaintiff subject to the defendants' right of access to the temple, and directed the defendants to pay compensation to the plaintiff for the encroachment. The plaintiff appealed to the High Court *Held* that, the land being found to be the plaintiff's, the Courts could not compel him to part with his legal rights and accept compensation against his will, however reasonable it might appear to be. The defendants were accordingly ordered to remove the verandahs complained of and to restore possession of the land to the plaintiff. GOVIND VENKAJI *v.* SADASHIV BHARMA SHET . I. L. R., 17 Bom., 771

2. ———— **Injury to property**—*Contributory act—Tort—Contributory negligence*—As in the case of contributory negligence, so an act of one party can only be contributory to the injury he complains of, if by the exercise of ordinary care the other party could not have avoided causing the injury. MADHAVA RAU *v.* FERNANDES

[I. L. R., 17 Mad., 368

3. ———— **Stranger building on land of another**—*Acquiescence of owner—Delay of owner in suing possession—Form of decree.*—It is well established law in England that if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building. Delay by the owner in bringing a suit is not in itself sufficient to create an equity

forthwith to commence to remove his building and to restore the property to the condition in which it was when he took possession, the same to be completed within one year from date of decree. In default, the plaintiff to be at liberty to remove the building at the expense of the defendant. PREMJI JIVAN BHATE *v.* CASSUM JUMA AHMED

[I. L. R., 20 Bom., 298

EJECTMENT, SUIT FOR—*concluded.*

one wrong-doer against another—First and second mortgages of occupancy holding.—Where an occupancy holding was mortgaged under two successive mortgage-deeds to different parties, and, the mortgagees under the first mortgage having been put in possession, the mortgagees under the second mortgage sued to eject them,—*Held* that both parties being wrong-doers, inasmuch as both mortgages were illegal, the defendants who were in possession had a right as against the plaintiffs to retain possession. USUF KHAN *v.* SARVAN . . I. L. R., 13 All., 403

21. ——— Sale by mortgagor of parts of the mortgaged property—*Suit for sale by mortgagee without joining the vendees—Subsequent suit to eject mortgagor's vendees—Cause of action—Right of suit.*—A mortgagor, who had given a simple mortgage over certain land, sold some of the mortgaged property. The mortgagee, after such sale had taken place, and without making the vendees parties to his suit, brought a suit for sale on his mortgage, and having caused the mortgaged property to be sold, including that portion which had been sold by the mortgagor, purchased it himself. The mortgagee then sued to eject the vendees of the mortgagor. *Held* that the suit would not lie, inasmuch as the plaintiff (mortgagee) had at its commencement no title to present possession of that particular portion of the mortgaged property as against anyone. HARGU LAL SINGH *v.* GOBIND RAI

[I. L. R., 19 All., 541

22. ——— Suit for ejectment by one auction-purchaser against the other—*Prior and subsequent mortgages—Mortgaged property sold twice in execution of decrees in suits in each of which the other mortgagee was not a party—Form of decree.*—*B* mortgaged a house, first to *D.* and subsequently to *M* and *C.* *M* and *C* brought a suit on their mortgage without making *D* a party to it, obtained a decree, and put the house up to sale, and it was purchased by *M L.* Subsequently to the date of the decree in the above suit, *D* brought a suit on his mortgage, without making *M* and *C* parties thereto, obtained a decree and put the house up to sale, and it was purchased by *B D.* *B D* then sued *M L* for ejectment and damages. *Held* that the plaintiff's suit must be dismissed; and that it was not competent to the Court to grant a decree in favour of the plaintiff conditioned on the failure of the defendant to redeem the mortgage upon which the plaintiff's title was ultimately based. *Hargu Lal Singh* v. *Gobind Rai, I. L. R., 19 All., 541,* followed and explained. MADAN LAL *v.* BHAGWAN DAS . . . . I. L. R., 21 All., 235

ELECTION.

——— Doctrine of—

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY.

[I. L. R., 20 Bom., 316
I. L. R., 21 Bom., 349

ELECTION—*concluded.*

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ELECTION, DOCTRINE OF.

[I. L. R., 14 Bom., 438

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SURVIVORSHIP.

[I. L. R., 15 Bom., 443

——— List of candidates at—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.

[I. L. R., 19 Calc., 192, 195 note, 298
I. L. R., 22 Calc., 717

——— Order refusing to set aside—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 21 Bom., 279

EMBANKMENT.

——— Erection of—

See RIGHT OF SUIT—INJURY, TO ENJOYMENT OF PROPERTY.

[I. L. R., 18 Mad., 158

1. ——— Addition to existing embankment—*Notification, Publication of—Beng. Act II of 1882 (Bengal Embankment Act), ss. 6, 76, cl. (b), and 80.*—The words "shall add to any existing embankment" in cl. (*b*), s. 76 of Bengal Act II of 1882, are not intended to mean any repair of an existing embankment, even if the effect of such repair be to make the embankment higher or broader, but only means an extension in the length of an existing embankment. The notification referred to in s. 6 of the Act must be published in the manner provided by s. 80, and it is not sufficient for such notification merely to be published in the *Calcutta Gazette.* GOVERDHAN SINHA *v.* QUEEN-EMPRESS . I. L. R., 11 Calc., 570

2. ——— Maintenance of embankment—*Prescriptive right—Liability for damage done by escape of water.*—Where a defendant shows a prescriptive right to maintain a bund, and uses all reasonable and proper precautions for its safety, he cannot be made liable for damage caused by the escape or overflow of water on to the lands of others and the consequent injury of the crops thereon, if the escape or overflow be caused by the act of God, or *vis major.* RAM LALL SINGH *v.* LILL DHARY MUHTON . . . I. L. R., 3 Calc., 776

See MADRAS RAILWAY COMPANY *v.* ZAMINDAR OF CARVETINAGARAM

[14 B. L. R., 209: L. R., 1 I. A., 364

3. ——— *Inundation—Embankments—Liability to repair—Beng. Act VI of 1873—Regs. II, VIII, and XXXIII of 1793—Reg. VI of 1806—Reg. XI of 1829—Act XXXII of 1855.*—In a suit for damages caused by the overflow of a river through an embankment on the defendant's land, it appeared that the defendants held under a kabuliat from Government, which provided that the zamindar should not object to pay rent on the score of drought or inundation; that he should

ENDOWMENT—*continued.*

Lord Chancellor in England. PANCHCOWRIE MULL *v.* CHUMROOLALL

[I. L. R., 3 Calc., 563: 2 C. L. R., 121

KALI CHURN GIRI *v.* GOLABI . 2 C. L. R., 128

RUP NARAIN SING *v.* JUNKO BYE

[3 C. L. R., 112

3. ———— *Creation of endowment, Presumption of—Erection of temple—Ownership, Presumption of.*—The mere fact of the owner of land having erected a temple and planted a grove thereon does not of itself, without any further evidence, indicate a dedication to the god and a cessation of the rights of private ownership in respect of such land. DAKHNI DIN *v.* KARIM-UN-NISSA

[I. L. R., 16 All., 412

4. ———— *Property in British India of a temple outside British India—Jurisdiction in suit to declare right to officiate in temple and for share of temple property.*—The plaintiff was a member of a family which had the management, and received the income, of certain property situate in British India belonging to a temple situate at Ashta in the Nizam's territory. Part of the income was devoted to religious services and part to the support of the family. The plaintiff sued to recover by partition his share of the income

[illegible]

to officiate at the temple which was outside British India. According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns, and of allowing alienation within certain restrictions TRIMBAK RAMKRISHNA RANADE *v.* LAKSHMAN RAMKRISHNA RANADE . . . I. L. R., 20 Bom., 495

5. ———— *Succession in*

[illegible]

for portion of claim—The plaintiff, the zamindar of Sivagunga, sued in a subordinate Court to remove the defendant from the office of head of a muth. The defendant was a married man living with his wives and children, whom he maintained with the produce of the property of the muth, and it appeared that he had failed to perform the ceremonies of the institution. The muth in question came into existence under a deed of endowment or "charity grant," whereby the first zamindar of Sivagunga granted land to his guru for the erection and maintenance of a muth and the performance of certain religious exercises in perpetuity, and provided that the head of the muth should be of the line of disciples of the original grantee whose spiritual family he desired to perpetuate In 1867 a predecessor in title of the plaintiff had sued unsuccessfully to recover certain pro-

[illegible]

to confirmation by the zamindar No sanction had been obtained for the institution of the present suit. It appeared that the trusts of the muth had been violated and the income misapplied, and that there was no qualified disciple in whom the right of succession had vested, and that the members of the plaintiff's family were the only persons interested in the appointment. *Held* (1) that the jurisdiction of the subordinate Court was not ousted by Act XX of 1863, since the trusts of the institution were in the nature of private trusts, (2) that sanction under s. 539 of the Civil Procedure Code was not a prerequisite of the suit for the same reason; (3) that the suit was not barred by limitation, its object being to prevent a specific endowment from being diverted from its legitimate object and to re-attach it to that object; (4) that the suit was not barred under s. 13 or s. 43 of the Civil Procedure Code, (5) that the proper decree was (1) to declare the plaintiff's right to appoint a qualified person with the concurrence of the rest of his family; (2) to direct him to do so within a given time, failing which the suit should stand dismissed with costs. If such appointment was made, notice should be given to the other members of the plaintiff's family before it was confirmed; if such appointment were confirmed, the property should be directed to be delivered to the person appointed to be administered in accordance with the trusts and usage of the muth. *Semble*—That the paradesi or head of the muth might be a married man, provided he had been duly initiated. SATHAPPAYYAR *v.* PERIASAMI

[I. L. R., 14 Mad., 1

6. ———— *Public, religious, and charitable trust—Hindu temple, with a dharmashala and sadavart attached to it—Trustee—Liability of constructive trustee.*—A Hindu built a temple in honour of the deity Shri Pandurang, to which were attached a dharmashala and a sadavart for feeding travellers and giving alms to the poor. For the maintenance of the temple and the charities

[illegible]

Procedure (Act XIV of 1882) with the sanction of

[illegible]

ENDORSEMENT.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 14 Bom., 472

See GOVERNMENT PROMISSORY NOTE. [13 B. L. R., 359

See CASES UNDER HUNDI—ENDORSEMENT.

See CASES UNDER PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

See REGISTRATION ACT, s. 17. [I. L. R., 14 Bom., 472

See STAMP ACT, 1879, s. 39. [I. L. R., 11 Mad., 40

See STAMP ACT, 1879, SCH. II, ART. 15. [I. L. R., 10 Mad., 64

——— **Assignment and re-transfer by—**

See STAMP ACT, 1869, SS. 34 AND 41. [I. L. R., 3 Calc., 347

——— **Forged—**

See BILL OF EXCHANGE. [I. L. R., 15 Bom., 267

See HUNDI—PROPERTY IN HUNDI AND FORGED HUNDI. [7 B. L. R., 275, 289 note

——— **of transfer on bond.**

See STAMP ACT, 1879, s. 13. [I. L. R., 17 Bom., 687

——— **on deed of sale.**

See REGISTRATION ACT, 1877, s. 17. [I. L. R., 2 Bom., 547

——— **on mortgage-bond.**

See REGISTRATION ACT, 1877, s. 17. [I. L. R., 9 All., 108

——— **to allow third person to sue.**

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES. [3 B. L. R., O. C., 130
2 C. W. N., 286

ENDOWMENT.

See CASES UNDER ACT XX OF 1863.

See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT I. L. R., 17 Mad., 343
[L. R., 21 I. A., 71

See DECREE—FORM OF DECREE—ENDOWMENT . . . 21 W. R., 334
[I. L. R., 24 Bom., 50

See HINDU LAW—CUSTOM—ENDOWMENT. [L. R., 1 I. A., 209
I. L. R., 14 Bom., 90

See CASES UNDER HINDU LAW—ENDOWMENT.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

ENDOWMENT—*continued.*

See CASES UNDER MALABAR LAW—ENDOWMENT.

See ONUS OF PROOF—TRUST, REVOCATION OF . . 10 B. L. R., P. C., 19

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO . I. L. R., 13 Mad., 277
[I. L. R., 17 Mad., 143

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ENDOWMENT. [I. L. R., 14 All., 413

See TRUST . I. L. R., 15 Bom., 625

1. ——— **Religious endowment**—*Civil Procedure Code, 1877, s. 539.*—S. 539 of the Civil Procedure Code, 1877, does not apply to the case of an endowment for purposes religious as well as charitable. KARUPPA *v.* ARUMUGA [I. L. R., 5 Mad., 383

2. ——— *Suit for management of religious endowment—Right of suit—Act XX of 1863, s. 18—Parties—Jurisdiction of High Court.*—The plaintiffs, describing themselves as the Calcutta Tairo Pantee Anungo Punch Brethren, in whom (as they alleged) was vested the management and control of the temples, endowments, and worship of the Degumbery sect of Jains, and who formed the committee for the management of all the Jain charities as well in Calcutta as in all the other towns and places in India, brought a suit, praying, *inter alid*, for the construction of a will, and for a declaration of their rights thereunder as members of the said Punch, and to have property dedicated by the will to religious purposes ascertained and secured. *Held per* KENNEDY, *J.*, in the Court below, that the description of the character in which the plaintiffs sued was uncertain and ambiguous; that, inasmuch as the property in question was not dewutter, the plaintiffs were not sebaits, and all they could claim, therefore, was a right of management; and that a mere manager, without some special power which the Hindu law confers on sebaits, could not institute such a suit; that the plaintiffs not being a corporation could not sue in a corporate character; that assuming religious endowments had been created by the will, leave to bring the suit should have been obtained under s. 18 of Act XX of 1863; and that, if the gifts in the will could be treated as charitable bequests, possibly the Advocate General could sue. *Held* on appeal, reversing the decision of the lower Court, that the right in which the plaintiffs sued was sufficiently shown, and that the object of the suit was not to assert any personal right of ownership in the plaintiffs. *Held*, further, that the Advocate General was not a necessary party, although it was desirable that such suits should be brought only with his consent, or by the leave of the Court. *Held*, further, that suits of this description do not fall under Act XX of 1863, but come under the ordinary jurisdiction of the Court, inherited from the Supreme Court, and conferred upon that Court by its Charter—a jurisdiction similar in its general features to that of the

ENDOWMENT—*continued.*

of the trustees, defendants to the suit *Held* that

of Act

for the

should

Board

Lakshmandas Parashram v *Ganpatrav Krishna*, I L R, 8 Bom, 365, and *Jawahra* v *Akbar Husain*, I. L R, 7 All, 178, referred to. *Held* also that, there being no special provision in the endowment for the appointment of trustees, the right of nomination remained vested in the founder of the endowment, and that the right to nominate continued to his heirs. *Gossami Sri Gridhariji* v. *Romanlalji Gossami*, I L. R, 17 Calc, 3: L R, 16 I. A, 137, referred to. SHEORATAN KUNWARI v RAM PARGASH [I. L. R., 18 All., 227

12. ———— *Trust—Ground for removing hereditary trustee—Mistake by trustee as to true legal position—Appointment of a devasthan committee—Scheme of management*—A mistake by a hereditary trustee of a devasthan as to his true legal position does not of necessity afford a ground for removing him from his post of manager and entrusting it to new hands The management of a devasthan being found to be lax and improvident, but not fraudulent and dishonest, the Court declined to remove the manager, but appointed a devasthan committee to supervise and control him, and framed a scheme for the management of the trust ANNAJI RAGHUNATH GOSAVI v. NARAYAN SITARAM [I. L. R., 21 Bom., 556

13. ———— *Devasthanam committee—Grounds for removal from office—Errors of judgment on part of committee man.*—Mere error in judgment on the part of a member of a devasthanam

of a devasthanam committee consists primarily in seeing that its endowments are appropriated to their legitimate purposes, and are not wasted. It is not a part of the duty of such a committee to interfere with the trustees in matters relating to rituals. TIRUVENGADATH AYYANGAR v SRINIVASA THATHACHARIAR . . . I. L. R., 23 Mad., 361

14. ———— *Devasthanam committee—Dismissal of dharmakarta by three out*

ceived petitions and took evidence, submitting the

ENDOWMENT—*concluded*

results of his enquiry to two other members successively, the three signing an order calling upon the dharmakarta to present himself at the office for the purpose of an enquiry in certain charges laid against him No date was fixed for the enquiry, and the two remaining members of the committee took no part in the proceedings. The dharmakarta took no notice of the order, whereupon the same three committee-men signed and issued another resolution dismissing him from his post This resolution was sent to the other

BAYYAR . . I. L. R., 23 Mad., 483

15. ———— *Powers of a Christian congregation to elect under which Bishop- ritual*

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Bishop—Suit for partition of the endowment—In the year 1806, a fund was started by a caste of Roman Catholic boatmen in Royapuram for the purpose of supplying the religious wants of the caste, and in 1829 the Church of St Peter at Royapuram was erected. The fund was under the control of the Government Marine Board, which in 1830, in consequence of disputes between the headmen of the caste, suspended all payment. In 1863 a member of the caste, claiming to be sole surviving headman, brought a suit against Government for a declaration that he was sole surviving headman, and as such entitled to the sole management of the funds then in the hands of Government, which funds the Government paid into Court to the credit of the said suit. By the decree in this suit it was declared that the fund in question belonged to the whole body of Roman Catholic boatmen in Royapuram, that it must be devoted to the religious observances of the body, and that it rested with that body to determine whether in spiritual matters the Church should continue under the Vicar Apostolic or the Goanese Bishop of Mylapore In 1886 a concordat was executed between the Pope of Rome and the King of Portugal, the effect of which was to place St. Peter's Church within the territorial jurisdiction of the Vicar Apostolic. Plaintiffs, who were members of the Goanese party, complained that, having regard to the effect of the concordat of 1886, it would be impossible for their party —even if in a majority—to elect a priest of their own party, and prayed for a division of the fund. *Held* that, even if this were so, this fact would not justify the Court in taking away from St. Peter's Church part of its endowment. CHINNASAMI MUDALI v. ADVOCATE GENERAL [I. L. R., 17 Mad., 406

ENDOWMENT—*continued.*

property was not a public, religious, and charitable trust; that he was not a trustee; that the plaintiffs had no right to sue; and that the suit was time-barred. *Held* (1) that, having regard to the fact that a certain number of the public had always used the temple, that there was attached to it a dharmashala, and that the surplus funds not required for the service of the temple were to be applied to feeding travellers and maintaining a sadavart, the intention of the founder was to devote the property to public, religious, and charitable purposes; (2) that although the defendant was not appointed a trustee, yet by taking charge of the endowment, and purporting to manage it as temple property, he made himself a constructive trustee, and was liable as such to the beneficiaries. JUGALKISHORE *v.* LAKSHMANDAS RAGHUNATH DAS [I. L. R., 23 Bom., 659

7. ——— *Madras Regulation VII of 1817—Order of Revenue Board appointing manager—Suit by trustees for possession.*—The suit was brought by the trustees of certain pagodas for the recovery of six villages for the defendant on behalf of the pagodas, and to declare a copper sanad, purporting to be an ancient grant on which defendant based his title, a forgery. The District Judge considered that the evidence sufficiently established that the title to the villages was in the temples, and not in the defendant, but he was also of opinion that, as defendant had been lawfully placed in management by the Board of Revenue in 1858, he was entitled to hold the villages for life. He therefore declared plaintiff's reversionary title as trustee of the temples on the death of the defendant. Defendant appealed from this decision as to the title, and plaintiff appealed as to the part of the decree which refused him immediate possession of the property. *Held* by INNES, *J.*, that the title to manage must reside in the pagoda if it did not reside in the defendant, that the evidence abundantly negatived the title of the defendant, and that plaintiff was entitled to possess and manage the property as trustee of the temples. Upon the question whether plaintiff was precluded from recovering during the lifetime of defendant, by reason of the order of 1858, placing defendant in possession,—*Held* that the Government could not create a valid title to more than they themselves possessed; that they had simply taken over the possession and management of the endowment, and afterwards given it over to defendant; that by so doing they relieved themselves of the trust they had undertaken under Regulation VII of 1817, but did not thereby appoint defendant a manager under Regulation VII of 1817. NALLATHUMBI BATTAR *v.* NELLAKUMARA PILLAI . . . 7 Mad., 306

8. ——— *Hindu or Mahomedan religious endowment, Alienation or pledge of—Bombay Act II of 1863, s. 8, cl. 3—Common law of the country.*—Religious endowments in this country, whether they are Hindu or Mahomedan, are not alienable; though the annual revenues of such endowments, as distinguished from the *corpus*, may occasionally, when it is necessary to do so in order to raise money for purposes essential to the temple or other institution endowed, but not further or otherwise, be pledged. Bombay Act II of 1863, s. 8, cl. 3, contained no new law, but merely declared the pre-existing common law of this country. NARAYAN *v.* CHINTAMAN . . . I. L. R., 5 Bom., 393

9. ——— *Charity—Family idols—Sale of trust property in execution—Suit by trustee to recover the property—Limitation.*—The Hindu law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public. In execution of decrees against the plaintiff as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held* that the plaintiff was entitled to recover the property. The gift was a valid one, creating a religious endowment under the Hindu law, and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. RUPA JAGSHET *v.* KRISHNAJI GOVIND [I. L. R., 9 Bom., 169

10. ——— *Charitable endowment—Trust property sold in execution—Rights of heirs of the creator of the trust against execution-purchaser.*—A trust-deed of certain property executed by the member of a Hindu family provided that neither he nor his heirs should incumber or alienate it, but that in case of necessity his heirs might maintain themselves out of the income while administering the trust of a certain charity. The provisions of the trust were not proved to have been observed by the settlor or his family, and the settlor on one occasion disclaimed the trust. The trust property was attached and sold in execution of personal decrees passed against the settlor and another member of his family. The widow of the latter, after the death of the settlor, sued to recover the land from the execution-purchaser as heir to the settlor. *Held* the plaintiff was not entitled to recover the land. *Rupa Jagshet* v. *Krishnaji Govind, I. L. R., 9 Bom., 169,* distinguished. SUPPAMMAL *v.* COLLECTOR OF TANJORE . . . . I. L. R., 12 Mad., 387

11. ——— *Act XX of 1863, s. 14—Bengal Regulation XIX of 1810—Civil Procedure Code (1882), s. 539—Suit to remove trustees of Hindu religious endowment—Right of representative of founder of trust to nominate trustee.*—The Maharaja of *B* in 1862 assigned certain lands situated in Bengal for the maintenance of a temple at Chauria in the Gorakhpur district, and appointed certain trustees of the endowment. Those trustees dealt with the property in a manner inconsistent with the trust by making alienations thereof as if it were their own private property. In 1893 the representative in title of the original settlor sued in the Court of the District Judge of Gorakhpur to have certain alienations made by the said trustees set aside and the property restored to its original uses, and for the appointment of a new trustee or new trustees in pleae

ENGLISH LAW—*continued*

its branches, but only *sub modo* and with the excep-

forfeiture of lands held in Calcutta or the mofussil by an alien, and devised by a will executed according to the Statute of Frauds, for charitable purposes *Semble*—The Statute of Mortmain does not extend to the British territories in the East Indies MAYOR OF LYONS v. EAST INDIA COMPANY

[1 Moore's I. A., 175

6. ——— Inheritance, Law of—*English law how far applicable*—The case of *Mayor of Lyons* v. *East India Company, 1 Moore's I. A., 175,* does not mean to decide that the Courts of this

points out that there are certain portions of the English statute law which from their very nature were only passed for reasons connected with England, and which would not be applicable in India or any Colony of the British Crown, *e g*, the Mortmain Acts, the Law of Aliens, and the like SARKIES v. PROSONOMOYEE DOSSEE . I. L. R., 6 Calc., 794: 8 C. L. R., 76

7. ——— Attainder, Law of—*Law in force in India.*—*Per Cur*—The English law of attainder did not apply in India in 1783 PAPAMMA v VENKATADRI APPA RAU. NARASIMHA APPA RAU v VENKATADRI APPA RAU I. L. R., 16 Mad., 384

8. ——— Attorneys—*Stat 3 Jac I, c. 7*—Stat. 3 Jac I, c 7, has not been extended to India WILKINSON v. ABBAS SIRKAR

[3 B. L. R., O. C., 96

10. ——— Bankruptcy—*Stat. 6 Geo. IV, c. 16, and 2 & 3 Will. IV, c. 114—Proof of bankruptcy under English Commission.*—The Stat. 6 Geo. IV, c 16, and 2 & 3 Will IV, c. 114, made to facilitate the proof of bankruptcy and assignment in England, were held not to extend to the Courts in India, and in an action by the assignee

given as would have been required to prove the fact if no statutory regulations had been made CLARK v ROOPLALL MULLICK. CLARK v. DOORGAMONEY DOSSEE . . . . 2 Moore's I. A., 263

11. ——— Case Law—*Application of English precedents to India.*—English precedents are only to be applied in India after being carefully weighed and tested with regard to the customs and habits of the people. JUGGOBUNDOO SHAW v GRANT, SMITH & CO. . . . . 2 Hyde, 129

12. ——— *Principles of English Common Law and Equity Courts.*—The different principles on which Courts of Law and Equity in England administer justice observed upon, and the necessity of bearing in mind this distinction when English cases are referred to, pointed out. PEDDAMUTHULATY v TIMMA REDDI 2 Mad., 270

See as to English cases *per* MACPHERSON, *J.*, in PARBATI CHARAN MOOKERJEE v RAMNARAYAN MATILAL . 5 B. L. R., 396, at pp. 400, 401

13. ——— Contracts—*Common law of England*—The requirements of the common law of England cannot, unless made applicable by legislation or sanctioned by well established judicial usages, be imported into the construction of a contract made in this country, unless it be clear from the construction of the contract that the parties at the time then entered into it had such requirements in view, and intended that the contract should be controlled by them GREAT EASTERN HOTEL COMPANY v. COLLECTOR OF ALLAHABAD . 2 Agra, Ex. O. C., 1

14 ——— *Agreements under* ... tives ... ween ... glish ... the country KRISHNA v. RAIYAPPA SHANBHAGA

[4 Mad., 93

15. ——— Equitable mortgage—*Mad Reg II of 1802, s 17*—Madras Regulation II of 1802, s 17, enacts that, in the absence of any

plaint to establish a lien on land, created by an equitable mortgage by deposit of title-deeds. *Held* (in the absence of any agreement that the transaction was to be governed by any particular local law) that under Madras Regulation II of 1802, s. 17, the principles of English law respecting equitable mortgages applied. VARDEN SETH SAM v. LUCKPATHY ROYJEE LALLAH

[9 Moore's I. A., 303

16. ——— Estoppel—*Approbation and reprobation of transaction*—The principle that a party cannot both approbate and reprobate the same transaction is applicable to Indian cases. MAKHANLALL v SRIKRISHNA SINGH

[2 B. L. R., P. C., 44: 11 W. R., P. C., 19
13 Moore's I. A., 157

17. ——— Hundis—*Analogy between hundis and bill of exchange—Application of English law*—Where the analogy between native hundis and English bills of exchange is complete, the English law is to be applied. SUMBOONATH GHOSE v JUDDOONATH CHATTERJEE 2 Hyde, 259

18. ——— Immoveable property—*Laws applicable to Bombay—Lex loci—Realty and personalty.*—The *lex loci* report of the Indian Law Commissioners and the introduction of English law into India discussed. Distinction taken, with reference to the observations of Lord Kingsdown

ENGLISH COMMITTEE OF HIGH COURT.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.
[I. L. R., 1 Calc., 219

———— Dismissal of Munsif—*Power of Division Bench of High Court.*—A Munsif who had been dismissed by an order of the English Committee, consisting of four Judges of the High Court, applied to a Division Bench, consisting of the Chief Justice and MITTER, *J.*, to reconsider his case. The Chief Justice having dismissed his application, while MITTER, *J.*, considered that he was entitled to a re-hearing, he appealed under cl. 15 of the Letters Patent. The Court considered it unnecessary to enter into the merits of the questions raised, and held that, the Munsif having been removed by an order of four Judges forming the English Committee, no Division Bench had any power to reconsider, or review, or set aside, or to order the Judges of the English Committee to reconsider, review, or set aside the decision of the English Committee. IN THE MATTER OF THE PETITION OF HURISH CHUNDER MITTER
[10 B. L. R., 79 : 18 W. R., 209

IN RE DENONATH MULLICK
[10 B. L. R., 80 and 82 note

ENGLISH LAW.

See CIVIL PROCEDURE CODE, s. 102.
[I. L. R., 22 Calc., 8

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS.
[I. L. R., 16 All., 53

See DEFAMATION.
[I. L. R., 19 Bom., 340

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . . . 4 Mad., 51
[I. L. R., 7 All., 44

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS . I. L. R., 16 Calc., 677
[L. R., 16 I. A., 44

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, AND BEQUESTS TO A CLASS—REMOTENESS.
[I. L. R., 2 Calc., 262

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE—COMPENSATION FOR IMPROVEMENTS.
[I. L. R., 8 Calc., 582

See LIMITATION ACT, 1877, s. 26.
[I. L. R., 14 Bom., 213

See LIS PENDENS.
[2 Ind. Jur., N. S., 169
1 Hyde, 160
11 Bom., 64
I. L. R., 6 Bom., 168

See MORTGAGE—TACKING.
[5 B. L. R., 463
2 B. L. R., Ap., 45

ENGLISH LAW—*continued.*

See PARSIS . . 4 Bom., O. C., 1
[5 Bom., A. C., 109
I. L. R., 2 Bom., 75
I. L. R., 5 Bom., 506
I. L. R., 6 Bom., 151, 363
I. L. R., 13 Bom., 302
I. L. R., 22 Bom., 355

See PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP . 3 B. L. R., A. C., 238
[10 B. L. R., 312
L. R., I. A., Sup. Vol., 86

See RIGHT OF WAY.
[I. L. R., 16 Bom., 552

See STATUTES, CONSTRUCTION OF.
[I. L. R., 19 Bom., 340

See TERRITORIAL LAW OF BRITISH INDIA.
[1 B. L. R., O. C., 87

See TRESPASS—GENERAL CASES.
[I. L. R., 2 Mad., 232

See VENDOR AND PURCHASER—LIEN.
[Marsh., 461
9 Moore's I. A., 303

1. ———— Applicability of, to natives of India.—It has always been the policy of the Courts of this country not to apply the strict rules of English law to natives of this country. PARABDI SAHANI *v.* MAHOMED HOSSEIN . . 1 B. L. R., A. C., 37

2. ———— Law in mofussil—*Bom. Reg. IV of 1827, s. 26.*—Although the English law is not obligatory upon the Courts in the mofussil, they ought, in proceeding according to justice, equity, and good conscience (Bombay Regulation IV of 1827, s. 26), to be governed by the principles of English law applicable to a similar state of circumstances. DADA HANAJI BABAJI JAGUSHET . 2 Bom., 38 : 2nd Ed., 39

WEBBE *v.* LESTER . 2 Bom., 55 : 2nd Ed., 52

3. ———— *English rules of equity in mofussil.*—Instances in which the rules of English Courts of Equity have been applied in the mofussil, referred to. WAMAN RAMCHANDRA *v.* DHONDIBA KRISHNAJI . I. L. R., 4 Bom., 126

4. ———— Advancement, Doctrine of —*Benami purchase—Europeans in India.*—The English doctrine of advancement is applicable in India as between a father and daughter, both of English extraction and living under English law. The status of the daughter, under an alleged *bond fide* purchase, made by her father for her advancement when a minor, cannot be set aside except by positive proof that the father merely made use of her name as he would that of any servant or stranger, retaining the beneficial interest in the property for himself. KISHEN KOOMAR MOITRO *v.* STEVENSON 2 W. R., 141

5. ———— Aliens, Law relating to—*Devise of lands for charitable purposes—Statute of Mortmain—Introduction of English law into India.*—The introduction of the English law into a conquered or ceded country does not draw with it that branch which relates to aliens if the acts of the power introducing it show that it was introduced, not in all

ENGLISH LAW—*concluded*

30. ———— Superstitious uses, Statute of.—The English statute as to superstitious uses is not applicable to the Courts in India, and these Courts have jurisdiction to entertain suits for the establishment and administration of native religious institutions ADVOCATE GENERAL *v.* VISHVANATH ATMARAM . . . 1 Bom., Ap., 9
KHUSALCHAND *v.* MAHADEO GIRI 12 Bom., 214

31. ———— . . . . :
Binding effect o
Principle of
Hindu law adm . . . . .
of equity in England hold a voluntary declaration of trust to be binding against the declarant. VENKATACHELLA MANUJAKAREY *v.* THATHAMMAL
[4 Mad., 460

32. ———— Wagers—*Stat. 8 & 9 Vict., c. 109 (Games and wagers)*.—The Stat 8 & 9 Vict., c. 109, amending the law relating to games and wagers, does not extend to India. RAMLALL THAKOORSEYDASS *v.* SOORJUMMULL DHONDMULL
[4 Moore's I. A., 339

ENHANCEMENT OF RENT.

See BENGAL RENT ACT, 1869, s 31
[I. L. R., 20 Calc., 498

See CASES UNDER BENGAL TENANCY ACT, s 29

See BENGAL TENANCY ACT, s 50
[I. L. R., 6 Calc., 617
I. L. R., 25 Calc., 744
4 C. W. N., 513

See BENGAL TENANCY ACT, s 158.
[I. L. R., 21 Calc., 807

See BENGAL TENANCY ACT, s 188
[I. L. R., 17 Calc., 695
I. L. R., 19 Calc., 593
I. L. R., 25 Calc., 917

See BOMBAY LAND REVENUE ACT, ss 85, 86 . I. L. R., 16 Bom., 583

See CONTRACT ACT, s 74.
[I. L. R., 22 Calc., 65

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—ENHANCEMENT OF RENT

See CASES UNDER DECLARATORY DECREE, SUIT FOR—RENT AND ENHANCEMENT OF RENT

See CASES UNDER DECREE—FORM OF *DECREE—ENHANCEMENT OF RENT*

See GHATWALI TENURE
[B. L. R., Sup Vol., 559
11 B. L. R., 71
14 Moore's I. A., 317
13 B. L. R., 134
L. R., I. A., Sup. Vol., 181
I. L. R., 3 Calc., 351

See CASES UNDER KABULIAT,—PROOF NECESSARY IN SUIT.

See KABULIAT—REQUISITE PRELIMINARIES TO SUIT
[B. L. R., Sup. Vol., 25, 203
4 W. R., Act X, 5
W. R., 1864 Act X, 3, 37, 60
5 W. R., Act X, 88

See CASES UNDER ONUS OF PROOF—ENHANCEMENT OF RENT.

1. RIGHT TO ENHANCE.

1. ———— Priority of title or tenure—*Inference of right to rent.*—A suit for enhancement implies such a priority of title or tenure existing between the parties that a claim to some rent is legally inferrible from it. The decision in *Saraomoyee v.*

ENGLISH LAW—*continued.*

as to Calcutta in the *Advocate General* v. *Surnomoyee Dossee, 9 Moore's I. A., 425-426,* between Bombay, which was held by the English in full sovereignty, and Calcutta, which was merely held by them as a factory. Statement of circumstances which led to the passing of Fergusson's Act, 9 Geo. IV, c. 33, and Act IX of 1837, relating to the immoveable property of Parsis. NAOROJI BERAMJI *v.* ROGERS . . . . 4 Bom., O. C., 1

19. ——— Insurance—*Applicability to Hindus—Law where no principle of Hindu law is applicable—Contract of insurance.*—Where the defendants, underwriters of a policy of insurance on go ds on board a vessel bound from Bombay to Calcutta, were Hindus, but no principle of Hindu law was applicable, the parties having selected the English language for the expression of their contract,—*Held* that the case was to be determined in accordance with the principles of English law. HARRIDAS PURSHOTAM *v.* GAMBLE . . 12 Bom., 23

20. ——— Limitation, Law of—*Application of statutes to India.*—The Statute of Limitations, 21 Jac. I, c. 16, extended to India. EAST INDIA COMPANY *v.* ODITCHURN PAUL

[5 Moore's I. A., 43

RUCKMABOYE *v.* LULLOBHOY MOTTICHUND

[5 Moore's I. A., 234

It applied to Hindus and Mahomedans as well as Europeans in civil actions in the Supreme Court. RUCKMABOYE *v.* LULLOBHOY MOTTICHUND

[5 Moore's I. A., 234

21. ——— Married woman's property—*Law applicable to Hindu converts.*—The English law relating to a married woman's property, and the right of the husband therein, is not necessarily applicable to Hindu converts to Christianity. The rule of decision in such cases is the rule prescribed by equity and good conscience, which is in each case to refer the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged. PANDU *v.* SURBOMONGOLA DOSSEE . 1 W. R., 22

22. ——— Notice, Doctrine of—*Priority of registered deed.*—The English equitable doctrine of notice, where there is a contest as to the priority of a deed registered under Act XVI of 1834 or Act XX of 1866 over an unregistered deed of a date prior to those Acts, is applicable in India. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI

[7 Bom., O. J. C., 45

23. ——— Oaths in Courts of Justice—*Stat. 17 & 18 Vict., c. 125.*—The English Stat. 17 & 18 Vict., c. 125, does not apply to India VALU MUDALI *v.* SOMERBY . 2 Mad., 246

24. ——— Personalty, Law relating to—*How far English law is applicable in Calcutta—Term of years—Armenians—Construction of power in deed to invest.*—The English law relating to personalty applies to personalty in India held by British subjects and others to whom the English law is applicable. A term of years is therefore personalty in India as it is in England. Armenians in India are subject to the English law. A power contained in a trust-deed to invest R20,000 "in or upon any real or Government securities, or in or upon any public funds at interest," is of an optional character, and not imperative, and does not alter the character of the original property so as to convert it from personalty into realty. NICHOLAS *v.* ASPHAR

[I. L. R., 24 Calc., 216

25. Prescription Act—*Law of mofussil.*—The English Prescription Act does not apply to this country in the mofussil. JOY PROKASH SINGH *v.* AMEER ALLY . . 9 W. R., 91

See CASES UNDER PRESCRIPTION.

26. ——— Primogeniture, Law of—*Law applicable to Portuguese in Bombay.*—The Portuguese inhabitants of the town and island of Bombay, not having had their laws, and usages having the force of laws, preserved to them by the treaty by which Bombay was (1661) ceded to the English, are subject to English law, so far as the same has been introduced into Bombay, and has not since been varied by legislation. Where a Portuguese inhabitant of Bombay, being entitled to certain immoveable estate in perpetuity, died intestate before the 1st of January 1866 (on which day the Succession Act, 1865, came into force), leaving two nephews by a sister as his next-of-kin, it was held that the elder of them, as heir-at-law of the intestate, was entitled to succeed solely to such immoveable estate. LOPES *v.* LOPES . . . . 5 Bom., O. C., 172

27. ——— Profit a prendre—*Rule as to statutes affecting the Crown—Profit à prendre—Right of pasturage in Bombay Presidency—Prescription.*—The rule of construction according to which the Crown is not affected by a statute, unless specially named in it, applies to India. The rule of English law that a claim to a profit *à prendre* cannot be acquired by the inhabitants of a village either by custom or prescription does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. SECRETARY OF STATE FOR INDIA *v.* MATHURABHAI

[I. L. R., 14 Bom., 213

28. ——— Sheriff's sale—*Sale in execution of decree—Law in mofussil.*—The law of the mofussil was the *lex rei sitæ* at Sheriff's sales, and controls or modifies the English law as to execution and delivery. BROWN *v.* RAM COMUL GHOSE. GOPEE CHUNDER CHUCKERBUTTY *v.* RAM KOMUL GHOSE . . . . W. R., 1864, 179

29. ——— Suicide—*Forfeiture of property.*—The English law of forfeiture of the personal property of persons committing suicide, if it ever applied to Europeans in India, is not applicable to Natives. *Quære*—Whether the law ever had existence as regards Europeans in India. ADVOCATE GENERAL OF BENGAL *v.* SURNOMOYEE

[1 W. R., P. C., 14 : 9 Moore's I. A., 387

ENHANCEMENT OF RENT—*continued.*

1. RIGHT TO ENHANCE—*continued.*

v. ICHAMOYEE DASSEA . I. L. R., 4 Calc., 612

18.———Independent talukh formerly part of a zamindari—*Decree of 1805—Bengal Regulation VIII of 1793, ss. 5 and 50—Bengal Tenancy Act, 1885, s 67.*—A decree of the Sudder Diwani Adalut in 1805 declared that a talukh was fit to be separated from the zamindari of which it had originally been part according to the provisions of s 5, Regulation VIII of 1793 The decree directed that, until separation, rent should be paid by the talukhdar to the zamindar "according to the jumma

payable quarterly. HEMANTA KUMARI DEBI *v.* JAGADINDRA NATH ROY . I. L. R., 22 Calc., 214 [L. R., 21 I. A., 131

rent at his pleasure (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey HARIBIN JOTI *v* NARAYAN ACHARYA 6 Bom., A. C., 23

20. ——— *Miras—Limited power to enhance.*—An inamdar's power to enhance the rent of mirasi tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country. PRATAPRAV GUJAR *v.* BAYAJI NAMAJI . I. L. R., 3 Bom., 141

21. ——— *Mirasdars—Right of inamdar to enhance their rent—Custom.*—Mirasdars in an inam village cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limits of custom. VISHVANATH BHIKAJI *v.* DHONDAPPA . I. L. R., 17 Bom., 475

22. ——— *Permanent tenant*—In every part of India the Government or its alienee is debarred, if not by law (as in Bengal), yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit What that limit is, must be determined by the circumstances of each case In a suit by an inam-

the old custom of the country, Scindia would have been entitled to enhance it, and upon a virtual admission of the defendant allowed enhancement to the extent of one-half the produce PARSOTAM KESHAVDAS *v.* KALYAN RAYJI I. L. R., 3 Bom., 348

23 ——— Nij-jote lands held by tenant

Act

landl

if the tenant continues in occupation, he must be taken to have agreed by implication to pay the said rent JANOO MUNDUR *v* BRIJO SINGH 23 W. R., 548

24. ——— Lessee of house—*Rent of sub-tenant.*—The lessee of a share of a house has a right to raise the rent of such share, while in the occupation of a sub-tenant without a lease, after due notice of the increased rate, and to proceed to eject him if he refuses to pay the higher rent, even though he has been in possession for many years. RAM LALL *v* CHUMMON GHUTTUCK . 24 W. R., 271

25 ——— Shilatri lands—*Bom. Reg I of 1808, s. 4—Right of inamdars to raise assessment on shilatri lands*—Government, by an indenture, dated the 25th January 1819, conveyed to *A* and *B*, and their heirs and assigns, certain villages in the island of Salsette, with the exception of such spots of shilatri tenure as might be therein, or on any part thereof, which could only become the property of *A* and *B*, on their purchasing the same from the proprietors Since 1819, the holders of

an action brought by an heir of *B* and *A* in 1868

tion I of 1808, s. 4, cls. 1 and 2, containing admissions by Government (which then was the

ENHANCEMENT OF RENT—*continued.*

1. RIGHT TO ENHANCE—*continued.*

Suttees Chunder Roy, 10 Moore's I. A., 123, commented on. SATYASARAN GHOSAL *v.* MOHESH CHUNDER MITTER

[2 B. L. R., P. C., 23 : 11 W. R., P. C., 10
12 Moore's I. A., 263

2. ——— Suit not brought under Rent Act—*Suit to assess land at enhanced rate—Act X of 1859.*—A suit to assess land and recover rents at an enhanced rate must be dismissed if not brought under some section of the Rent Act. SREEDHUR JHA *v.* DABEE DUTT . . . . . 9 W. R., 170

See LALUNMONEE *v.* AJOODHYA RAM KHAN
[23 W. R., 61

3. ——— Suit to assess land paying no rent.—A suit to assess rent upon land paying no rent at all is not a suit for enhancement of rent. BARODA KANT ROY *v.* RADHA CHURN ROY
[13 W. R., 163

4. ——— Lakhiraj tenure—*Resumption, Necessity of, before enhancement.*—A decree in a suit for resumption must be obtained before rent can be recovered against a tenant holding under a lakhiraj tenure. HILL *v.* KHOWAJ SHEIKH MUNDUL
[Marsh., 554 : 2 Hay, 663

ROMESH CHUNDER DUTT *v.* GOOROO DOSS NUNDEE
[W. R., 1864, 204

MAHOMED MYANOBOOL HEK *v.* MAHOMED SYUD KHAN . . . . 1 W. R., 15

NUND KISHORE LAL *v.* KUREEM BUKSH KHAN
[5 W. R., Act X, 62

MODEE HUDDIN JOWARDAR *v.* SANDES
[12 W. R., 439

5. ——— Hereditary conditional tenure—*Resumption, Necessity of, before enhancement—Descendant of grantee of jaghir.*—A suit to enhance is not maintainable against the descendant of the grantee of a hereditary conditional jaghir. The zamindar must first sue to resume on the ground that the jaghir has been determined by breach of the condition through neglect of the service. NILMONEY SINGH DEO *v.* RAMGOPAUL SINGH CHOWDHRY
[Marsh., 518

6. ——— Punchukee lakhiraj lands—*Necessity for resumption before enhancement.*—A zamindar may sue to enhance punchukee lakhiraj lands without first suing for their resumption. MADHUB CHUNDRA JANAH *v.* RAJKISSEN MOOKERJEE
[7 W. R., 86

7. ——— Tullubi bromuttur tenure—*Necessity for resumption before enhancement.*—A tullubi bromottur tenure is not a lakhiraj tenure, and it is not necessary for a landlord to bring a suit for its resumption before he can sue for enhancement of its rent. NILMONEE SINGH *v.* CHUNDER KANT BANERJEE . . . . . . 14 W. R., 251

8. ——— Beng. Reg. VII of 1822, s. 9—*Act X of 1859, s. 13—Right to enhance without notice.*—S. 9, Regulation VII of 1822, related only to settlement, not to collection of rents, and did not entitle a person claiming from Government as a private zamindar to enhance rents without proceeding under the law for the collection of rent and without giving notice of enhancement under s. 13, Act X of 1859. NAWAB NAZIM OF BENGAL *v.* RAM LALL GHOSE *alias* JOGOBUNDHOO GHOSE
[6 W. R., Act X, 5

9. ——— Rent paid in kind—*Conversion into rent paid in money.*—A zamindar may sue to convert rents paid in kind into rents paid in money. The fact of the raiyat having paid in kind for a number of years is no bar to enhancement. THAKOOR PERSHAD *v.* MAHOMED BAKUR
[8 W. R., 170

10. ——— Assignment of rents to creditor for a term beyond existing lease—*Right on expiration of term.*—The mere circumstance that the landlord has assigned to a creditor a certain amount of the rents for certain years extending beyond an existing lease, does not prevent him from enhancing the rent after the expiration of the term. ESSEN CHUNDER MANICK *v.* SEEBJOY THAKOOR . . Marsh., 435 : 2 Hay, 503

11. ——— Sale of tenure in execution of decree—*Bar to enhancement.*—A landowner is not estopped from enhancing rent by the circumstance that he has caused the tenure to be sold under a decree. SURNOMOYEE *v.* ADOITO CHURN ROY
[Marsh., 605

12. ——— Farmer for a term of years—*Absence of stipulation prohibiting enhancement.*—A farmer for a term of years is entitled to enhance the rent of raiyats holding under him when there is no condition or stipulation in his lease precluding him from so doing. RUSHTON *v.* GIRDHAREE TEWAREE
[Marsh., 331 : 2 Hay, 394

13. ——— Ijaradar—*Absence of stipulation prohibiting enhancement.*—An ijaradar is entitled to enhance the rent of raiyats holding under him where there is no condition or stipulation in his lease precluding him from so doing. DOORGA PROSAD MYTEE *v.* JOYNARAIN HAZRA
[I. L. R., 2 Calc., 474

14. ——— Dur-ijaradar.—A dur-ijaradar can enhance the rents of the estate of which he holds the sub-lease. GUNGARAM *v.* UJOODHYARAM MYTE . . . . . . 2 W. R., 158

15. ——— Auction-purchaser.—An auction-purchaser cannot eject a raiyat having a right of occupancy, or enhance his rent, except in the manner prescribed by law. DABEE BHUGGUT *v.* BEECHUN RAOOT . . W. R., 1864, Act X, 111

16. ——— *Act I of 1845.*—An auction-purchaser under Act I of 1845 is not entitled to sue to enhance the rent of a tenant, not being a raiyat or cultivator, without his consent. JUGGODESHURY DOSSIA *v.* UMA CHURN ROY
[7 W. R., 237

17. ——— *Beng. Reg. XLIV of 1793, s. 5.*—According to the decision of the

ENHANCEMENT OF RENT—*continued*

2. LIABILITY TO ENHANCEMENT—*continued.*

37. ——— Lands held in excess of pottah—*Act X of 1859, s 14*—The words "rent free" in cl. 14, s 1, are not used in contradistinction

[illegible]

form part of what was covered by the pottah, they are held to have been occupied as land included in the pottah since before the Decennial Settlement, and the rent of them cannot therefore be enhanced. JANOKEE BULLUB CHUCKERBUTTY *v.* NOBIN CHUNDER ROY CHOWDHRY . . . 2 W. R., Act X, 33

38. ——— *Act X of 1859,*

[illegible]

for enhancement of rent under Act X of 1859, s. 17, cl. 3, and the Court would grant such relief, notwithstanding that the plaintiff also asked that execution of a kabuliat might be ordered after determining the rate of rent. MUKTAKESHI DEBEE CHOWDRAIN *v* SAJED SHEIK . 2 B. L. R., Ap., 5

39. ——— Cultivators related to zamindar—*Assessment of rent—Rate of rent*—*Held* that mere relationship does not constitute a class of cultivators, and a zamindar who allowed some of his kindred to hold at favourable rates cannot be compelled to show similar favour to other cultivators who may be equally near in relationship to him DABEE SINGH *v* PUNCHUM SINGH

[2 Agra, Part II, 203

40. ——— Transferable tenure—*Mutation of names—Tenant who has transferred his holding—Liability of*—The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent re adjusted. In a suit for enhancement it was found that the defendant had, prior to institution, sold his holding, which by custom was transferable without the consent of the landlord, to a third party There had been no mutation of names, or payment of a nazar, [illegible] l had [illegible] fully [illegible] on of [illegible] end, and the suit against him did not lie ABDUL AZIZ KHAN *v.* AHMED ALI . I. L. R., 14 Calc., 795

(*b*) PARTICULAR TENURE-HOLDERS AND TENURES

41. ——— Jungleboory tenants.—Jungleboory tenants are liable to enhancement DHUNPUT SINGH *v* GOOMAN SINGH

[W. R., 1864, Act X, 61

HARAN CHUNDER GHOSE *v.* GOOROO CHURN SIRCAR . . . 10 W. R., 421

42. ——— Moostagirs—*Act X of 1859, ss. 15 and 16*—Moostagirs are protected from enhancement, not as raiyats, but as intermediate tenants, under ss 15 and 16, Act X of 1859. DHUNPUT SINGH *v* GOOMAN SINGH

[W. R., 1864, Act X, 61

Affirmed by Privy Council in DHUNPUT SINGH *v* GOOMAN SINGH. . 11 Moore's I. A., 433

[9 W. R., P. C., 3

43. ——— Ex-maafeedar—*Rent-free holding*—*Held* that an ex-maafeedar, whose land at the time of settlement was separately assessed, and the sum so assessed made payable through the zamindar, cannot be treated as a mere raiyat liable to enhancement KEDAR POOREE *v* KULLAN KHAN

[1 Agra, Rev., 56

See HUMEDOOLLAH KHAN *v* PRAN SOOKH

[3 Agra, 280

44. ——— Farmers holding over—*Act*

[illegible]

MANJEE . . W. R., 1864, Act X, 93

45 ——— Purchaser of transferable tenure—*Act X of 1859, s 6*—The purchaser of a transferable tenure, under which the rent cannot be enhanced, is entitled to the benefit of it, although he may not have occupied for twelve years, or acquired a right of occupancy under s. 6, Act X of 1859 FISHER *v.* NUNDOO COOMAR MUNDLE

[Marsh., 625

46. ——— Purchaser from raiyat at sale in execution—*Liability to enhancement.*—A purchaser at a sale in execution of a decree of the right and interest of a person in the position of a raiyat holding at a low and favourable rate (the privilege being personal to him and his family) is not entitled to exemption from enhancement FLOWERT *v.* KOOTOOB HOSSEIN 2 Agra, 274

47. ——— Under-tenants—*Tenants holding directly from Government.*—In a suit against the Government for a declaration that certain lands held by the plaintiffs were not liable to enhancement of rent, it appeared that the Government had in 1825 granted, at the rates then prevailing in the neighbourhood, the lands in question to the predecessors in title of the plaintiffs; that possession had been taken by the Government shortly afterwards, but again restored under an order of the Board of Revenue in 1827, a settlement being made at R2-8 per kani; that in 1248 it was arranged that the plaintiffs should pay their rent through a talukh-

[illegible]

and that the Government subsequently gave the plaintiffs notice of enhancement. *Held* that the plaintiffs were not under-tenants, and that, under the circumstances, their tenure was not liable to enhancement. SECRETARY OF STATE *v.* RADHA PERSHAD WASTI . . . . 9 C. L. R., 189

ENHANCEMENT OF RENT—*continued.*

1. RIGHT TO ENHANCE—*concluded.*

immediate landlord of the shikmidars) that Government itself had no such right, plaintiff was consequently not entitled to raise the rent. DADIBHAI JAHANGIRJI *v.* RAMJI BIN BHAU . 11 Bom., 162

2. LIABILITY TO ENHANCEMENT.

(*a*) GENERAL LIABILITY.

26. ———— Raiyats having right of occupancy.—No tenures are liable to enhancement of rent by judicial proceedings except the tenures of raiyats having right of occupancy, unless on the foundation of custom or of agreement expressed or implied. SURNOO MOYE *v.* BLUMHARDT [9 W. R., 553

CHUNDER COOMAR BANERJEE *v.* AZEEMOODEEN [14 W. R., 100

27. ———— Raiyats with right of occupancy.—In the absence of express stipulation or of a right such as is mentioned in ss. 3 and 4, Act X of 1859, all raiyats having rights of occupancy are liable to have their rents enhanced, if such rents are below the rate payable by the same class of raiyats for land of a similar description, and with similar advantages in the places adjacent. PUHLWAN THAKOOR *v.* GODOOREE KOONWAR [W. R., F. B., 142

28. ———— Raiyats with stipulation prohibiting enhancement—*Agreement made before Act X of 1859.*—If a zamindar has come under any valid and binding engagement with the raiyat to the effect that the rent shall not be enhanced during the term of the settlement or during any other term, Act X of 1858 gives him no privilege to set aside that contract. SHIB SINGH *v.* BHOOP SINGH [2 Agra, 303

BYJNATH *v.* CHUTTER SINGH . 3 Agra, 181

29. ———— *Settlement with Government for higher revenue.*—If a raiyat has a right of occupancy, his rate of rent can only be enhanced in the mode prescribed by law; if he has not, his landlord can only claim arrears of rent on the ground of actual agreement, express or implied. Such claim cannot be made at an enhanced rate simply because the landlord has settled with Government at a higher rate of revenue. ROOPUN ROY *v.* PURDEEP SINGH . . . . . . 22 W. R., 10

30. ———— Tenure not agricultural—*Tenant at inadequate rent.*—Except in the case of agricultural holdings, landlords and tenants cannot be compelled to enter into a contract against their inclination, nor can a tenant who holds at an inadequate rent and who has no right to hold at a fixed rate be compelled by proceedings in the Civil Court to pay a higher rate of rent. LALUNMONEE *v.* AJOODHYA RAM KHAN . . 23 W. R., 61

See KYLASH CHUNDER SIRCAR *v.* WOOMANUND ROY . . . . . . 24 W. R., 412

31. ———— Intermediate tenants—*Hereditary and transferable tenure—Act X of 1859, s. 15.*—Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Perpetual Settlement, the tenants (being intermediate between proprietor and raiyats) are protected from enhancement by s. 15, Act X of 1859. Tenants, intermediate between proprietors and raiyats, are subject to the Rent Act, which contemplates under-tenants as distinct from raiyats, and contains provisions relating to both classes. DHUNPUT SINGH *v.* GOOMAN SINGH [9 W. R., P. C., 3 : 11 Moore's I. A., 433

32. ———— *Act X of 1859, ss. 13 and 17.*—Where a notice under s. 13, Act X of 1859, clearly recognized defendants as talukhdars, and at the same time sought to enhance rent under s. 17, it was held (following a decision of the Privy Council), *Dhunput Sing v. Gooman Sing, 9 W. R., P. C., 3*, that a suit for enhancement would not lie, as s. 17 did not apply to intermediate holders, but only to raiyats having rights of occupancy. BUDURROONISSA CHOWDHRAIN *v.* CHUNDER COOMAR DUTT [10 W. R., 455

33. ———— *Act X of 1859, s. 17.*—The holding of an intermediate tenure does not remove the holder from the category of raiyats whose lands may be enhanced under s. 17, Act X of 1859; nor does the sub-letting of part of a tenure alter the original character of the raiyat's holding. UMA CHURN DUTT *v.* UMA TARA DABEE [8 W. R., 181

HURISH CHUNDER CHOWDHRY *v.* RAM CHUNDER CHOWDHRY . . . . . 18 W. R., 528

S. C. on review, RAM CHUNDER CHOWDHRY *v.* HURISH CHUNDER CHOWDHRY . 19 W. R., 196

34. ———— *Act X of 1859, s. 17.*—There is no class of persons intermediate between the tenure-holders and the raiyats entitled to a notice of enhancement under s. 17, Act X of 1859. RAM CHUNDER CHOWDHRY *v.* HURISH CHUNDER CHOWDHRY . . . . . 19 W. R., 196

Affirming on review . S. C. 18 W. R., 528

35. ———— *Act X of 1859, ss. 13-16.*—Under ss. 13 to 16 of Act X of 1859, the rent of a tenant who is a middleman may be enhanced on notice on the same grounds (except as provided in those sections) on which he was liable to enhancement prior to the passing of that Act. GRISH CHUNDER GHOSE *v.* RAMTONOO BISWAS . 12 W. R., 449

36. ———— Tenants assessed at Government settlement—*Zamindars with percentage for risk and labour of collection—Act X of 1859, s. 23, cl. 3.*—*Held* that the plaintiff, whose land at the time of the settlement was assessed with a proportionate Government demand, was not liable to enhancement by zamindars who, in their right, were restricted to get a certain percentage only for risk and labour of collection by the order of the settlement officer. MOOSEY KHUTEREY *v.* MAHOMED TUQEE [1 Agra, Rev., 3

WAZEER ALI *v.* DUNNE . 1 Agra, Rev., 15

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continued.*

62. ———— Land with buildings—*Mokurari.*—Where a pottah was granted at "mokurari" rates, and the lands were taken for erecting buildings thereon, and carrying on the works of an indigo factory, it was held to indicate a building lease at a fixed rent, and a suit for enhancement would not lie in respect of such land. KERRY *v.* MADANLAL DOSS . . 1 B. L. R., S. N., 11

63. ———— *Beng. Act VIII of 1869.*—A suit for enhancement of rent under Bengal Act VIII of 1869 will not lie in respect of lands occupied by buildings. BROJO NATH KUNDU CHOWDHRY *v.* STEWART [8 B. L. R., Ap., 51: 16 W. R., 216

64. ———— *Jurisdiction*—*A suit for enhancement of rent of land covered with buildings* will not lie in the Revenue Court under cl. 4, s. 23 of Act X of 1859, but is cognizable only by a Civil Court DURGA SUNDARI DASI *v.* BIBI UMDATANNISSA 9 B. L. R., 101: 18 W. R., 234

On appeal from S. C. in which Judges differed. [17 W. R., 151

KHAIRUDDIN AHMED *v.* ABDUL BAKI [3 B. L. R., A. C., 65: 11 W. R., 410

CHURCH *v.* RAMTANU SHAHA [9 B. L. R., 105 note: 11 W. R., 547

RAMDHUN KHAN *v.* HARADHAN PARAMANICK [9 B. L. R., 107 note: 12 W. R., 404

IN RE BRAMMAMYI BEWA (MITTER, *J.*, dissenting) . . . 9 B L R., 109 note [14 W. R., 252

65. ———— A plaintiff brought

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termine suits concerning the rent of such lands, and therefore had jurisdiction to entertain the present suit *Held per* MITTER, *J.*, that the word "land" in Bengal Act VIII of 1869 is used in its ordi-

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CHOWDHRY *v.* LOWTHER . . . 9 B. L. R., 121

S. C. BROJONATH KOONDOO CHOWDHRY *v.* GOPEENATH SHAHA . . . . 17 W. R., 183

66. ———— Land forming part of street in town—*Beng. Act VIII of 1869—Land with buildings on it.*—Bengal Act VIII of 1869 relates only to agricultural holdings, and its provisions have no application to land *forming part of a street in a town.* The mere fact that a building has been erected on a piece of land with the consent of the proprietor does not give the occupant a right to hold the land perpetually at the same rate; and if the proprietor with an ultimate view of raising the rent brings a suit for ejectment, he has a right to have his title to eject tried in that suit COLLECTOR OF MONGHYR *v.* MADAR BUKSH . 25 W. R., 186

67. ———— Land let for building purposes—A suit for enhancement of rent, in pur-

[illegible]

ancestor of plaintiffs to the ancestor of defendants for building purposes PURNO CHUNDER ROY *v.* SADUT ALI . 2 C. L. R., 31

68 ———— Land for purpose of silk factory—*Enhancement of rent, suit for—Beng Act VIII of 1869, s 14—Notice of enhancement*—Plaintiff, having served notice of enhancement, in terms of s 14 of Bengal Rent Act VIII of 1869, of certain lands held by defendants on which reservoirs and buildings for the purposes of a silk filature had

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was held at a fixed rate or not *Held* further that although the suit was brought under the general law

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[3 C L. R., 513

69 ———— Lease of land for building Perpetual leases for building are only protected as held at a fixed rate, when the rent is fixed by the original leases. SURBOMUNGULA DOSSEE *v.* SUTTISH CHUNDER ROY . 2 W. R., 231

[illegible]

lands, and is not protected from enhancement. NUFFER CHUNDRA SAHA *v.* GOSSAIN JYSINGH BHARUTTEE . 3 W. R., Act X, 144

71. ———— Dwelling-house in village—*Jurisdiction of Revenue Court*—A suit for enhancement of rent of a dwelling house in a village is cognizable by the Collector. ABDUL HAMID *v.* DONGARAM DEY . 3 B. L. R., Ap., 133

KALEE KISHEN BISWAS *v.* JANKEE [8 W. R., 250

72 ———— Lands appurtenant to a dwelling-house—*Reg XIX of 1814, s 9*—The

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ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continued.*

48. ———— *Sale for arrears of rent.*—Under-tenures fall with the original tenure of the defaulter, and are liable to enhancement by the purchaser of the tenure sold for arrears of rent. TARUCKNATH PORAMANICK *v.* MCALLISTER [6 W. R., Act X, 34

49. ———— Khamar lands—*Act X of 1859, s. 4.*—S. 4, Act X of 1859, makes no exception as to khamar lands. RAM COOMAR MOOKERJEE *v.* RUGOONATH MUNDUL . . 1 W. R., 356

50. ———— Mandidari tenure—*Tenant with right of occupancy at rates varying with revenue.*—Mandidari tenure is the tenure of a tenant with rights of occupancy who is entitled to hold at rates varying with the revenue, and he possesses privileges superior to those of an ordinary raiyat. His rates of rent are not liable to enhancement. BUNKUT NURSEYA *v.* GOUREE SINGH . 2 N. W., 369

51. ———— Talukh created before accession of British Government - *Act X of 1859, s. 15.*—A talukh created before the accession of the British Government, held at an unvaried rent from before the Perpetual Settlement, is protected from enhancement by s. 15 of Act X of 1859. GOBIND CHUNDER DUTT *v.* HURRONATH ROY [1 Ind. Jur., N. S., 52: 5 W. R., Act X, 10

52. ———— Lessees, Right of, to collect lac insects from trees—*Act X of 1859.*—Act X of 1859 does not entitle a lessor to enhance the rent payable by a lessee on account of right leased to the latter to collect lac insects from trees growing on the lands of the former. GOPAL SINGH MOORAH *v.* SUNKUREE PAHARIN . . . . 23 W. R., 458

53. ———— Sursory jote—*Act X of 1859, ss. 3 and 4.*—A sursory jote tenure is not exempt from the operation of ss. 3 and 4, Act X of 1859, but is protected from enhancement on proof of twenty years' payment of uniform rent. DOORGA MOYEE DOSSEA *v.* KASSISSUR DEBEA CHOWDHRAIN [4 W. R., Act X, 20

54. ———— Government khas mehal, Mode of enhancement of rent of.—The rent of a Government khas mehal can only be enhanced by the same process as the rent on any private estate. AKSHAYA COOMAR DUTT *v.* SHAMA CHARAN PATITANDA . . I. L. R., 16 Calc., 586

55. Settlement of a Government khas mehal—*Regulation VII of 1822—Bengal Act III of 1878—Bengal Act VIII of 1879, ss. 10-14.*—In order to make the enhanced rent stated in a jummabundi settled under Regulation VII of 1822 binding upon a tenant, there must be either an assent to that enhancement or else a compliance with the provisions of the rent law with reference to enhancement of rent in force at the time of such enhancement. *D'Silva* v. *Rajkumar Dutt, 16 W. R., 153, Enayetoollah Meah* v. *Nubo Coomar Sircar, 20 W. R., 207,* and *Reazooddeen Mahomed* v. *McAlpine, 22 W. R., 540,* followed. AKSHAYA COOMAR DUTT *v.* SHAMA CHARAN PATITANDA . . I. L. R., 16 Calc., 586

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continue*

(c) LANDS OCCUPIED BY BUILDINGS AND GARDEN

56. ———— Lands with buildings-*Garden ground—Non-agricultural land.*—Lar held ancillary to the enjoyment of a house, as, f instance, a garden or compound, is not subject enhancement of rent under the Rent Acts. Acts of 1859 and XIV of 1863 do not apply to lan occupied by houses, but only to land held for agi cultural purposes. POWELL *v.* WAHID KHAN [1 N. W., 133: Ed. 1873, 21

KALEE MOHAN CHATTERJEE *v.* KALI KISTO ROY [2 B. L. R., Ap., 39: 11 W. R., 18

57. ———— Garden lands—*Act I of 184 s. 26, cl. 4—Notice of enhancement.*—In order t obtain the benefit of cl. 4, s. 26, Act I of 1845 (pro tecting garden lands from enhancement), it is no sufficient that the notice of enhancement should de scribe the lands as garden lands, but there must be clear finding that the lands have been held as such under *bonâ fide* leases. SIDDESSUREE CHOWDHRAII *v.* KISSOREEKANT GOSSAIN [W. R., 1864, Act X, 101

58. ———— Lands situated in a town—*Bengal Rent Act 1869*—A suit cannot be maintaine under Bengal Act VIII of 1869 for rent at enhanced rates of land not used for agricultural or horticultural purposes, but situated in a town. MADAN MOHAN BISWAS *v.* STALKART [9 B. L. R., 97: 17 W. R., 441

59. ———— Lands for building purposes—*Bastu land.*—Bastu land (land used for sites of houses) situated in a town cannot form the subject of suits under Act X of 1859 for enhancement. Bastu land, which is the site of a house occupied by a raiyat engaged in cultivating the surrounding lands, does fall under the provisions of Act X of 1859. NAIMUDDA JOWADDAR *v.* MONCRIEFF [3 B. L. R., A. C., 283

S. C. NYMOODDEE JOARDAR *v.* MONCRIEFF [12 W. R., 140

KAILAS CHUNDER SIRKAR *v.* DURGADAS TARAFDAR . . . 3 B. L. R., A. C., 284 note

Contra, KENNY *v.* GREEDHUR MANJEE [W. R., 1864, Act X, 9

60. ———— *Bastu lands—Oodbastu lands.*—When lands are liable to be assessed with rent as bastu and when as oodbastu lands. PREM LALL CHOWDHRY *v.* BROWN [6 W. R., Act X, 92

61. ———— Lands for building and horticultural purposes.—Land had been let under different pottahs to a man for building and horticultural purposes, to be enjoyed by him, his sons, and his sons' sons for ever at a rent mentioned in the pottahs. *Held* that, though the suit was cognizable by the Collector, the rent was not liable to enhancement. KAILAS CHANDRA ROY *v.* HIRALAL SEAL. FAKIR CHAND GHOSE *v.* HIRALAL SEAL [2 B. L. R., A. C., 93: 10 W. R., 403

ENHANCEMENT OF RENT—*continued.*

2 LIABILITY TO ENHANCEMENT—*continued.*

VIII of 1793, although not duly registered by the zamindar *Held* that the defendant having made out a strong *primâ facie* case to prove that he and those through whom he claimed had held the talukh at a fixed rent from a date more than twelve years prior to the Decennial Settlement, and the zamindar having relied on the weakness of the defence and having failed to show that the rent had varied, the tenure was exempt from re-assessment. MOHAMOYA DOSSEE *v.* DOYAMOYE CHOWDHRAIN . 7 W. R., 62

83 ———— *Accretion to zimma tenure with fixed rent.*—Where a permanent zimma tenu more than 1859, as w VIII of 17 accretions to the parent talukh. JUGGUT CHUNDER DUTT *v.* PANIOTY . 8 W. R., 427

84. ———— *Raiyati kadimi tenure.*—Where a zamindar, a purchaser from a mortgagee, sued to enhance the rent of lands (part of the purchased zamindari) held on a raiyati kadimi tenure, which had existed more than twelve years ut the holder of pottah from the such pottah did not debar the tenant from the right of exemption from enhancement to which he was entitled by reason of the nature of his tenure. Such a pottah may be confirmatory only, and is not inconsistent with the presumption that a prior title existed *Semble*—A claim to exempt a tenure from enhancement on the ground that it is a raiyati kadimi tenure does not fall within Regulation VIII of 1793, s. 51. RAM CHUNDER DUTT *v.* JOGESH CHUNDER DUTT

[12 B L. R., P. C, 229 : 19 W. R., 353

85. ———— *Beng Reg VIII of 1793, ss. 48 52—Beng. Reg. XLIV of 1793, ss. 2-5*—A purchaser of a zamindari at a public sale may, by virtue of his ordinary right as zamindar, enhance the rent of a dependent talukh from time to time under the provisions of Bengal Regulation VIII of 1793, and is not barred from so doing by the provisions of s. 5 of Bengal Regulation XLIV of 1793 The words "for the same period as the term of their own engagements with Government" in s 48 of Bengal Regulation VIII of 1793 refer to the period of the Decennial Settlement, and do not mean "in perpetuity" *Doorga Soondree v. Chundernath Bhadooree, S. D A (1852), 642,* dissented from In an enhancement suit of the nature indicated above, the rate of rent to be fixed as payable by the under tenure-holder must ordinarily be fixed with reference to the rents paid by raiyats within the tenure itself, and not with reference to those paid by raiyats in the neighbourhood outside the limits of the tenure. BISSESSURI DEBI CHOWDHRAIN *v.* HEM CHUNDER CHOWDHRY . . . . I. L. R., 14 Calc, 133

86. ———— *Notice of enhancement*—S. 51, Regulation VIII of 1793 (looked at with ss. 13 and 15, Act X of 1859), does not require any notice in the case of a dependent talukhdar, preliminary to a claim for enhancement of rent, but in order to succeed in a suit under that section, plaintiff must show that he is about to enhance on one of the three grounds therein mentioned TARINEE KANT LAHOOREE *v.* KOONJ BEHAREE AWUSTEE

[13 W. R., 112

87. ———— *Grounds of enhancement*—The grounds of enhancement stated in s. 51 of Regulation VIII of 1793, and not those in s 17 of Act X of 1859, are applicable to dependent talukhdars. HURONATH ROY *v.* BINDOO BASHINEE DEBIA . . . 3 W. R., Act X, 16

88. ———— *Act X of 1859, ss 13, 17*—In a suit for enhancement on one of the grounds set forth in s. 17, Act X of 1859, the notice under s 13 can be served on a raiyat with rights of occupancy, but in a case of a dependent talukhdar the plaintiff must proceed under s. 51, Regulation VIII of 1793, and not on the grounds laid down in s 17, Act X of 1859 The defendant's talukh in this case

[8 W. R., 496

89. ———— Act X of 1859, s 15—A dependent talukhdar's rent is not liable to enhancement, unless it can be shown to have changed since the Perpetual Settlement, and he must be proceeded against under s. 15 (not 17) of Act X of 1859 NUROKISHORE BOSE *v.* PANDUL SIRCAR 8 W. R., 312

90. ———— Rate of enhanced rent—*Right to reasonable profit*—A talukhdar's rent cannot be enhanced to the same rate as that paid by cul-

91. ———— *Neighbouring lands of same kind*—A talukhdar is liable to enhancement only to the extent of what other similar talukhdars in the neighbourhood pay for similar under tenures with similar lands. MOHIMA CHUNDRA DEY *v.* GOOROO DOSS SEIN . 7 W. R., 235

92. ———— Procedure—*Beng Reg VIII of 1793, s 5*—Points out the procedure to be adopted by a Court in a suit for enhancement of rent, when the defendant pleads that he is a shamilat talukhdar, that is to say, a talukhdar protected under the provisions of s. 5, Regulation VIII of 1793 SHARODA PROSUNNO MOOKERJEE *v.* BIPEEN BEHAREE BOSE

[13 W. R., 71

93. ———— *Beng Reg VIII of 1793, s. 51—Failure of defendant to prove presumptive protection from enhancement*—In a suit for arrears of rent of a talukh at an enhanced rate, where it was shown that the defendant was not entitled to set up as against any case for enhancement made out by the plaintiff, that he was protected by proof or presumption of holding from the permanent

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continued.*

on that land must be considered the fixed rent of the homestead of the house and ground, and not, therefore, capable of enhancement. KHAIRUDDIN AHMED *v.* ABDUL BAKI

[3 B. L. R., A. C., 85 : 11 W. R., 410

73. ——— **Land on which shop is built**—*Jurisdiction of Revenue Court—Act X of 1859, s. 23.*—A suit will not lie in the Collector's Court to enhance the rent of land on which a shop stands, the shop being the thing for which rent is paid and the land merely an adjunct to it. MADAN SINGH *v.* MADAN RAM DEB . . **1 B. L. R., S. N., 11**

74. ——— **Lands leased for building a school and church**—*Jurisdiction of Revenue Court.*—Revenue Courts have no jurisdiction in a suit to recover arrears of rent at an enhanced rate from a tenant to whom land had been leased for the express purpose of building a school and a church. SURNOMOYEE *v.* BLUMHARDT . . **9 W. R., 552**

(*d*) DEPENDENT TALUKHDARS.

75. ——— **Beng. Reg. VIII of 1793, ss. 49, 51.**—A dependent talukhdar, whose tenure was in existence before the Permanent Settlement, is entitled to protection under s. 49, Regulation VIII of 1793, unless his zamindar can prove a title to enhance rent under s. 51 of that law. RADHEEKA CHOWDRAIN *v.* RAM MOHUN GHOSE . **1 W. R., 367**

76. ——— **s. 51**—*Actual proprietors.*—The "dependent talukhdars" mentioned in Regulation VIII of 1793 are actual proprietors, and not talukhdars whose talukhs are held under documents granted by proprietors which do not transfer property in the soil. The defendant was, therefore, held not exempt from liability to enhancement as being one of the latter. SUTTYANUND GHOSAUL *v.* HURO KISHORE DUTT . **15 W. R., 474**

77. ——— *Act X of 1859, s. 15.*—A dependent talukh created before the Decennial Settlement is protected from enhancement by s. 51, Regulation VIII of 1793, except under the circumstances therein mentioned. In a suit by a zamindar for enhancement, brought after Act X of 1859 came into operation, against the holder at a fixed rent of a dependent talukh, the later is protected from enhancement by the provisions of s. 15 of that Act, notwithstanding decrees pronounced in previous litigation between the parties declaring the zamindar's right to enhance, and directing that the rent of the talukh should be assessed at pargana rates, if it appear that the rent never has been assessed at pargana rates and never has been enhanced, but has remained unchanged from the time of the Permanent Settlement. Such decrees place the zamindar in no better position than other landlords who, previously to the passing of Act X of 1859, had a good right to enhance, but whose right, not having been exercised from the time of the Permanent Settlement, has been taken away by the 15th section of that Act. HURRONATH ROY *v.* GOBIND CHUNDER DUTT . . **15 B. L. R., 120**

[**23 W. R., 352 : L. R., 2 I. A., 193**

Affirming the High Court decision in HURRONATH ROY *v.* GOBIND CHUNDER DUTT

[**5 W. R., Act X, 11**

S. C. on review . . . **6 W. R., Act X, 2**

78. ——— *Unregistered tenure.*—A dependent talukhdar, under s. 51 of Regulation VIII of 1793, is not debarred from claiming the benefit of that section because his tenure had not been registered by the zamindar under s. 48 of that law. The onus of proving that a dependent talukhdar under s. 51 of the Regulation is liable to enhancement under the provisions of that section must fall on the zamindar. DOYAMOYEE CHOWDHRAIN *v.* NUNDOCOOMAR DEY . **2 Hay, 220**

79. ——— *Persons not personal cultivators.*—In a suit for arrears of rent at an enhanced rate against tenants who held a "kaimi jote jumma,"—*Held* that the fact that they did not personally cultivate land, but held a jumma with raiyats under them, could never place them in the position of dependent talukhdars, and even if it could, Regulation VIII of 1793, s. 51, could not apply to them, unless they could show that their tenure existed, and was capable of being registered, at the date of the Decennial Settlement. ESHAN CHUNDER BANERJEE *v.* HURISH CHUNDER SHAHA

[**24 W. R., 146**

80. ——— *Person with lease terminable yearly or at will of zamindar.*—S. 51, Regulation VIII of 1793, refers solely to dependent talukhdars, and cannot be applied so as to protect from enhancement a person whose tenure is terminable at the end of any year or at the pleasure or caprice of his zamindar. KALEEDHUN BANERJEE *v.* ROMESH CHUNDER DUTT . **3 W. R., 172**

81. ——— *Nature of tenure.*—In a suit for enhancement of rent under Regulation VIII of 1793 the nature of the tenure is a material question, irrespectively of the question whether the rent is fixed or variable, the nature and extent of the proof which the plaintiff (zamindar) is bound to give being different according as the tenure falls within s. 49 or s. 51 of the Regulation. The rulings of the High Court holding that in order to bring a talukh within s. 51 of the Regulation, it is sufficient to show that it existed and was capable of being registered in the zamindari sherishta at the time of the Decennial Settlement, approved of. BAMA SOONDUREE DOSSEE *v.* RADHIKA CHOWDHRAIN

[**13 W. R., P. C., 11**

S. C. RADHIKA CHOWDHRAIN *v.* BAMA SUNDARI DASI . . . . . **4 B. L. R., P. C., 8**

[**13 Moore's I. A., 248**

82. ——— *Exemption from enhancement.*—Suit for enhancement (under the old law) of rent of a talukh held to be a dependent talukh within the meaning of s. 51, Regulation

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continued.*

104. ——— **Lease containing no term for expiry**—*Improvement of land—Agency of raiyat—Improvement by other means*—When a pottah contains no term and does not provide against enhancement, and the tenant has not occupied for twelve years, if it is shown that the tenant has improved the land, he will be entitled to a proportionate reduction in determining the rent he should pay. But if it is also shown that the value of land generally in the neighbourhood has increased irrespectively of the agency of the raiyat, the landlord will be entitled to enhancement proportionate to that improvement. MATHURA MOHUN SAHA *v.* GYARAM HALDAR . . . W. R., 1864, Act X, 128

105. ——— **Transferee of lease**—*Construction of lease—Liability to enhancement*—A lease contained the following words—"You shall continue to pay the sum of sicca R5 fixed on the whole as ticca jumma of the said mouzah every year, and having cleared the villages of jungle and having brought the lands under cultivation, yourself and through others, as usual, enjoy and occupy the same with your sons and grandsons in succession" *Held* that the lease conveyed an absolute interest, and that the grantee and his heirs were entitled to transfer it; and that a transferee, not an auction-purchaser, was not liable to enhancement of rent. WATSON & CO *v.* JOGGESHAR ATTAH

[Marsh., 330: 2 Hay, 436

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in a preceding part of the pottah the words "year by year" are used (BAYLEY, *J*, *dissentiente*) PUNCHANUN BOSE *v.* PEARY MOHUN DEB . 2 W. R., 225

107. ——— **Solehnamah stipulating against enhancement**—*Construction of solehnamah.*—A member of a Hindu family, who had the management of the ancestral property, was sued by one of the tenants for illegal distraint. Plaintiff put in a pottah in which the rent was described as a fixed rent, and the tenancy an old and existing tenancy The result of that suit was a solehnamah or compro-

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108. ——— **Decree allowing enhancement**—*Subsequent transfer of estate*—A childless Hindu widow granted a pottah to defendant On her death there was a dispute as to the heirship to her husband, and the right of plaintiff's vendor having been declared, the latter brought a suit against defendant for a kabuliat at enhanced rates of rent. Defendant disputed the claim, setting up the title of the opposite party, but the suit was decreed to the extent of the rate of rent admitted by defendant. Subsequently plaintiff issued a notice of enhancement, and defendant, not coming to terms, sued to set aside the pottah and obtain possession *Held* that the decree obtained by plaintiff's vendor created a new contract between the parties under the kabuliat, by which defendant was entitled to hold at the rent admitted by him till plaintiff took further steps; and that plaintiff's vendor having conveyed his whole title to plaintiff, who then gave defendant distinct notice, plaintiff was entitled to succeed in the present suit *Juggessur Buttobyal v Roodro Narain Roy, 12 W R, 299*, distinguished NUBO KISHEN MOOKERJEE *v* KALACHAND MOOKERJEE

[15 W R., 438

See JUGGESSUR BUTTOBYAL *v* ROODRO NARAIN ROY 12 W. R., 299

109. ——— **Agreement to pay increased rent**—*Acquiescence*—One of the holders

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lord was entitled to rent at the rate claimed, until circumstances were shown from which it would follow that the rate claimed was not the fair and equitable rate payable *Held*, further, that the

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uddi Howladar v Mohun Chunder Guha, 8 C L R, 508, distinguished BURHUNUDDI HOWLADAR *v* MOHUN CHUNDER GUHA . 8 C L. R., 511

110. ——— **Decree in accordance with defendant's admission**—*Beng Act VII of 1869, s 14—Suit for arrears of rent—Rate of rent payable*—The plaintiff sued for arrears of rent for the year 1282 at the rate of R2 8 per bigha. The defendant alleged that the rent was only fifteen annas per bigha. The Judge found that the plaintiff had not proved that the rate of rent was R2-8 per bigha, and, without finding that the proper rate was fifteen annas, gave the plaintiff a decree for that amount. The plaintiff brought a subsequent suit for arrears of rent for the year 1283, when it was held by the Court of first instance and by the lower Appellate Court that he could only recover arrears of rent at the rate of fifteen annas, that being the rate of "rent payable for the previous year" within the meaning of s. 14, Bengal Act VIII of 1869 *Held* that the decisions were wrong, and must be reversed. PUNNOO SINGH *v.* NIR SHIX SINGH

[I. L. R., 7 Calc., 298: 8 C. L. R., 310

111. ——— **Stipulation in kabuliat for increase in rent**—*Rent for land in excess of quantity held under kabuliat—Suit to recover rent as agreed—Notice of enhancement—Beng Act VIII of 1869, s. 14.*—Where a kabuliat contains an

settlement,—*Held* that that did not relieve the plaintiff from the necessity of proving a case under Regulation VIII of 1793, s. 51, under which alone he could maintain his suit. SUSTEE CHURN DEY *v.* ISHAN CHUNDER . . . . . 22 W. R., 383

(*e*) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT.

94. ———— **Maurasi lease.**—A maurasi (perpetual) tenure does not necessarily carry with it fixity of rent; it is matter of evidence whether it does or not; therefore the rent of such a tenure may be liable to enhancement. ANANDLAL DASS *v.* MUSHUN ALI . . . 2 B. L. R., A. C., 98 note

95. ———— *Rent not fixed as invariable.*—A maurasi pottah, in which the rent is not fixed as invariable, does not protect the raiyat from enhancement. TARUCK CHUNDER NUNDEE *v.* MODHOOSOODUN NUNDEE . 5 W. R., Act X, 80

96. ———— *Tikka mohto.*—The words "tikka mohto" cannot be construed as conferring a permanent or maurasi lease at a fixed rate. NUFFER CHUNDER SHAHA *v.* GOSSAIN JOY SINGH BHARATTEE . . . 3 W. R., Act X, 144

97. ———— **Mokurari tenure**—*Suit for kabuliat—Rate paid for similar lands.*—In a suit for a kabuliat at an enhanced rate under a pottah, the terms of which were that the lessee should hold the lands for four years rent-free; that after measurement the lands were to be assessed; that then he was to pay four annas a bigha in the year 1265, six annas in 1266, and eight annas and three gandas in 1267 and for five years after,—*Held* this did not constitute a mokurari holding at a fixed rate. The case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly. KASIMUDDI KHANDKAR *v.* NADIR ALI TARAFDAR

[2 B. L. R., A. C., 265 : 11 W. R., 164

98. ———— *Expressions importing hereditary character of tenure.*—The objection that the documents relied on by the defendant in support of their mokurari title contained no expressions importing the hereditary character of the alleged tenures was held to be one not open to the plaintiff in a suit for enhancement, where the pleadings admitted the existence of the tenure and the lawful occupation of the defendant, and the only question was whether the tenures were held at a variable or at a fixed and invariable rent. Even if the objection were open to the plaintiff, it was held that it could not prevail against the evidence which the record afforded that for upwards of a century the talukhs in question had been treated as hereditary, and as such had descended from father to son, and been the subject of purchase. GOPAL LALL TAGORE *v.* TILLUCK CHUNDER RAI

[3 W. R., P. C., 1 : 10 Moore's I. A., 183

99. ———— *Pura dastoor.*—Where it was stipulated in the pottah that the land should be held rent-free for five years from 1250 to 1254; that for 1255 a rate of five annas a bigha should be paid; for 1256 ten annas a bigha; and that from 1257 the rate to be paid every year should be the "pura dastoor," or full customary rate or fourteen annas,—it was held not to constitute a holding at a fixed rent. BHARAT CHANDRA AITCH *v.* GAUR MANI DASI

[2 B. L. R., A. C., 266 note : 11 W. R., 31

100. ———— *Rent fixed after stated time—Act X of 1859, ss. 13 and 17.*—The defendant, as middleman, took a clearing lease of certain land, which it was agreed in the kabuliat he should hold during 1260 without any rent; "for 1261 at the rate of R1 per kani; for 1262 at R2 per kani; for 1263 at R3 per kani; and in 1264 at the full customary rate of R5 per kani." The tenure was admittedly a permanent one. In a suit for arrears of rent for 1272, after notice of enhancement under s. 13, Act X of 1859,—*Held* that the intention was that after 1264 the rent should be fixed, and it was therefore not liable to enhancement. SOORASOONDERY DABEE *v.* GOLAM ALLY

[15 B. L. R., P. C., 125 note : 19 W. R., 142

101. ———— **Lease not finally fixing rent**—*Failure to specify duration.*—An amulnamah, by which the defendant, for clearing and cultivating chur lands, was to pay no rent for the first three years, and then a low rate of rent gradually rising till it reached a certain rate, no period being fixed for the duration of such last-mentioned rate, was held to be no bar to the plaintiff's right of enhancement. PUDDO MONEE DOSSIA *v.* PURAMANUND SEIN

[7 W. R., 158

102. ———— **Lease of land uncleared**—*Land let for purpose of clearing at low rent afterwards to be higher.*—When land is let for the purpose of clearing jungle, or other reclamation, and on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement. HURO PRASAD ROY CHOWDHRY *v.* CHUNDEE CHURN BOYRAGEE

[I. L. R., 9 Calc., 505 : 12 C. L. R., 251

103. ———— *Act I of 1845, s. 26, cl. 4—Jungle land.*—The words "such land continuing to be used for the purposes specified in the leases" in cl. 4, s. 26, Act I of 1845, do not restrain the effect of a lease for clearing land of jungle solely to such time as jungle remains to be cut on the land, but should be taken to mean that the lease will stand good as long as the land is kept clear of jungle, and not allowed to fall back into its old state. If a pottah gives the tenant power to extend his lease beyond the land originally made over to him under the pottah, and gives the same rent for the additional land as for the other land, such additional land is not assessable with the pargana rate of rent, but the pottah is good and binding even on an auction-purchaser as respects the whole of the land cultivated by the tenant. WATSON & CO. *v.* JHUKROO SINGH

[1 W. R., 195

ENHANCEMENT OF RENT—*continued*

3 EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued*

120 ———— Pottah subsequent to Permanent Settlement—*Pottah not inconsistent with holding* —When a raiyat, in an enhancement suit, proves uniform payment of rent for twenty years previous to the suit, the production of a pottah dated more than twenty years before the suit, but subsequent to the Permanent Settlement, if not inconsistent with the inference that it is a continuation of a former state of things, will not interfere with or defeat the presumption of uniform payment from the Permanent Settlement KISHEN MOHUN GHOSE *v* ESHAN CHUNDER MITTER 4 W. R., Act X, 36

121. ———— Failure to prove pottah—*Act X of 1859, ss 3, 4—Presumption* —In a suit for enhancement of rent, a raiyat is not to be precluded from the benefit of the presumption under s. 4 of *Act X of 1859, on proof of having held at a fixed* rent for a period of twenty years merely because he has failed to prove a pottah which he has set up not inconsistent with that presumption GIRISH CHUNDRA BOSE *v* KALI KRISHNA HALDAR
[B L. R, Sup. Vol., 538: 6 W. R., Act X, 57

PEAREE MOHUN MOOKERJEE *v*. KOYLAS CHUNDER BYRAGEE . . 23 W R., 58

122. ———— Existence of kabuliat within 20 years—*Bengal Rent Act VIII of 1869, s 4*—The presumption arising in favour of a tenant from a twenty years' occupation, when it is supported by evidence, is not necessarily displaced by the discovery of a kabuliat bearing a subsequent date Such a kabuliat is as consistent with the confirmation of a pre-existing rent as with the settlement of a new rate, and it is for the Court to balance the inferences drawn from the kabuliat against those arising from the twenty years' holding SOORJOMONEE DOSSEE *v* PEAREE MOHUN MOOKERJEE
[25 W. R., 331

123 ———— Setting up pottah—*Presumption of exemption from enhancement.*—A defendant who rested his defence in a suit for enhancement upon a pottah, which he set up, as entitling him to hold free from enhancement under s 4, Act X of 1859, cannot plead that the tenure is protected from enhancement by reason of payment of rent at a uniform rate for twenty years. JAUN ALI *v* JAN ALI
[9 W. R., 149

WATSON & Co *v* SHAM LALL PANDAH
[10 W. R., 73

WATSON & Co. *v*. ANJUNNA DASSEE
[10 W. R., 107

[illegible]

means of judging, is no bar to prevent him from claiming the benefit of the presumption under s. 4, Act X of 1859 HURONATH ROY *v* KUMOLA KANT CHUCKERBUTTY . . 5 W. R., Act X, 56

ENHANCEMENT OF RENT—*continued.*

3 EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

125 ———— Existence of pottah and amulnama—*Presumption of change in rent* —In a suit for enhancement where the defendants plead a holding at a uniform rate from the Permanent Settlement the mere existence of a pottah and amulnamah of 1215 is not conclusive evidence that the rate was then changed, or was then first fixed. LUCHMEE NARAIN SHAHA *alias* GOPEENATH SHAHA *v* KOOCHIL KANT ROY . 6 W. R., Act X, 46

126 ———— Pottah not shown to be confirmatory of previous holdings—*Commencement of possession* —In the absence of documentary evidence to show that a pottah of 1239 was merely confirmatory of a previous holding, the possession of a raiyat claiming under that pottah will commence from the date of his pottah, and he is not entitled to the benefit of the presumption under s. 4, Act X of 1859 JAINOODDEEN *v*. PURNO CHUNDER ROY
[8 W. R., 129

127. ———— Pottah subsequent to Permanent Settlement.—A tenant is not entitled to the presumption, under s. 4 of Act X of 1859, of having held his tenure at a uniform jumma from the

[illegible]

to his obtaining the pottah. KUNDA MISSER *v*. GANESH SINGH
[6 B. L. R., Ap, 120 15 W. R., 193

LUCHMEE PERSAD *v* RAMGOLAM SINGH
[2 W. R., Act X, 30

128 ———— *Act X of 1859, s 4—Rebutting presumption* —The presumption of occupancy from the Permanent Settlement created by s 4, Act X of 1859, is rebutted by the raiyat relying upon a pottah granted after the Permanent Settlement. MUNMOHUN SINGH *v* WATSON & Co
[W R, F. B., 22: 1 Ind. Jur, O. S., 78

S C WATSON & Co. *v* CHOTO JOORA MUNDUL
[Marsh., 68: 1 Hay, 232

RAM LAL GHOSE *v* LALLA PECUMLALL DOSS
[Marsh, 403: 2 Hay, 526

RAMKISHEN SIRCAR *v*. DELEE ALI
[W. R, 1864, Act X, 30

BEER KISHORE LALL *v* KUNBOOLY LALL
[W. R., 1864, Act X, 109

129. ———— Reliance on and failure to prove mokurari tenure—*Act X of 1859, s. 4 —Presumption.*—The fact of a raiyat having relied upon a mokurari tenure cannot prevent his falling back on the presumption arising under s. 4 of Act X of 1859 CHAMARNEE BIBEE *v*. AYENOOLLAH SIRDAR
[9 W. R., 451

130. ———— *Presumption.* —In a suit for arrears of rent at an enhanced rate,

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*continued.*

agreement to pay a certain specified rent for a certain specified area, although no rate per bigha was fixed, and also an agreement to pay further rent at the rate specified for lands found on measurement to be held in excess of the lands of which the jumma was fixed, a landlord is entitled to recover such increased rent without serving any notice on the tenant under s. 14 of Bengal Act VIII of 1869, and it is a reasonable presumption to make that the rate per bigha was the average rate of rent payable in respect of the lands for which the total amount of rent payable was fixed. *Nistarini Dassi* v. *Bonomali Chatterjee, I. L. R., 4 Calc., 941,* followed. LAIDLEY *v.* BISHUCHARAN PAL . . I. L. R., 11 Calc., 553

112. ——— Agreement to take rent as long as holdings continue—*Right to enhance—Exemption from enhancement.*—Where the relative rights of the parties as landlord and tenants were determined by competent authority, and the matter referred for decision of the Collector was the commutation of the rents paid in kind into money rents, and that officer in so doing decided the rights of the parties declaring the tenants sub-proprietors and directing them to pay at the revenue rates with an addition of 5 per cent. allowance to the landlord,—*Held* that the lumbardar, notwithstanding his failure to set aside the order and his receipt of the amount so fixed, was not precluded from enhancing the rent on any of the grounds specified in s. 17, Act X of 1859. Where a wajib-ul-urz stated that "the hereditary tenants in the village pay their rents like the proprietors, and so long as they shall continue to pay their rents, they and their heirs shall continue to cultivate their holdings,"—*Held* that, on the terms of the wajib-ul-urz, the defendants could not claim exemption from enhancement. BUNSEE *v.* RAMSOOKH . . . . . . 3 Agra, 384

113. ——— Provision in administration paper protecting from enhancement.—A specific provision in the administration papers protecting the raiyat from enhancement of rent during the term of the settlement will be enforced. JHUMMUN SHAH *v.* DEBEE DASS

[1 N. W., 8: Ed. 1873, 7

114. ——— Conditions with respect to enhancement of rent in a wajib-ul-urz are generally intended to have effect only during the period of the settlement being made at the date of such wajib-ul-urz. BAICHOO RAM *v.* DOWLUT RAM

[2 N. W., 8

115. ——— Agreement to pay enhanced rates—*Tenant-at-will—N.-W. P. Rent Act (XVIII of 1873), s. 21.*—The patwari of a village entered in his diary that a tenant-at-will had agreed with the landholder to pay enhanced rent, but the agreement was not recorded, the terms as to rent were not stated, and there was nothing to show that such tenant had assented to such entry. *Held* that there was no record of such agreement within the meaning of s. 21 of Act XVIII of 1873. BHAWANI *v.* ABDULLA KHAN . . I. L. R., 3 All., 365

ENHANCEMENT OF RENT—*continued.*

2. LIABILITY TO ENHANCEMENT—*concluded.*

116. ——— Agreement not to enhance, Duration of *Liability to enhancement.* On the 27th June 1866 it was agreed between *B*, a zamindar, and *D*, a raiyat, that the latter should pay R20 annually as the rent of his holding, and that for the future no further sum in excess should be demanded or suit brought for enhancement of rent. The settlement of the district where the land in respect of which the agreement was made was situate expired on 1st July 1870. *B* having subsequently enhanced *D*'s rent to R40, *D* brought a suit to contest his liability to pay enhanced rent, basing his suit on the agreement of 27th June 1866. The lower Courts held that *B* was not bound by the agreement after the expiry of the settlement in force at the time of the agreement, and directed *D* to pay an enhanced rate of rent. In special appeal *D*'s claim was decreed. DEOJEET *v.* BHUGWANT . 6 N. W., 373

117. ——— Assessment of, and decree for, rent at enhanced rate—*Kabuliat, Effect of subsequent execution of.*—On the 25th of January 1864, the plaintiffs obtained a decree against the defendants for assessment of enhanced rent. Shortly afterwards, the defendants executed a kabuliat at a reduced rate, for eleven years ending the 31st Assin 1282 (16th October 1875). After the term had expired, the plaintiffs sought to recover rent from the defendants at the rate settled by the decree of 1864. *Held* that the decree had been superseded by the subsequent arrangement, and that the plaintiffs could not recover rent at an enhanced rate, except under the provisions of Bengal Act VIII of 1869. NOBIN CHUNDER SIRCAR *v.* GOUR CHUNDER SHAHA

[I. L. R., 6 Calc., 759: 8 C. L. R., 161

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION.

(*a*) GENERALLY.

118. ——— Tenant accepting pottah after long holding—*Presumption—Act X of 1859, s. 4.*—If a tenant has held land at a uniform rate for generations, and the pottah given to him subsequently does not fix a rent different from that previously paid, but merely asserts the rent he is to pay during the term of the pottah, he is entitled to the benefit of the presumption contained in s. 4, Act X of 1859, if it be found that his rent has not been changed for twenty years. NOWLAS KOONWER *v.* SHIVA SUHAI . . . 1 Agra, Rev., 65

119. ——— Pottah not inconsistent with holding.—In a suit for enhancement, if the defendant plead pottahs which are not inconsistent with the presumption under s. 4, Act X of 1859, and proves twenty years' uniform payment of rent, the presumption will arise unless the opposite party prove a variance in the pottahs. KOROONA MOYEE DOSSEE *v.* SHIB CHUNDER DEB

[6 W. R., Act X, 50

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit AHMED ALI *v.* GOLAM GAFAR
[3 B. L. R., Ap., 40: 11 W. R., 432

141. ———— Continuous and uniform payment—*Presumption—Beng Act VIII of 1869, ss. 3, 4*—S. 4, Bengal Act VIII of 1869, entitles the holder of land for the time being, however he may have acquired it, to the benefit of the presumption prescribed in that section if he can show that there has been a continuous and uniform payment of the same rent for twenty years. TIRTHANUND THAKOOR *v.* HEMDU JHA
[I. L. R., 9 Calc., 252

142 ———— Calculation of period of twenty years—*Act X of 1859, s. 4—Exclusion of time in calculating period.*—In calculating the period of twenty years mentioned in s. 4, Act X of 1859, there is nothing in the section to warrant the exclusion of the period during which the estate was under farm. GOORBIN BHAGAT *v.* FUREED ALUM
[3 Agra, 401

143. ———— *Saleable tenures—Act X of 1859, s. 4—Possession of vendor*—In cases of saleable tenures the period of possession by the raiyat's vendor is included in the twenty years mentioned in s. 4, Act X of 1859. KHODA NEWAZ *v.* NUBO KISHORE RAJ . 5 W. R., Act X, 53

144. ———— Limitation of presumption—*Act X of 1859, s 4—Suit not under Rent* [illegible] Act X of [illegible] ceedings [illegible] to suits [illegible] d not do [illegible] n determining for what length of time payment of a fixed rent should be made in order to warrant the presumption of its having been made since the Permanent Settlement. DUKHINA MOHUN ROY *v.* KURREEMOOLLAH . . . . . 12 W. R., 243

145. ———— *Suit not under Rent Act—Act X of 1859, s 4, and Beng. Act VIII of 1869, s. 4—Suit in Civil Court for declaratory decree*—A zamindar having sued a raiyat for rent, the defendant pleaded to a lower rate of rent than that claimed, and set up a mokurari tenure. The suit was decreed, and an appeal therefrom was dismissed. The raiyat then brought an action in the Civil Court to have it declared that he had a mokurari tenure The suit was dismissed by the first Court, but the lower Appellate Court reversed the decision, relying mainly upon a presumption under s. 4 of the Rent Law. *Held* that the lower Appellate Court was wrong in raising the presumption of uniform payment, s. 4 only applying to suits under the Rent Acts. ISHAN CHUNDER ROY CHOWDHRY *v.* BHYRUB CHUNDER DASS . . 21 W. R., 25

146. ———— Necessity of pleading holding at uniform rate—*Act X of 1859, s. 4—Presumption*—The presumption under s. 4, Act X of 1859, of holding at a uniform rate from the Permanent Settlement need not be specifically pleaded, but (unless rebutted) arises as a matter of course on proof of uniform payment for twenty years. MUNEEKURNICKA CHOWDHRAIN *v.* ANUND MOYEE CHOWDHRAIN . . . 8 W. R., 6

147. ———— ———— *Presumption—Act X of 1859, s 4*—S 4 does not require the defendant to plead uniformity of payment from the time of the Permanent Settlement, but provides that if, on the trial of a suit, it appears that the rent has not been changed for twenty years, it shall be presumed that the land has been held at that rate from the time of the Permanent Settlement. BHOYRUBNATH SANDYAL *v.* MUTTY MUNDUL
[W. R., 1864, Act X, 100

MAHMOODA BEBEE *v.* HAREE DHUN KHULEEFA
[5 W. R., Act X, 12

RAM COOMAR MOOKERJEE *v.* RAGHUB MUNDUL
[2 W. R., Act X, 2

RAKAL DOSS TEWAREE *v.* KINOORAM HALDAR
[7 W. R., 242

148. ———— Possession for 60 years—*Presumption—Act X of 1859, s 4*—Proof of uni- [illegible] or sixty years will entitle them to nothing but a right of occupancy RAMNARAIN SINGH *v.* HORONATH ROY . . W. R., 1864, Act X, 86

HUREEKISHEN ROY *v.* SHAIKH BABOO
[1 W. R., 5

EKRAM *v.* BUHOORAN . 2 W. R., Act X, 69

Contra, RAMRUTNO SIRCAR *v.* CHUNDER MOOKHEE DABEA . . . 2 W. R., Act X, 74

149. ———— Proprietors paying rent—*Act X of 1859, s. 4.*—Proprietors paying rent for the right of occupancy are not raiyats in the sense contemplated by s. 4, Act X of 1859. MITTURJEET SINGH *v.* FITZPATRICK . . 11 W. R., 206

150. ———— Inference from ancient dowl—*Beng. Reg. VIII of 1793—Presumption of fixed rent.*—The plaintiff claimed to enhance defendant's rent from sicca R661 to Company's R7,528. No evidence was given as to the time at which the holding had commenced, or how long it had continued; but an attempt was made to prove a dowl bundobust of 1803, which would have shown that the persons through whom the defendants claimed were then in occupation of the land at the same rent, but no legal evidence of the dowl was given.

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

where defendants pleaded protection under a mokurari pottah of old date, which had been lost long ago, and also pleaded the presumption arising from uniform payment for more than twenty years,—*Held* that the defendants' inability to adduce sufficient proof of that pottah was no reason why they should not be allowed an opportunity to prove the uniform payment pleaded. NILMONEY SINGH DEO *v.* ANUNT RAM PUTNAIK . . . . . 15 W. R., 393

131. ———— **Setting up forged pottah**—*Presumption.*—Presumption of occupancy from the Permanent Settlement cannot be pleaded after a pottah brought forward to strengthen the presumption is found to be fabricated. FORBES *v.* NUND COOMAR MUNDUL . . 2 W. R., Act X, 35

132. ———— *Act X of 1859, s. 4—Presumption.—Quære*—Whether a party who has propounded a forged pottah could have the benefit of the presumption arising from paying a fixed rent for twenty years. GOPAL CHUNDER ROY *v.* GOOROO DASS ROY

[B. L. R., Sup. Vol., 764 note: 7 W. R., 135

133. ———— *Forged deed—Dishonest defence.*—In a suit for enhancement of rent, the raiyat, defendant, set up a mokurari pottah, which was found to be forged. *Held* that the fact of the raiyat having relied on a pottah which was found to be forged did not entitle the landlord to a decree for enhancement of rent to the amount claimed. ISWAR CHANDRA DAS *v.* NITTIANAND DAS

[B. L. R., Sup. Vol., 490: 6 W. R., Act X, 70

(*b*) PROOF OF UNIFORM PAYMENT.

134. ———— **Sale for arrears of rent**—*Auction-purchaser, Right of—Presumption.*—When an auction-purchaser at a sale for arrears of revenue demands an enhancement, the presumption arising from a uniform payment holds good, and the tenant's protection is not swept away by the sale. SHUDEK SIRCAR *v.* MOHAMOYA DABEE

[1 Ind. Jur., N. S., 77

S. C. SADUCK SIRCAR *v.* MOHAMOYA DEBIA

[5 W. R., Act X, 16

135. ———— *Act X of 1859, s. 4—Presumption—Auction-purchaser at sale prior to passing of Rent Act, Right of.*—The plaintiff was the auction-purchaser at a sale of land made prior to the passing of Act X of 1859. In 1253 he dispossessed a tenant who had been in occupation of the land for twenty-seven years at a uniform rent. In 1260 the tenant was restored to the land under a decree, finding that he held a mokurari tenure. Afterwards, and before the plaintiff had received any rent, he brought a suit against the tenant for enhancement of rent. *Held* that the enactment in s. 4 of Act X of 1859 that, when it shall be proved that the rent at which land has been held by a raiyat in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, did not apply to deprive the plaintiff of the right to enhance, since there had not been a holding for twenty years before the commencement of the suit within the meaning of the section; and the plaintiff under the law in force before the passing of Act X of 1859 was as an auction-purchaser not bound by the rent, unless the mokurari tenure was created twelve years before the date of the Permanent Settlement. LUTEEFOONISSA BEEBEE *v.* POOLIN BEHARY SEN

[1 Ind. Jur., O. S., 10: W. R., F. B., 31

Upheld on review . . W. R., F. B., 91

POOLIN BEHARY SEN *v.* LUTEEFOONNISSA BIBEE

[Marsh., 107: 1 Hay, 242

136. ———— **Sale for arrears of revenue**—*Purchaser, Right of—Act I of 1845, s. 26—Act X of 1859, ss. 1, 3, 4.*—Raiyats who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. HURRYHUR MOOKERJEE *v.* MOHESH CHUNDER BANERJEE

[B. L. R., Sup. Vol., 623: 7 W. R., 176

137. ———— *Purchaser, Right of—Act XI of 1859, s. 37—Beng. Act VIII of 1869, ss. 4 and 17—Presumption.*—The procedure prescribed in Bengal Act VIII of 1869 applies to claims of enhancement under s. 37 of Act XI of 1859 by a purchaser at a revenue-sale, and the rights of any such purchaser are, therefore, subject to all the modifications contained in ss. 4 and 17, which form a presumption in favour of tenures of all classes held at an unchanged rent for a period of twenty years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement. PURNANUND ASRUM *v.* ROOKINEE GOOPTANI . I. L. R., 4 Calc., 793

138. ———— **Invalid lakhiraj resumed after Permanent Settlement**—*Beng. Act VIII of 1869, ss. 3 and 4.*—Ss. 3 and 4, Bengal Act VIII of 1869, apply to invalid lakhiraj grants resumed at a time subsequent to the Permanent Settlement. BANEE MADHUB BANERJEE *v.* BHAGUT PAL

[20 W. R., 466

139. ———— **Evidence of uniform payment of rent.**—What is sufficient evidence to warrant a presumption that a tenure has been held at a uniform rate for twenty years will depend upon the circumstances of each case. PEAREE MOHUN MOOKERJEE *v.* ANNUND MOYEE DEBIA

[9 W. R., 158

140. ———— **Issue as to change in rent**—*Act X of 1859, s. 15—Presumption.*—In determining whether a party is entitled to the benefit of the presumption under s. 15, Act X of 1859, or not, the

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued*

question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit. AHMED ALI *v.* GOLAM GAFAR
[3 B. L. R., Ap, 40: 11 W. R., 432

141. ——— Continuous and uniform payment—*Presumption—Beng Act VIII of 1869, ss 3, 4*—S. 4, Bengal Act VIII of 1869, entitles the holder of land for the time being, however he may have acquired it, to the benefit of the presumption prescribed in that section if he can show that there has been a continuous and uniform payment of the same rent for twenty years. TIRTHANUND THAKOOR *v.* HERDU JHA
[I. L. R., 9 Calc., 252

142 ——— Calculation of period of twenty years—*Act X of 1859, s. 4—Exclusion of time in calculating period*—In calculating the period of twenty years mentioned in s. 4, Act X of 1859, there is nothing in the section to warrant the exclusion of the period during which the estate was under farm. GOORBIN BHAGAT *v.* FURZED ALUM
[3 Agra, 401

143. ——— *Saleable tenures—Act X of 1859, s. 4—Possession of vendor*—In cases of saleable tenures the period of possession by the raiyat's vendor is included in the twenty years mentioned in s. 4, Act X of 1859. KHODA NEWAZ *v.* NUBO KISHORE RAJ . 5 W. R., Act X, 53

144. ——— Limitation of presumption—*Act X of 1859, s 4—Suit not under Rent Act*—The presumption arising under s. 4, Act X of

tion of its having been made since the Permanent Settlement. DUKHINA MOHUN ROY *v.* KURREEMOOLLAH . . . . . 12 W. R., 243

145. ——— *Suit not under Rent Act—Act X of 1859, s 4, and Beng. Act VIII of 1869, s. 4—Suit in Civil Court for declaratory decree*—A zamindar having sued a raiyat for rent, the defendant pleaded to a lower rate of rent than that claimed, and set up a mokurari tenure. The suit was decreed, and an appeal therefrom was dismissed. The raiyat then brought an action in the Civil Court to have it declared that he had a mokurari tenure. The suit was dismissed by the first Court, but the lower Appellate Court reversed the decision, relying mainly upon a presumption under s. 4 of the Rent Law. *Held* that the lower Appellate Court was wrong in raising the presumption of uniform payment, s. 4 only applying to suits under the Rent Acts. ISHAN CHUNDER ROY CHOWDHURY *v.* BHYRUB CHUNDER DOSS . . 21 W. R., 25

146. ——— Necessity of pleading holding at uniform rate—*Act X of 1859, s. 4—Presumption*—The presumption under s 4, Act X of 1859, of holding at a uniform rate from the Permanent Settlement need not be specifically pleaded, . . . course on . . . ity years. . . . to MOYEE CHOWDHRAIN . . . 8 W. R., 6

147. ——— *Presumption—Act X of 1859, s. 4*—S 4 does not require the defendant to plead uniformity of payment from the

the time of the Permanent Settlement. BHOYRUBNATH SANDYAL *v.* MUTTY MUNDUL
[W. R., 1864, Act X, 100

MAHMOODA BEBEE *v.* HAREE DHUN KHULEEFA
[5 W. R., Act X, 12

RAM COOMAR MOOKERJEE *v.* RAGHUB MUNDUL
[2 W. R., Act X, 2

RAKAL DOSS TEWAREE *v.* KINOORAM HALDAR
[7 W. R., 242

148. ——— Possession for 50 years—*Presumption—Act X of 1859, s 4*—Proof of uniform payment of rent of twenty years by raiyats

or sixty years will entitle them to nothing but a right of occupancy. RAMNARAIN SINGH *v.* HORONATH ROY . . W. R., 1864, Act X, 86

HUREEKISHEN ROY *v.* SHAIKH BABOO
[1 W. R., 5

EKRAM *v.* BUHOORAN . 2 W. R., Act X, 69

Contra, RAMRUTNO SIRCAR *v.* CHUNDER MOOKHEE DABEA . . . 2 W. R., Act X, 74

templated by s. 4, Act X of 1859. MITTURJEET SINGH *v.* FITZPATRICK . . 11 W. R., 206

150. ——— Inference from ancient dowl—*Beng. Reg. VIII of 1793—Presumption of fixed rent.*—The plaintiff claimed to enhance defendant's rent from sicca R601 to Company's R7,528 No evidence was given as to the time at which the holding had commenced, or how long it had continued; but an attempt was made to prove a dowl bundobust of 1803, which would have shown that the persons through whom the defendants claimed were then in occupation of the land at the same rent, but no legal evidence of the dowl was given.

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

where defendants pleaded protection under a mokurari pottah of old date, which had been lost long ago, and also pleaded the presumption arising from uniform payment for more than twenty years,—*Held* that the defendants' inability to adduce sufficient proof of that pottah was no reason why they should not be allowed an opportunity to prove the uniform payment pleaded. NILMONEY SINGH DEO *v.* ANUNT RAM PUTNAIK . . . . . 15 W. R., 393

131. ——— **Setting up forged pottah**—*Presumption.*—Presumption of occupancy from the Permanent Settlement cannot be pleaded after a pottah brought forward to strengthen the presumption is found to be fabricated. FORBES *v.* NUND COOMAR MUNDUL . . 2 W. R., Act X, 35

132. ——— *Act X of 1859, s. 4—Presumption.—Quære*—Whether a party who has propounded a forged pottah could have the benefit of the presumption arising from paying a fixed rent for twenty years. GOPAL CHUNDER ROY *v.* GOOROO DASS ROY

[B. L. R., Sup. Vol., 764 note: 7 W. R., 135

133. ——— *Forged deed—Dishonest defence.*—In a suit for enhancement of rent, the raiyat, defendant, set up a mokurari pottah, which was found to be forged. *Held* that the fact of the raiyat having relied on a pottah which was found to be forged did not entitle the landlord to a decree for enhancement of rent to the amount claimed. ISWAR CHANDRA DAS *v.* NITTIANAND DAS

[B. L. R., Sup. Vol., 490: 6 W. R., Act X, 70

(*b*) PROOF OF UNIFORM PAYMENT.

134. ——— **Sale for arrears of rent**—*Auction-purchaser, Right of—Presumption.*—When an auction-purchaser at a sale for arrears of revenue demands an enhancement, the presumption arising from a uniform payment holds good, and the tenant's protection is not swept away by the sale. SHUDEK SIRCAR *v.* MOHAMOYA DABEE

[1 Ind. Jur., N. S., 77

S. C. SADUCK SIRCAR *v.* MOHAMOYA DEBIA

[5 W. R., Act X, 16

135. ——— *Act X of 1859, s. 4—Presumption—Auction-purchaser at sale prior to passing of Rent Act, Right of.*—The plaintiff was the auction-purchaser at a sale of land made prior to the passing of Act X of 1859. In 1253 he dispossessed a tenant who had been in occupation of the land for twenty-seven years at a uniform rent. In 1260 the tenant was restored to the land under a decree, finding that he held a mokurari tenure. Afterwards, and before the plaintiff had received any rent, he brought a suit against the tenant for enhancement of rent. *Held* that the enactment in s. 4 of Act X of 1859 that, when it shall be proved that the rent at which land has been held by a raiyat in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, did not apply to deprive the plaintiff of the right to enhance, since there had not been a holding for twenty years before the commencement of the suit within the meaning of the section; and the plaintiff under the law in force before the passing of Act X of 1859 was as an auction-purchaser not bound by the rent, unless the mokurari tenure was created twelve years before the date of the Permanent Settlement. LUTEEFOONISSA BEEBEE *v.* POOLIN BEHARY SEN

[1 Ind. Jur., O. S., 10: W. R., F. B., 31

Upheld on review . . W. R., F. B., 91

POOLIN BEHARY SEN *v.* LUTEEFOONNISSA BIBEE

[Marsh., 107: 1 Hay, 242

136. ——— **Sale for arrears of revenue**—*Purchaser, Right of—Act I of 1845, s. 26—Act X of 1859, ss. 1, 3, 4.*—Raiyats who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. HURRYHUR MOOKERJEE *v.* MOHESH CHUNDER BANERJEE

[B. L. R., Sup. Vol., 623: 7 W. R., 176

137. ——— *Purchaser, Right of—Act XI of 1859, s. 37—Beng. Act VIII of 1869, ss. 4 and 17—Presumption.*—The procedure prescribed in Bengal Act VIII of 1869 applies to claims of enhancement under s. 37 of Act XI of 1859 by a purchaser at a revenue-sale, and the rights of any such purchaser are, therefore, subject to all the modifications contained in ss. 4 and 17, which form a presumption in favour of tenures of all classes held at an unchanged rent for a period of twenty years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement. PURNANUND ASRUM *v.* ROOKINEE GOOPTANI . I. L. R., 4 Calc., 793

138. ——— **Invalid lakhiraj resumed after Permanent Settlement**—*Beng. Act VIII of 1869, ss. 3 and 4.*—Ss. 3 and 4, Bengal Act VIII of 1869, apply to invalid lakhiraj grants resumed at a time subsequent to the Permanent Settlement. BANEE MADHUB BANERJEE *v.* BHAGUT PAL

[20 W. R., 466

139. ——— **Evidence of uniform payment of rent.**—What is sufficient evidence to warrant a presumption that a tenure has been held at a uniform rate for twenty years will depend upon the circumstances of each case. PEAREE MOHUN MOOKERJEE *v.* ANNUND MOYEE DEBIA

[9 W. R., 158

140. ——— **Issue as to change in rent**—*Act X of 1859, s. 15—Presumption.*—In determining whether a party is entitled to the benefit of the presumption under s. 15, Act X of 1859, or not, the

ENHANCEMENT OF RENT—*continued.*

3 EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

paid more than R24 to the Government, did not neutralise the effect of the decrees as the very best evidence that the rents had varied since the Decennial Settlement. WOODOY NARAIN SEIN *v.* TARINEE CHURN ROY . . 11 W. R., 496

159. ——— *Act X of 1859,*

that the orchard was planted more than forty years ago, and it was for plaintiffs to prove it to have been made since the Permanent Settlement. SOODISTEE LALL CHOWDHRY *v.* NUTHOO LALL CHOWDHRY [8 W. R., 487

prove that the rent has not changed for twenty years, he is entitled to the presumption allowed by s. 4, Act X of 1859. LUCHMEEPUT SINGH *v.* JUNGULEE KULLYAN DOSS . . . 9 W. R., 147

161. ——— *Act X of 1859, s. 4—Presumption.*—When a raiyat alleges that he has paid rent at a uniform rate for forty years and claims the benefit of the presumption under s. 4, Act X of 1859, it is not necessary, in order to entitle him to a decree, that he should expressly state that rent has been paid at the same rate from the time of the Permanent Settlement. POOLIN BEHARY SEN *v.* NEMAYE CHAND . . . 7 W. R., 472

162. ——— *Beng. Act VIII of 1869, s. 4—Presumption.*—In a suit for enhanced rent after notice, where defendant pleaded that he had for more than twenty years paid at the same rate,—*Held* that he was entitled to the presumption under s. 4 of the Rent Law, unless plaintiff could prove that defendant's tenure commenced at some date subsequent to the Decennial Settlement. ASHRUF ALI *v.* VILAET HOSEIN . . . . . 24 W. R., 356

163. ——— *Inference—Beng Act VIII of 1869, s 4—Presumption.*—In a suit relating to four jummas in the possession of the same persons in which it was proved that three of the jummas had been held at the same rent for twenty years, but that the fourth, having only been

twenty years, and that the lower Courts were justified in inferring that such had been the case. RADHAMOYE DEY CHOWDHRY *v.* AGHORE NATH BISWAS. . . . . . . 25 W. R., 384

and (in a third) a decree of 1857 citing an earlier

Permanent Settlement, or that such rent had been fixed at some later period, the plaintiffs were held entitled to the presumption prescribed by Bengal Act VIII of 1869, s. 4. RAM BHUROSEE SINGH *v.* MAHOMED ASGUREE KHAN . 19 W. R., 205

165. ——— *Enhancement of rent, Suit for—Beng. Act VIII of 1869, s. 4—Presumption of evidence*—In a suit for arrears of rent at enhanced rates, where the defendant relies on the presumption contained in s. 4 of Beng Act VIII of 1869, it is not sufficient, in order to do away with that presumption, to show that the land has not been in cultivation from the time of the Permanent

166. ——— *Act X of 1859, s. 4—Evidence to establish presumption of uniform rent*—A raiyat is not bound to file dakhilas in order to establish the presumption allowed by Act X of 1859, s 4, if he can establish it by other good independent evidence. RADHA GOBIND ROY *v.* SHAMA SOONDUREE DABEE . . . . 21 W. R., 403

167. ——— *Act X of 1859, s. 4—Enhancement on ground of there being excess land.*—The rent of a tenure protected from enhancement under the provisions of s. 4, Act X of 1859, cannot be increased on the ground of the tenure containing excess land. DECOURCY *v.* MEGHNATH JHA [15 W. R., 157

168. ——— *Enhancement on ground of there being excess land—Act X of 1859, ss. 15 and 16—Presumption of uniform rent.*—In a suit for arrears of rent at enhanced rates, where

dant may be in excess of that covered by the original tenure. If, on the other hand, the excess land was not included in the original tenure, but obtained subsequently without the consent of the plaintiff, the possession of the defendant must be considered adverse, and the suit must fail for want of privity. INDRO BHOOSUN DEB *v.* GOLUCK CHUNDER CHUCKERBUTTY [12 W. R., 350

mation, raised the question whether he was entitled to the benefit of s. 4 of Act X of 1859 HURBAN SING *v.* TULSI RAM SAHU [5 B. L. R., 47: 13 W. R., 216

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

Held per PEACOCK, *C.J.* (*dissentiente* BAYLEY, *J.*, and KEMP, *J.*), that, independently of the dowl, it might be presumed, from the great differences between the rent at which the lands were held and the present value of the lands, that the occupation at the low rent had been continued as of right, and not merely by the sufferance of the zamindar, and that such occupation at the same rent had existed twelve years before the date of Regulation VIII of 1793. *Per* BAYLEY, *J.*, that, independently of the dowl, the facts did not satisfy such a presumption; but that, if the dowl were proved, then it might be presumed that the occupation at the same rent had commenced twelve years before the date of the Regulation. *Per* KEMP, *J.*, that, even if the dowl were proved, the presumption would not arise. BROJUNGGONA DASSEE *v.* DEBRANEE DASSEE . Marsh., 424

DEBRANEE DASSEE *v.* BROJUNGGONA DASSEE [W. R., F. B., 94

151. ——— Possession for a long time from olden date, etc.—*Presumption—Act X of 1859, s. 4.*—A plea of holding "for a long time from olden date from before" is not inconsistent with a holding from the time of the decennial settlement so as to deprive the defendant of the benefit of the presumption created by s. 4, Act X of 1859, which does not require a specific plea that the tenure was held at a fixed rent at the Permanent Settlement, but only proof of payment for twenty years at a fixed rate in order to raise the legal presumption. MUNMOHUN GHOSE *v.* HUSRUT SIRDAR . 2 W. R., Act X, 39

JUGMOHUN DOSS *v.* POORNO CHUNDER ROY [3 W. R., Act X, 133

HEM CHUNDER CHATTERJEE *v.* POORNO CHUNDER ROY . . . . . 3 W. R., Act X, 162

RAJ COOMAR ROY *v.* ASSA BEBEE [3 W. R., Act X, 170

GOOROO DOSS MUNDUL *v.* DURBAREE [5 W. R., Act X, 86

SHAM LAL GHOSE *v.* MUDDUN GOPAL GHOSE [6 W. R., Act X, 37

152. ——— Possession for a long time—*Sufficiency of evidence.*—When, in a suit for enhancement, a raiyat or talukhdar pleads possession for a long time and claims the benefit of the presumption under s. 4, that is tantamount to his having named the Permanent Settlement. DHUN SINGH ROY *v.* CHUNDER KANT MOOKERJEE [4 W. R., Act X, 43

153. ——— Possession from Permanent Settlement—*Sufficiency of evidence.*—Possession from the Permanent Settlement is not sufficient to prove that a uniform rate of rent has been paid from that date. MAHMOODA BEBEE *v.* HAREEDHUN KHULEEFA . 5 W. R., Act X, 12

154. ——— Possession for long time—*Act X of 1859, s. 4—Presumption.*—*Held* (by JACKSON, *J.*, whose opinion prevailed) that where a raiyat in his answer to a suit for enhancement pleads possession for a very long time, and expressly claims the benefit of the presumption under s. 4, Act X of 1859, it is tantamount to his naming the Permanent Settlement; but where the defendant's allegation, whether oral or written, suggests a commencement of a holding at a much later period, and his evidence is of the same character, then the presumption claimed will not arise from the proof of twenty years' occupation at a rate unchanged. HURRAK SINGH *v.* TOOLSEE RAM SAHOO . 11 W. R., 84

Affirmed in HURRAK SINGH *v.* TULSI RAM SAHU [5 B. L. R., 47: 13 W. R., 216

155. ——— Possession from generation to generation—*Presumption—Act X of 1859, s. 4.*—In a suit for enhancement of rent the raiyat pleaded that he had held certain lands from generation to generation at a uniform rate; that he was therefore entitled to claim the presumption arising under s. 4, Act X of 1859; and that he should be allowed to date his claim from the date of the Permanent Settlement. *Held* that he was entitled to such presumption on showing that he had paid rent at a uniform rate for a period of twenty years previous to the suit. MITRAJIT SINGH *v.* TUNDAN SINGH . . 3 B. L. R., Ap., 88 [12 W. R., 14

156. ——— Sufficiency of proof—*Act X of 1859, s. 4—Presumption.*—In a suit for enhancement of rent, where defendant claimed the benefit of the presumption arising under s. 4, Act X of 1859, it was held that his sworn declaration that the rent had not varied for more than twenty years, corroborated by the records of the Collectorate, which showed that the rent was the same as it had been more than thirty years ago, was sufficient to warrant the presumption, seeing that plaintiff had failed to show any intermediate variation. RAJ DOOLLAB *v.* MOHESSUR BHUTT . 10 W. R., 364

157. ——— *Act X of 1859, s. 4—Admission of plaintiff.*—In a suit for enhancement of rent, plaintiff's admission that defendant had held the tenure for thirty or thirty-two years at the same rent was held not to amount to an admission that the land had been held at that rate of rent from the Permanent Settlement, and that plaintiff should have an opportunity allowed him of rebutting any presumption which might arise from that admission. PEAREE MOHUN DUTT *v.* RADHA MADHUB MOOKERJEE . . 10 W. R., 427

158. ——— *Act X of 1859, s. 4—Decrees for arrears of rent.*—In a suit for arrears of rent at an enhanced rate, where defendant pleaded the presumption arising under s. 4, Act X of 1859, and plaintiff produced in support of his claim a decree of 1860, declaring him entitled to the enhanced rent and a later decree for arrears on the same scale,—*Held* that the fact that the later decree had only been executed in part, and that defendants never

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

contemplated by s. 4 of Act X of 1859. MAHOMED YACOOB HOSSEIN *v.* CHOWDRY WAHEYD ALLY [1 Ind. Jur., N. S., 29: 4 W. R., Act X, 23

HANUMAN PARSHAD *v.* RAMJUG SINGH [6 N. W., 371

THAKOOR PERSHAD *v.* MAHOMED BAKU [8 W. R., 170

181. ——— *Rent in kind, (bhaoli) varying with amount of yearly produce—Act X of 1859, ss 3 and 4—Act XVIII of 1873, ss. 5 and 6* —A rent in kind (bhaoli) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of s 3 of Act

ing. HANUMAN PARSHAD *v* KAULESAR PANDEY [I. L. R., 1 All., 301

182. ——— *Abatement of rent for unculturable land—Act X of 1859, s. 4.*—Where an abatement of rent was allowed in a lump sum upon a lump jumma on account of lands having been rendered unculturable by the overflow of a river, the abatement was held not to vary the rate of rent so as to debar the raiyat from the benefit of the presumption under Act X of 1859, s 4 RADHA GOBIND ROY *v.* KYAMUTOOLLAH . 21 W. R., 401

ation, unless it be shown that the tenant submitted to or paid that varied and enhanced rate. GOPAL MUNDUL *v.* NOBBO KISHEN MOOKERJEE [5 W. R., Act X, 83

184. ——— Variation of rent shown in dakhilas—*Average of payments of rent.*—Where dakhilas are relied upon to prove uniformity of rent and any variation in the dakhilas is found to exist, there must be a distinct finding as to whether the short payments of one year were made up the next year, the variation *primâ facie* being evidence that the rent was not uniform. RAMJADOO GANGOOLY *v.* LUCKHEE NARAIN MUNDUL . . 8 W. R., 488

185. ——— Additional illegal cess for additional land—*Immaterial variation.*—Additional rent for additional land, and the addition of a small illegal cess, are not such variations of the proper rent as deprive the tenant of the presumption

arising from twenty years' payment of uniform rent. SUMEEROODEEN LUSHKUR *v* HURONATH ROY [3 W R., Act X, 93

Act X of 1859. MUNSOOR ALLY *v* BUNO SINGH [7 W. R., 283

187. ——— *Immaterial variation.*—The variation of a few annas in the dakhilas, when not proved to be a variation in the annual rents, is not sufficient to deprive the raiyat of the benefit of the presumption. TARA SOONDERY BURMONYA *v* SHIBESSUR CHATTERJEE [6 W R., Act X, 51

ELAHEE BUKSH CHOWDHRY *v.* ROOPUN TELEE [7 W. R., 284

188. ——— Nominal reduction in jumma—*Immaterial variation.*—A nominal reduction in the jumma of one anna and three pies, and that too in the raiyat's favour, is not a variation that deprives him of the benefit of the presumption created by s 4, Act X of 1859 But the acceptance of a temporary kabuliat annuls such presumption. RAMRUTNO SIRCAR *v.* CHUNDER MOOKHEE DEBIA [3 W. R., Act X, 74

Nor does an unexplained variation of one rupee in a total jumma of sixty rupees. ANUNDOLALL CHOWDHRY *v* HILLS . . 4 W. R., Act X, 33

WATSON & CO *v* NUND LAL SIRCAR [21 W. R., 420

189 ——— Alteration in jumma—*Immaterial variation* —It must be a variation which affects the integrity of the jumma. GOPAL CHUNDER BOSE *v.* MOTHOOR MOHUN BANERJEE [3 W. R., Act X, 133

HILLS *v.* HURO LAL SEN . 3 W. R., Act X, 135

190 ——— Material difference—*Difference in amount.*—The difference between R11 13 and R13-4 was held sufficient to destroy the presumption of a uniform payment of rent. BISSESSUR CHUCKERBUTTY *v.* WOOMACHURN ROY [7 W. R., 44

v. NAGA DOSS . . . 3 N. W., 93

192. ——— Variation of rent from change of currency —A variation of rent from change of currency only is not a variation rebutting the presumption arising from uniform payment for more than twenty years. RAM COOMAR MOOKERJEE *v.* RUGOONATH MUNDUL . . 1 W. R., 356

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

170. ——— *Presumption.*—In a suit for enhancement, before giving a defendant the benefit of the presumption created by s. 4, Act X of 1859, there must be legal evidence of actual uniformity of rent for the whole of the twenty years immediately preceding the commencement of the suit. RAJ NARAIN ROY CHOWDHRY *v.* ATKINS [15 W. R., 45: 5 W. R., 30

SHIB NARAIN GHOSE *v.* KASHEE PERSAD MOOKERJEE . . . . . . 1 W. R., 226

RAM KISHORE MUNDUL *v.* CHAND MUNDUL [5 W. R., Act X, 84

PREM SAHOO *v.* NYAMUT ALI [6 W. R., Act X, 84

171. ——— *Proof requisite of uniformity of rent.*—A raiyat is bound to give strict proof of a uniform payment of rent for twenty years. That is a matter which should not be decided in his favour on mere inference. SHAM LAL GHOSE *v.* BOISTUB CHURN MOZOOMDAR . 7 W. R., 407

BUNGO CHUNDAR CHUCKERBUTTY *v.* RAM KANYE BHAWAL . . . . . . 10 W. R., 256

SREENATH BOSE *v.* POGLIAN MOLLAH [17 W. R., 374

172. ——— *Time for which the rent has been uniform.*—Uniform payment must be shown, if not for every year in the twenty years, at least for the greater portion of that period, and for years in the earlier, as well as in the later, portion of the same. SURNOMOYEE DASSEE *v.* SHAM MUNDUL [9 W. R., 270

173. ——— *Act X of 1859, s. 16—Rent of talukh—Presumption.*—S. 16, Act X of 1859, does not require proof of actual payment of one rate of rent for twenty years, but that the rent has remained unchanged for that period. Uniform rent for the twenty years preceding the suit ought not to be presumed upon evidence which only touches a portion of that period: on the other hand, it is not necessary to have evidence bearing directly on every one of the twenty years. It is sufficient if the whole time is included within limits upon which the evidence bears, provided the evidence leads to the belief of uniform rent. FOSCHOLA *v.* HURO CHUNDER ROSE [8 W. R., 284

RASHBEHARY GHOSE *v.* RAM COOMAR GHOSE [22 W. R., 487

174. ——— *Evidence of each year's rent.*—Uniform payment of rent for twenty years may be presumed without proof of such payment for every separate year. KOMUL LOCHUN ROY *v.* TUMEERUDDEEN SIRDAR . 7 W. R., 417

175. ——— *Presumption—Act X of 1859, s. 4.*—Proof of uniform payment of rent up to the date of suit is not absolutely necessary to entitle a raiyat to the benefit of the presumption under s. 4, Act X of 1859, in a case when the landlord has refused to take rent for a few years before suit. GYARAM DUTT *v.* GOOROOCHURN CHATTERJEA [2 W. R., Act X, 59

176. ——— *Interruption in proof of duration—Act X of 1859, s. 4—Presumption.*—In a suit for a kabuliat at an enhanced rent,—*Held* by SETON-KARR, *J.*, that, as there was a break of three years in the period of uniform payment which would give rise to the presumption of uniform holding from the time of the Permanent Settlement, the Judge, instead of accepting dakhilas, merely because they were not denied by the plaintiff, should have found whether the dakhilas were satisfactorily proved and attested, and, if so, whether they could legally support a uniform payment for twenty years. RADHA KANT DEB *v.* KHEMA DASEE [7 W. R., 501

(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE.

177. ——— **Uniformity in rate**—*Variation.*—Uniformity in the amount actually paid is not required to raise the presumption under s. 4, Act X of 1859, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid. MORAN & Co. *v.* ANUND CHUNDER MOZOOMDAR . 6 W. R., Act X, 35

SHAM CHURN KOONDOO *v.* DWARKANATH KUBEERAJ . . . . . . 19 W. R., 100

178. ——— *Act X of 1859, s. 4—Rent changed in amount, but at same rate.*—The words of s. 4, Act X of 1859, refer to the rate as well as the amount of rent. Therefore, where from 1839 to 1858 a raiyat had paid rent at the same rate, but in 1856 the rent was, by order of the Civil Court, changed, and a proportionate amount remitted in consequence of a portion of the land having been lost by diluvion,—*Held* that the remaining portion of the rent being levied at the same rate as before, the raiyat had not lost his right to avail himself of the provisions of s. 4, Act X of 1859. RIAZUNISSA *v.* TEKUN JHA [1 B. L. R., S. N., 18: 10 W. R., 246

KENARAM MULLICK *v.* RAMKOOMAR MOOKERJEE [2 W. R., Act X, 17

179. ——— *Rent in kind (bhaoli)—Act X of 1859, ss. 3 and 4.—Semble*—A tenant who has paid at the same bhaoli rate—*i.e.*, in kind—for a period of twenty years is entitled to the presumption of s. 4, Act X of 1859, and to exemption from enhancement under s. 3. RAM DAYAL SINGH *v.* LATCHMI NARAYAN [6 B. L. R., Ap., 25: 14 W. R., 388

180. ——— *Rent in kind (bhaoli) varying in proportion to crop—Act X of 1859, s. 4.*—A bhaoli rent, varying yearly in amount in a fixed proportion to the produce of the crop, is not a fixed unchangeable rent of the nature

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT.

(a) NECESSITY OF NOTICE.

202. -
Beng. Re
a tenure [illegible]
notice under s. 51, Reg VIII of 1793, before his rent can be enhanced. NILMONEE SINGH *v.* CHUNDER KANT BANERJEE . 14 W. R., 251

203. ———— **Tullubi bromuttur tenure** —*Beng. Reg. VIII of 1793, s. 51.*—A tullubi bromuttur tenure, which has been held as such from the time of the Decennial Settlement, is such an intermediate tenure as entitles the holder to a notice under s 51, Reg VIII of 1793. NILMONEE SINGH DEO *v.* CHUNDERKANT BANERJEE
[I. L. R., 2 Calc., 125 : 25 W. R., 200

204. ———— **Necessity of notice**—*Act X of 1859, s 13.*—A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, s. 13. AKHAY SUNKUR CHUCKERBUTTY *v.* INDRA BHUSUN DEB ROY
[4 B. L. R., F. B., 58

S C AKHAY SUNKUR CHUCKERBUTTY *v.* INDRO BHOOSUN DEB ROY . . 12 W. R., F. B., 27

205 ———————— *Act X of 1859, s. 13—Specification of grounds of enhancement.*—Under s 13 of Act X of 1859, no tenant is liable to enhancement unless he is duly served with a proper notice at a proper time specifying on what ground enhanced rent is demanded MAHTAB KOOER *v.* BULDEO SINGH . . 4 N. W., 58

BINDESSUREE DUTT SINGH *v.* DOMA SINGH
[9 W. R., 88

BURODA KANT ROY *v.* RADHA CHURN ROY
[13 W. R., 163

206. ———— **Express engagement for specified rent**—*Act X of 1859, s 13.*—S. 13, Act X of 1859 (requiring previous service of notice), has no application to a case in which there is an express written engagement between the parties providing for the payment of rent at a specified rate from a specified point of time. BHYRUB CHUNDER MOJOOMDAR *v.* HURO PROSUNNO BHUTTACHARJEE
[17 W. R., 258

[illegible]

specifying the grounds of enhancement. BAKRANATH MANDAL *v.* BINODRAM SEN
[1 B. L. R., F. B., 25 : 10 W. R., F. B., 33

[illegible]

a written notice before he can be called upon to pay enhanced rent, the provisions of that section qualifying those of ss. 7 and 9, Reg VII of 1822 D'SILVA *v.* RAJCOOMAR DUTT . . 16 W. R., 163

See ENAYETOOLLAH MEAH *v.* NUBO COOMAR SIRCAR
[20 W. R., 207

WOOMANATH ROY CHOWDHRY *v* DEBNATH ROY CHOWDHRY . . . . . 16 W. R., 471

209. ———— **Suit to set aside alleged right to quit rent tenure**—*Act X of 1859, s. 13.*—No notice is required under s. 13, Act X of 1859, to set aside an alleged right to a quit rent tenure in a suit for declaration of title. GHUNSHYAM CHOBEY *v* KASHEENATH SHANTEEKAREE
[3 W. R., Act X, 4

210. ———— **Accreted land afterwards diluviated**—*Act X of 1859, s 13.*—In a suit

[illegible]

was necessary under s. 13, Act X of 1859, before rent could be demanded by the zamindar in the case. WATSON & CO *v* NEEL KANT SIRCAR
[10 W. R., 330

211. ———— **Suit for arrears of rent of**

[illegible]

of a notice under s. 13, Act X of 1859 THEKMEE BELDAR *v* RAM KISSEN LALL 15 W. R., 71

212. ———— **Decree for rent according to yearly assessment**—*Act X of 1859, s. 13.*—Where a decree of 1848 gave plaintiffs the right to assess and to receive the rents for each year according to the assessment made for that particular year, a notice under s. 13, Act X of 1859, was held not necessary when the rent found assessable for the years for which rent was claimed varied from what was found assessable in 1848. SALEHOONISSA KHATOON *v.* MOHESH CHUNDER ROY . 17 W. R., 452

213. ———— **Land held under ootbundee tenure or otherwise**—*Act X of 1859, s 13.*—Whether land is held under an ootbundee tenure or not, the tenant is entitled to notice under s. 13, Act X of 1859, before the rate at which he pays can be enhanced. DWARKANATH MISREE *v* NOBOO SIRDAR . . . . . 14 W. R., 193

214. ———— **Lease, stipulation in, for increase or decrease of rent according to excess or diminution in amount of land**—*Beng. Act VIII of 1869, s. 14.*—A lease from generation to generation gave the boundaries of the land leased, estimated the area thereof, and fixed a certain rent per bigha. It contained a condition that, if on measurement the actual quantity of land should turn out to be either more or less than the estimated area, the

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*continued.*

See also KALEE CHURN DUTT *v.* SHOSHEE DOSSEE [1 W. R., 248

KATTYANI DEBEA *v.* SOORDUREE DEBEA [2 W. R., Act X, 60

See MEER MAHOMED HOSSEIN *v.* FORBES [22 W. R., 316 : L. R., 2 I. A., 1

193. ——— **Consolidation of jummas**—*Act X of 1859, s. 4.*—A consolidation of jummas into one tenure does not deprive the raiyat of the benefit of the presumption under s. 4, Act X of 1859, if it can be shown that the rent has not been changed. This principle applies also to jummas which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one jumma. The presumptions of s. 4 are not restricted to holdings, but refer simply to the fact that land has been held by a raiyat at a rent which has not been changed for twenty years before the commencement of the suit. RAJ KISHORE MOOKERJEE *v.* HUREEHUR MOOKERJEE [1 B. L. R., S. N., 8 : 10 W. R., 117

194. ——— *Holding created since Decennial Settlement.*—He must be entitled to the presumption in respect of the whole tenure as consolidated. If one of the holdings constituting it is shown to have been created since the Decennial Settlement, the presumption cannot be made as to the rest. MOULA BUKSH *v.* JODOONATH SADOO KHAN [21 W. R., 267

195. ——— *Presumption.*—The consolidation of several holdings into one, or the omission of fractions by the settlement officer, cannot deprive a raiyat of the benefit of the presumption under s. 4, Act X of 1859. LUKHI MONI HALDAR *v.* GUNGA GOBIND MUNDLE [W. R., 1864, Act X, 126

KHODA NEWAZ *v.* NUBO KISHORE ROY [5 W. R., Act X, 53

196. ——— **Division of holding among heirs**—*Preservation of continuity of holding.*—The division of a raiyat's holding among his heirs, the continuity of the holding not being destroyed, does not deprive the raiyat of the benefit of the presumption under s. 4, Act X of 1859. In the latter case the default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. HILLS *v.* BESHARUTH MEER . . 1 W. R., 10

197. ——— **Division of tenure**—*Act X of 1859, s. 4—Extent of proof necessary.*—In order to bring himself within ss. 3 and 4, Act X of 1859, a raiyat need only show that the particular land which is the subject of suit, not the whole tenure of which it may once have formed a part, has been held at an unchanged rent since the Permanent Settlement. It is not necessary that the land should have remained a separate holding. KASEENATH NUSKER *v.* BAMA SOONDERY DOSSIA . . . . 10 W. R., 429

ENHANCEMENT OF RENT—*continued.*

3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*concluded.*

198. ——— **Variation of rent of undivided fractional share**—*Act X of 1859, s. 4—Presumption of uniformity.*—A change in the rent of an undivided fractional part of a tenure is to be considered as a change in the rent of the whole tenure, and therefore destroys the presumption to be raised under s. 4, Act X of 1859. MAHOMED MUDDEEN MIRDHA *v.* GOPAL LALL TAGORE . 2 Hay, 514

199. ——— **Distribution of rent after sale of portion of tenure**—*Beng. Act VIII of 1869, s. 4.*—The sale of a portion of a tenure involving a distribution of the rent over two parts does not amount to a change of rent within the meaning of Bengal Act VIII of 1869, s. 4. SOODHA MOOKHEE DOSSEE *v.* RAM GUTTEE KURMOKAR [20 W. R., 419

200. ——— **Temporary holding by one of several joint owners under arrangement**—*Act X of 1859, s. 4.*—A temporary arrangement among joint owners by which one of their number is allowed to hold a portion of the joint property on payment of a certain sum of money does not convert the occupier into a raiyat holding at a fixed rent or entitle him to the benefit of the presumption under s. 4, Act X of 1859. ROGHOOBUN TEWAREE *v.* BISHEN DUTT DOBEY [2 W. R., Act X, 92

201. ——— **Partition**—*Evidence of previous enhancement in a suit by another co-zamindar—Talukh—Beng. Act VIII of 1869, s. 17.*—More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talukh, the zamindari under which the talukh was held was partitioned under a batwara among three zamindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talukhdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861, the owner of the two-anna share obtained a decree against the talukhdars for enhancement of the rent of his share. In the present suit against the same talukhdars, the defendants contended that the rent of their talukh had not been changed for a period of more than twenty years before suit. *Held* that the "talukh," which was intended by s. 17 of the Rent Act, was the original talukh; and that, if the defendants could show that the rent of that talukh had remained unchanged, either in its original entirety or apportioned as it had been under the batwara, they would be entitled to the benefit of the section; but that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talukh, and that the plaintiff could avail herself of that decree, although she was not a party to it. SARAT SOONDARY DABEA *v.* ANUND MOHUN SURMA GHUTTACK [I. L. R., 5 Calc., 273 : 4 C. L. R., 448

See HEM CHANDRA CHOWDHRY *v.* KALI PRASANNA BHADURI . . . I. L. R., 26 Calc., 832

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

224. ——— **Necessity for fresh notice** —*Act X of 1859, s. 13—Notice of enhancement.*—Where a zamindar served a notice of enhancement of rent on the raiyats of a mouzah, and afterwards granted a lease of the mouzah to the plaintiff,—*Held* the plaintiff was entitled to sue for enhancement upon the notice already served. KHASKI ROY *v.* FARZAND ALI KHAN . 9 B. L. R., 125 : 18 W. R., 144

(*b*) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN.

225. ——— **Accuracy and precision**

sum on the whole land in and out of defendant's possession is not sufficient. TARACHAND ROY *v.* KEENARAM KURMOKAR . W. R., 1864, Act X, 118

226. ——— **Prospective notice**—*Disadvantage to tenant.*—A notice of enhancement should not be prospective, the principle being that the raiyat should be prepared to meet the claim on grounds existing at the time the notice is received. BYJNATH KOONWAR *v.* SAHEB KOONWAR [12 W. R., 532

227. ——— **Requisites for notice**—*Precise nature of claim.*—The great strictness with which cases involving questions as to the form of

without containing the exact terms of the law, it states with sufficient precision the nature of the claim, the amount asked for, and the grounds on which the enhancement is sought, so that the raiyat served with the notice may not be misled, and can clearly comprehend the case which he has to meet. McGIVERAN *v.* HURKHOO SINGH . 18 W. R., 203

228. ——— **Notice based on simple ground of rents having become less**—*Abatement—Beng. Reg. VIII of 1793, s. 51.*—A notice of enhancement of the rent of a talukh on the simple ground of the rents having become less by decrees is not based on the "abatement" contemplated by s. 51, Regulation VIII of 1793, or any of the other grounds specified in that section. NUBO KRISTO MOJOOMDAR *v.* TARA MONEE . . 12 W. R., 320

229. ——— *Abatement*—

an abatement of his jumma, and thereby rendered himself liable for the increase demanded. NOBO KISHEN BOSE *v.* MAZAMOODDEEN AHMED CHOWDHRY [19 W. R., 338

230. ——— **Notice describing intermediate as ordinary tenant**—*Reg. VIII of 1793, s. 51.*—A notice describing an intermediate holder as an ordinary tenant and avowedly served under Bengal

ENHANCEMENT OF RENT—*continued.*

4 NOTICE OF ENHANCEMENT—*continued.*

[24 W. R., 190

they can be sued for enhancement of rent, to a notice which not only specifies the rent, but also states the ground on which enhancement is claimed, and shows

MONEY SINGH *v.* RAM CHUCKERBUTTY [21 W. R., 430

SHIB NARAIN GHOSE *v.* AUKHIL CHUNDER MOOKERJEE 22 W. R., 485

v. RAMTONOO BISWAS 13 W. R., 449

233 ——— **Specification of particular grounds**—*Beng Act VIII of 1869, s 18—Schedule appended to notice.*—In notices of enhancement of rent it is absolutely necessary that in the statement of grounds there should be some words to show that it is the intention of the landlord to proceed under some particular clause or clauses of s. 18, Bengal Act VIII of 1869 It is not sufficient to leave this to be inferred from a schedule appended to the notice. HOORUL MUNDER *v.* HURRUCK DUTT KHOWAS [23 W. R., 420

234. ——— *Act X of 1859, s 19—Sufficiency of notice of enhancement.*—It is not sufficient for a notice of enhancement of rent to allege generally the grounds of enhancement mentioned in s. 17, Act X of 1859 It should set forth specific and tangible grounds of enhancement applicable to the particular case. DWARKA NATH CHOWDHRY *v.* BEJOY GOBIND BURAL . 10 W. R., 333

SHUMSOOL OSMAN *v.* BUNSHEEDHUR DUTT [15 W. R., 366

BANEE MADHUB CHOWDHRY *v.* TARA PROSUNNO BOSE . . . . . . 21 W. R., 33

KALEE KANT CHOWDHRY v. BHOOBUNNESSUREE CHOWDHRAIN . . . 22 W. R., 116

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

rent should be increased or decreased in proportion at the same rate per bigha. In a suit for enhancement of rent, on the ground that the land leased contained more than the estimated number of bighas, the lease being one which did not specify the period of the engagement,—*Held* that notice of enhancement was necessary under Beng. Act VIII of 1869, s. 14. EKRAM MUNDUL *v.* HULODHUR PAL
[I. L. R., 3 Calc., 271

215. ——— **Stipulation in pottah for increase in rental to be made yearly**—*Beng. Act VIII of 1869, s. 14—Suit to recover rent as per pottah.*—Where a pottah in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the pottah without serving on the tenants any notice under s. 14 of Beng. Act VIII of 1869. NISTARINI DASI *v.* BONOMALI CHATTERJI. DINO NATH DAS *v.* BONOMALI CHATTERJI . . . . . I. L. R., 4 Calc., 941
[4 C. L. R., 278

216. ——— **Lands found in excess.**—A notice of enhancement, according to the rate mentioned in an agreement, is necessary as to lands found in excess on measurement where no term is specified in the written agreement. BURODAKANT ROY *v.* SIB SUNKUREE DOSSEE
[4 W. R., Act X, 35

217. ——— *Contract to pay for excess land after measurement—Notice—Rent Act (Beng. Act VIII of 1869), s. 14.*—When a tenant contracts to pay rent at a certain rate for any such land as upon measurement may be found to be in excess of the estimated area, it is not necessary to serve him with notice under s. 14 of the Rent Act before instituting a suit for the rent of any additional land, nor is it necessary that he should be present at the measurement. DWARKANATH *v.* BABURAM LASKAR . . I. L. R., 9 Calc., 72
[11 C. L. R., 326

218. ——— *Mistake in measurement—Act X of 1859, s. 17.*—S. 17, Act X of 1859, is applicable to cases where the land was undoubtedly included in the original tenure, but it has been found in a fresh measurement that there was some mistake in the former measurement, and that a greater amount of rent ought to be paid, not in respect of any fresh land, but in respect of land which was included in the original tenure. PRANKISSEN BAGCHEE *v.* MONMOHINEE DASSEE
[17 W. R., 33

219. ——— *Beng. Act VIII of 1869, ss. 18 and 19—Rent of excess lands.*—In a suit for arrears of rent after deduction of payments where the claim embraced excess lands found after measurement, and was based on a kabuliat which stipulated that the raiyat would pay for such excess at the same rate as for the rest of the land, and from the date of the kabuliat,—*Held* that there was no question of enhancing the rate of rent, and the raiyat was not entitled to notice under Beng. Act VIII of 1869, ss. 18 and 19. RAM NARAIN LALL *v.* GUMBEER SINGH . . . 19 W. R., 108

220. ——— **Accreted land**—*Enhancement of rent after accretion—Notice of enhancement—Beng. Act VIII of 1869, s. 14—Reg. XI of 1825, s. 4, cl. 1.*—Before increased rent, on the condition laid down in Reg. XI of 1825, s. 4, cl. 1, on account of the area of land held by a tenant under a permanent tenure having been increased by accretion, can be recovered, a notice must be served upon the tenant under s. 14 of Beng. Act VIII of 1869, informing him of the amount of rent to be imposed and the grounds upon which it is claimed. RAMNIDHEE MANJEE *v.* PARBUTTY DASSEE
[I. L. R., 5 Calc., 823 : 6 C. L. R., 362

221. ——— *Landlord and tenant—Arrears of rent, Suit for—Notice of enhancement.*—When land has accreted to a raiyat's holding, the rent paid by the raiyat may be enhanced in respect thereof under the provisions of cl. 3, s. 18 of Beng. Act VIII of 1869; and no suit for rent in respect of such accretion will lie unless a proper notice of enhancement has been previously given. *Ramnidhee Manjee* v. *Parbutty Dassee, I. L. R., 5 Calc., 823,* followed. BROJENDRA COOMAR BHOOMICK *v.* WOOPENDRA NARAIN SINGH
[I. L. R., 8 Calc., 706

222. ——— **Suit after permission to hold at old rent**—*Subsequent to declaration of right to enhance.*—In a former suit brought by a raiyat against the holder under a temporary ijara extending down to 1271, a decree was passed maintaining the ijaradar's right to enhance. But notwithstanding this decree, the raiyat was by express agreement allowed, and in fact continued, to hold at the old rates. On the expiration of the ijara, the zamindar entered upon the lands, and after collecting a part of the rents for 1272 gave the plaintiff a patni of the estate from 1273, and an assignment of the right to collect the uncollected portion of the rents of 1273. The patnidar now sues to recover from the defendant the rent for the remainder of 1272 and for 1273 at the enhanced rates decreed to the ijaradar. *Held* that neither the zamindar nor the patnidar could recover enhanced rents from the raiyat without some notice. BODHNARAIN SINGH *v.* RUNGO LALL MUNDUR
[7 W. R., 190

223. ——— **Previous decree after notice before Act X of 1859**—*Suit for subsequent arrears.*—Where notice of enhancement was issued according to the law in force before Act X of 1859, and a decree obtained by the zamindar which ascertained the liability of the cultivator to an enhanced rate of rent and awarded arrears at that rate,—*Held* that a suit by the zamindar for arrears for the years subsequent to the decree at the enhanced rate thereby determined was legal and good without issue of any fresh notice under Act X of 1859, and the effect of the decree ascertaining the liability to enhanced rent still continued, notwithstanding it was not executed and arrears not recovered under it. MOUZZUM ALI KHAN *v.* SHEORUTTUN SINGH . . 3 Agra, 277

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

Enquiry as to rate of rent paid by neighbouring raiyats—In a suit for enhancement of rent where the raiyats plead that their relations with the zamindar are peculiar, it is not sufficient for a notice to set forth, and for a Court to find, that the rent paid in respect of the land in dispute is lower than the rent paid in respect of neighbouring lands the Court is bound to enquire into the status and situation of the defendant's raiyats with those of the raiyats of the neighbouring lands. LALLA ROGHOOBUNS SAHOY *v* ASLOO . . . . . . 20 W. R., 294

246. ———— Notice not stating year for which enhancement is sought—*Act X of 1859, s. 13.*—A notice of enhancement under s. 13, Act X of 1859, is not required to state that it is for the ensuing year. GUDADHUR BANERJEE *v.* NUND LAL BISWAS . . 3 W. R., Act X, 145

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DUTT . . . . 4 W. R., Act X, 48

248. ———— Notice with some insufficient reasons for enhancement—*Act X of 1859, s. 13*—In the case of a tenant who has no right of occupancy, a landlord's notice of enhancement under s. 13 of Act X of 1859 is valid, if it specifies the rent to which the tenant will be subject for the ensuing year and the ground on which the enhancement is claimed, even if among the reasons assigned are some which will not bear examination. The only limit to the landlord's power of enhancement after notice is the fairness and reasonableness of the rent SREEGOPAUL MULLICK *v.* DWARKANAUTH SEIN . . 15 W. R., 520

249. ———— Notice in case of distinct holdings—*Act X of 1859, s. 13*—A landlord serving notice of enhancement under s. 13, Act X of 1859, has no right to consolidate distinct and independent holdings, without the consent of the raiyat. The raiyat, on the other hand, is entitled to a notice or notices specifying the several holdings in his possession, the amount of enhanced rent he is liable to pay upon each, and the ground of such enhancement upon each instance. BEEJOY GOBIND BURAL *v.* JANNOBEE BROMONYA . . 8 W. R., 252

DENOBUNDHOO BHADOOREE *v.* PRANKISHEN SURMA . . . . . . 20 W. R., 146

DWARKANAUTH HALDAR *v.* HUREE MOHUN ROY [20 W. R., 404

NIDHOO MONEE JOGINEE *v.* KISHEN NATH BANERJEE . . . . . 20 W. R., 442

250. ———— *Beng Act VIII of 1869, s. 15—Distinct holdings*—A notice of enhancement under s. 15 of Bengal Act VIII of 1869 must, when the tenant holds different jotes the rents of which it is sought to enhance, distinctly specify the several holdings, the amount of enhanced rent claimed in respect of each holding, and the grounds for claiming such enhanced rent. UDOYTARA CHOWDHRAIN *v* SHIB NATH SURMA BAHADOORI . . . . . . 9 C. L. R, 207

251. ———— *Separate holdings.*—A notice of enhancement of rent need not be on a separate piece of paper for each holding; all that is required is that it shall be so distinct for each holding that the tenant may be able to distinguish those in respect of which he does not object to the enhanced rent, from others in respect of which he declines to pay it. MCGIVERAN *v.* DURIAW CHOWDHRY . . . 20 W. R, 470

252. ———— Notice in case of land con-

the tenant with a notice of enhancement, specifying all the three grounds of enhancement mentioned in s. 18 of Bengal Act VIII of 1869 Such notice should specify the particular ground or grounds on which each separate plot is alleged to be liable to enhancement. *Semble*—This would not be so if the same ground or grounds applied to every plot the rent of which is sought to be enhanced. If in a suit for enhancement the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. GUNNES CHUNDER HAZRA *v* RAMPRIA DEBEA . . . . I. L. R., 5 Calc., 53

253. ———— Notice given by agent—*Farmer as agent of zamindar*—A notice of enhancement by a farmer as agent and on behalf of the zamindar is legal. HEM CHUNDER CHATTERJEE *v.* POORAN CHUNDER ROY . 3 W. R., Act X, 163

254. ———— *Notice signed by naib—Evidence of authority to sign.*—A notice of enhancement of rent under s. 13 of Act X of 1859, signed by the naib of the landlord, is valid, without evidence that he was specially authorized to sign the notice. DEGUMBUR MITTER *v* GOBINDO CHUNDER HALDER . . . Marsh., 354 : 2 Hay, 403

255. ———— Notice by bringing suit—*Act X of 1859, s. 13—Plaint.*—The plaint in a suit for enhancement is not a substitute sanctioned by law for the notice of intended enhancement required to be given by s. 13 of Act X of 1859. SOBHA MAHTON *v.* PABAROO . . . . . . 2 N. W., 310

256. ———— Notice by suit—*Act X of 1859, s. 13—Decree in contested suit.*—Following a previous decision of a Division Bench, *Modhoo Soo-*

the commencement of the year following that in which the decree was passed. RAMANATH DUTT *v.* JOYKISHEN MOOKERJEE . . . 11 W. R., 3

257. ———— Notice by measurement—*Measurement made in previous suit.*—In a previous

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

235. ——— **Notice not setting out grounds as in s. 17 of Act X of 1859.**—A notice of enhancement which did not set forth grounds of enhancement in the words of s. 17, Act X of 1859, *held* not a sufficient notice. RAM SARAN SING *v.* BHAJAN DOBAY KARPARDAZ

[6 B. L. R., Ap., 155 : 11 W. R., 515

236. ——— Suit for enhancement of rent dismissed on the ground of the insufficiency of the notice of enhancement is not specifying the grounds on which it was sought in accordance with s. 17, Act X of 1859. DINANATH DASS *v.* GUGAN CHANDRA SEN

[7 B. L. R., Ap., 45 note : 14 W. R., 274

KALINATH CHOWDRY *v.* HUMI BIBI

[7 B. L. R., Ap., 47 note : 12 W. R., 506

KHONDKAR ABDOOR RUHMAN *v.* WOOMA CHURN ROY . . . . . . 8 W. R., 330

SYEFOOLLA KHAN *v.* KALEE PERSHAD SAHOO

[20 W. R., 256

237. ——— **Indefinite and uncertain notice.**—Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought. Notice of enhancement to the effect "that as the rent of the land" (in the occupation of the tenant) "is below the rates prevailing in the pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patit lands have been cultivated, I am entitled to receive from you R794-5-7-11½ per annum," was held to be indefinite and uncertain; and therefore no suit thereon could lie for enhancement of rent. GOBIND KUMAR CHOWDHRY *v.* HURO CHANDRA NAG

[5 B. L. R., Ap., 61 : 11 W. R., 571
21 W. R., 442 note

NILMONEY SINGH *v.* SAGURMONEE DEBIA

[12 W. R., 441

KALI CHANDRA CHOWDHRY *v.* RATAN GOPAL BHADHURI . . . 4 B. L. R., Ap., 62 note

HEERALAL SEAL *v.* GUNGADHUR SENAPUTTY

[1 Ind. Jur., O. S., 8
W. R., F. B., 19 : Marsh., 60 : 1 Hay, 229

238. ——— **Notice not specifying clause or section of Act under which enhancement was sought.**—A notice of enhancement held to be sufficient, although it did not specify in terms the clause or section of the Act under which enhancement was sought. KUMAR PARESH NARAIN ROY *v.* GAUR SUNKER BHUMICK

[6 B. L. R., Ap., 154 : 15 W. R., 39

RADHA BALLAB GHOSE *v.* BEHARILAL MOOKERJEE

[6 B. L. R., Ap., 155 : S. C., 12 W. R., 537

239. ——— A notice of enhancement stated that "you the defendants pay less than other raiyats in the neighbourhood, and therefore you are to pay for the future such and such rates," held not a sufficient notice as contemplated by s. 17, Act X of 1859. SHEMSULOSMAN *v.* BANSIDHAR DUTT . . . . 7 B. L. R., Ap., 32

240. ——— In a suit for enhancement of rent of an intermediate tenure, a notice to the following effect was held sufficient: "You (defendant) hold a takshishi talukh, the rent of which has always been of a varying nature; you have been called upon to make a settlement with your landlord at the pergunnah rates; by the immemorial custom of the pergunnah, the holders of such talukhs as yours, after deducting 10 per cent. of the fair jumma for collection charges, and 10 per cent. for malikana, are bound to pay the residue as rent to the zamindar. You hold so much land which, according to rates paid for similar kinds of land in the same and adjacent villages, ought to pay such and such a gross rental; from this, deducting your 20 per cent. on account of malikana and collection charges, the remainder (so much) ought to be paid to me as my rent, and you are hereby called upon to pay that amount." JANNOBA *v.* GIRISH CHUNDRA CHUCKERBUTTY

[7 B. L. R., Ap., 44 : 15 W. R., 335

241. ——— **Omission to state mode of increase of produce or productive powers of land.**—A notice of enhancement under the second clause of s. 17, Act X of 1859, is defective if it omits to state that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat himself. SOOJAAT ALI *v.* HUREE THAKOOR

[6 W. R., Act X, 44

242. ——— **Notice with ground vaguely stated.**—A notice based on the first of the grounds in s. 17, Act X of 1859, and specifying "that the rates paid are below those paid for similar lands in adjacent places," was held to be bad. SHIB NARAIN DUTT *v.* KERAMOONISSA BEGUM

[17 W. R., 356

243. ——— **Notice with ground incorrectly stated**—"*Surrounding rates*"—*Act X of 1859, s. 17.*—That a tenant is holding at a rent lower than surrounding rates is not a sufficient ground to be specified in a notice of enhancement; the words "surrounding rates" being not tantamount to the ground of enhancement indicated in s. 17, Act X of 1859. BOYDONATH *v.* RAMJOY DEY

[9 W. R., 292

244. ——— **Notice not stating quantity of land**—*Excess land.*—A notice under s. 13, Act X of 1859, for enhancement of rent upon land held by a raiyat in excess of the land for which he pays rent to the zamindar, must state the quantity of land so held in excess. The mere statement of "excess land" is not a sufficient compliance with the provisions of the law. GRISH CHANDRA GHOSE *v.* ISWAR CHANDRA MOOKERJEE

[3 B. L. R., A. C., 337 : 12 W. R., 226

245. ——— **Notice stating simply that rates are lower than neighbouring rates**—

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

268. ———— *Notice erroneously including lakhiraj land.*—A notice for enhancement, otherwise sufficient, is not invalided

[illegible]

land which is liable to enhancement. NEWAJ BUNDOPADHYA *v.* KALI PROSONNO GHOSE [I. L. R., 6 Calc., 543 : 8 C. L. R., 6

269. ———— Notice of enhancement in

[illegible]

served, is good for that part. GUBDOO MULL *v.* HOOLASEE . . . . . 2 Agra, 247

[illegible]

[12 W. R., 137

271. ———— Notice to non-cultivator treated as raiyat.—Where a party who was not personally a cultivator of the land, but held a large jumma with a number of raiyats below him, was

[illegible]

272. ———— Notice of excess after measurement—*Statement of proof of measurement.*—In a suit for enhancement of rent after notice, on the allegation that the defendant holds land in excess of the area admitted by him to be in his occupation, it must be shown that the notice stated that such excess has been proved by measurement. KALEE KUMARY DASSEE *v.* SHUMBHOO CHUNDER GHOSE [6 W. R., Act X, 23

[illegible]

notice of enhancement. HILLS *v.* PANCH COUREE SHEIKH . . . . . . 1 W. R., 3

274. — [illegible]
mediate [illegible]
—*Act X* [illegible]
of 1859, [illegible]

[illegible]

for the next and following years must be brought within the said year. MAHOMED ROHIMUDDEEN *v.* RADHA MOHUN MUNDUL . 6 W. R., Act X, 96

275. ———— Notice, Effect of, as regards rent after suit.—In a suit for arrears of

[illegible]

NEE DASSEE *v.* KEDARNATH BOSE . 12 W. R., 141

[illegible]

ascertain the nature, extent, and conditions of his

[illegible]

[8 W. R., 271

277. ———— Notice to zimmadars in talukh—*Act X of 1859, s. 17.*—S. 17, Act X of 1859, applies only to raiyats, not to zimmadars having a tenure of a talukhi character. PANIOTY *v.* JUGGUT CHUNDER DUTT . . . . 9 W. R., 379

[illegible]

279. ———— Notice to tenant as raiyat [illegible] *as* [illegible] tice [illegible] 59, plaintiff was held to have treated defendant as a raiyat having a right of occupancy, and to be debarred from suing him for enhancement of rent as an under-tenant or middleman. CHUNDERNATH GHOSE *v.* SHOTOCORAM MOJOOMDAR . . . . . 12 W. R., 343

280. ———— Notice, Effect of, as admitting valid tenure or right of occupancy—*Presumption of nature of tenancy—Onus of proof.*—When a zamindar sues to enhance the rent of a talukhdar, and specifies certain churs as part of the land *the rent of which is to be enhanced, he, by* implication, must be considered to admit that the

[illegible]

281. ———— Notice, Effect of, as binding plaintiff—*Ground of enhancement.*—A plaintiff must be kept to the grounds of enhancement stated in his notice. HURRY MOHUN ACHARJEE *v.* OKHOY KUMAR BOSE . W. R., 1864, Act X, 14

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease: that suit was decided in favour of the plaintiff for the rent claimed. *Held* that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess, binding upon the defendant, and that, even if it were, the fact of such measurement would be no sufficient notice of enhancement to the defendant. EKRAM MUNDUL *v.* HOLODHUR PAL . . . . I. L. R., 3 Calc., 271

258. ——— **Notice not of sufficient length**—*Right to enhancement—Insufficient notice—Inamdar.*—An inamdar is not entitled to recover an increased rent if he has given notice of such increase in December 1870 for the current year 1870-71. HARI YEMAJI *v.* PARSHRAM GUNDO [11 Bom., 23

259. ——— **Notice containing clerical error or omission**—*Immaterial error—Act X of 1859, s. 17.*—Where a defendant has known perfectly well the grounds upon which enhancement of rent is demanded from him, a clerical omission which in no way prejudiced the defendant cannot operate to invalidate the notice of enhancement under s. 17, Act X of 1859. RYESUNNISSA BEGUM *v.* BYDONATH SAHA . . . . 17 W. R., 354

260. ——— **Notice where defendant was aware of ground of enhancement**—*Act X of 1859, s. 17.*—The object of the notice of enhancement is that the defendant may know what are the grounds on which the plaintiff seeks to enhance his rent, so that he may have an opportunity of coming forward to contest any of those grounds; and as the defendant's own answer in the case showed that he was fully aware of and came forward to contest the main ground on which the plaintiff sought to enhance his rent, the notice issued by plaintiff was held to be sufficient to meet the requirements of s. 17, Act X of 1859. TIRTH NUND THAKUR *v.* MOHUR MUNDLE . . . 17 W. R., 278

261. ——— *Informality in notice.*—Informality in a notice for enhancement of rent was not allowed to prevail in this case, where the defect was held to have been made good by the evidence on the record, and where there could be no doubt that the tenant knew exactly the nature of the demand he had to meet, and where also the objection was a mere after-thought and not put forward until after the order of remand by the High Court. WOOMA CHURN DUTT *v.* GRISH CHUNDER BOSE [17 W. R., 32

262. ——— **Omission in notice.**—Where a raiyat well knew and pleaded to the grounds of enhancement, the mere omission of the words "same class of raiyats" in the notice was held not fatal to the plaintiff's suit. Nor was the omission of the words "otherwise than by the agency and at the expense of the raiyat" considered material when the plaintiff distinctly stated in his plaint that the productive powers of the soil had increased owing to the land having been irrigated from the plaintiff's khas tank. WATSON & CO. *v.* RAM DHUN GHOSE [17 W. R., 496

263. ——— *Act X of 1859, s. 17.*—The omission of the words "same class of raiyat" in a notice under Act X of 1859, s. 17, even if unintentional, is sufficient to invalidate a claim for enhancement. *Quære*—Would this be the case if, notwithstanding the omission, the raiyat knew all the grounds on which enhanced rent was demanded of him, and defended himself on all? SAYEFOOLLAH KHAN *v.* CHAYA THAKOOR . . 18 W. R., 532

264. ——— **Informality in notice**—*Dismissal of suit for want of proper notice—Obiter dicta.*—Where a suit for enhancement of rent is dismissed on the ground that no notice was served, any decision in the Court's judgment as regards the mâl or lakhiraj character of the land must be deemed to be mere *obiter*. Where it is found in such a suit that the notice did not state that the raiyat pays less than raiyats of the same class, the informality may be overlooked if there is evidence on the record of the rates of rent payable by such raiyat; but if there is no evidence of that nature, the suit must be dismissed. MOTHOORNATH SIRCAR *v.* NIL MONEE DEO . . . . 13 W. R., 297

265. ——— *Omission to specify among grounds stated those relied on.*—The plea of informality of notice on the ground that it contained all the grounds of enhancement allowed by law without specifying any as those relied on was disallowed, inasmuch as the raiyat had not shown that he had been prejudiced thereby, or had been in any difficulty as to what he was called upon to answer. GOPEENATH JANNAH *v.* JETTO MOLLAH [18 W. R., 272

HUSMUT ALI *v.* OUREE THAKOOR [20 W. R., 232

OUDH BEHAREE SINGH *v.* DOST MAHOMED [23 W. R., 185

266. ——— **Notice fully comprehended by tenant**—*Contesting suit for enhancement.*—A raiyat who has received a notice of enhancement may be in a different position relative to its sufficiency according as he waits until a suit is brought against him, or comes into Court of his own accord to attack the notice. In the latter case, if he frames his suit on a thorough understanding of the notice, he cannot object to it as not reasonably sufficient. RAM BHUROSEE SINGH *v.* MAHOMED ASGUREE KHAN [19 W. R., 205

267. ——— **Mistake in notice**—*Notice erroneously including lakhiraj land.*—A suit for enhancement should not be dismissed merely because the plaintiff has included in his notice of enhancement land belonging to the defendant's lakhiraj holding. CHUNDER COOMAR ROY *v.* BHOLANATH SIRCAR . . W. R., 1864, Act X, 110

ENHANCEMENT OF RENT—*continued.*

4 NOTICE OF ENHANCEMENT—*continued.*

295. ———— *Personal service.*—Where the service of notice of enhancement relied on has not been personal it will not be valid unless it appear that an attempt has been made to effect personal service on all the defendants. RASH BEHARY MOOKERJEE *v.* KHETTRO NATH ROY [1 C. L. R., 418

296. ————Mode of service—*Substituted service—Avoiding service of notice*—Where substituted service of notice of enhancement is resorted to under Regulation V of 1812, s. 10, the Courts should take care to be first satisfied that the person who ought to be served personally is keeping out of the way RAMCHUNDER DUTT *v.* JOGESHCHUNDER DUTT 12 B. L. R., P. C., 229 : 19 W. R., 353

297. ———— *Substituted service without attempting personal service.*—A notice is not duly served when it is merely fixed on the defendant's residence, without any attempt being made to effect personal service. BURODA KANT ROY *v.* RAY CHURN BURNOSHIL [24 W. R., 381

298. ———— *Indigo factory —Conspicuous place—Act X of 1859, s 13—Informality in notice* An indigo factory is a "conspicuous place" within the meaning of s 13, Act X of 1859, where a notice of enhancement may be fixed. A notice of enhancement served under the provisions of s 13, Act X of 1859, is not informal because it does not bear the signature of the landlord or his agent. HURONATH ROY *v.* MIRNOMOYEE DABEE . . . W. R., 1864, Act X, 56

299. ———— *Substituted service—Proof of intention to avoid service*—Service of notice upon a defendant, by affixing the same upon the door of his dwelling-house, is not sufficient, unless the condition exists which alone renders substituted service good, namely, that the person upon whom it is sought to effect service is keeping out of the way. *Ram Chunder Dutt* v. *Jogesh Chunder Dutt, 12 B. L R, P C, 229 : 19 W. R, P. C, 353,* cited and followed. RAMA RAI *v.* SHIDHUR PERSHAD NARAIN SAHAI [4 C. L. R., 397

300 ———— *Service on joint Hindu family Beng. Act VIII of 1869 s 14.*—Service of notice of enhancement under s. 14 of Bengal Act VIII of 1869 must be made strictly in the manner provided by that section *Chunder Monee Dossee* v *Dhuroneedhur Lahory, 7 W. R., 2,* followed. When a tenure was held by a Hindu and three Santhals, and it was shown that service of the notice of enhancement had been personal on the latter, but only on the son of the former, who was an adult and living with his father as a member of a joint Hindu family,—*Held* that this was not sufficient service on the Hindu tenant. *Quære*—Whether, if it had been shown that the notice, though served on the son, had come into the hands of the father, that would not amount to a sufficient service of the notice BOIDONATH MAHANTA *v.* LAIDLAY . . I. L. R., 10 Calc., 433

301. ———— *Substituted service—Beng. Act VIII of 1869, s 14—Reg. V of 1812, s 10—Evidence of substituted service, Nature of—Burden of proof*—Proof of the validity of substituted service required by s. 10, Regulation V of 1812, is stricter than that necessary under the terms of s. 14 of Bengal Act VIII of 1869 *Ram Chunder Dutt* v. *Jogesh Chunder Dutt, 19 W. R, 353 12 B. L. R, 229,* distinguished Where the only evidence in support of substituted service was the statement of the serving peon that he had searched for the tenant and could not find him,—*Held* that such evidence was sufficient, under the terms of s. 14 of the Rent Act, to throw the onus upon the defendant to show by cross examination or otherwise that the search was not properly made NOOR ALI MIAN KHONDKAR *v.* ASHANULLAH I. L. R., 11 Calc., 603

302. ———— *Joint family—Notice shown to have reached, though informally, person intended to be served—Beng. Act VIII of 1869, s 14*—Where there is evidence that a notice under s 14 of Act VIII of 1869 has actually reached the persons for whom it was intended, such notice is valid, although the formalities enjoined by the section have not been strictly complied with. Service of such notice upon two of four joint brothers is good service. BASSUNT LALL DASS *v.* PANA ALI [3 C. L. R., 432

303. ———— *Joint notice—Act X of 1859, s 19*—A joint notice of enhancement was served upon several raiyats, whose jummas were [illegible] that they were entitled to the benefit of some of the holdings being separate for the purpose of surrendering some, and retaining others, of such separate holdings under s. 19 of Act X of 1859. JADUB CHUNDER HALDAR *v.* ETWAREE LUSHKUR [Marsh., 498 : 2 Hay, 599

304. ———— *Joint undivided tenure—Joint tenure subdivided without sanction*— [illegible] under any [illegible] ice of en- [illegible] s interested [illegible] OORANATH [illegible] [3 W. R., Act X, 92

305. ———— *Tenure held jointly*—A suit for enhanced rent in respect of a tenure held jointly cannot proceed except on notice to all the joint tenants. SURNOMOYI *v.* JOHUR MAHOMED NASHYO . 10 C. L. R., 545

306. ———— *Joint Hindu family—Beng. Act VIII of 1869, s 14*—Where a tenure is owned by a joint Hindu family, it is sufficient service of notice of enhancement under s. 14, Bengal Act VIII of 1869, if any one of the

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

And the decision should be on those grounds only. BHEEM SEIN *v.* HUR GOBIND [3 Agra, Rev., 12

282. ——— *Enhancement in case of tenant-at-will.*—A zamindar is not bound by the ground of enhancement mentioned in his notice in the case of a tenant-at-will. Nor has the tenant any right to claim the prevailing rate, but is liable, after notice of enhancement, to the highest rack-rent. KOOBIR SIRDAR *v.* GOLUCK CHUNDER CHUCKERBUTTY . . 3 W. R., Act X, 126

MUNEEROODDEEN MERDHA *v.* KENNIE [4 W. R., Act X, 45

RAMMONEE CHUCKERBUTTY *v.* ALLA BUKSH [4 W R., Act X, 46

283. ——— *Proof of rate of rent stated in notice.*—In a suit for rent at an enhanced rate, the landlord is not indispensably bound to prove the very rate which he claims in his notice. SREEKANT GHOSE *v.* BHUGWAN CHUNDER SEN [24 W. R., 13

284. ——— **Irregularity in drawing up notice**—*Right to declaratory decree to enhance on service of fresh notice.*—A slight irregularity in the drawing up of a notice of enhancement cannot affect the plaintiff's right to a declaratory order reciting his right to enhance at some future time on service of a fresh notice. RAM LOCHUN DUTT *v.* PETUMBER PAUL . W. R., 1864, Act X, 111

285. ——— **Notice given during pendency of suit**—*Right to decree declaratory of right to enhance.*—Where a notice of enhancement is served during the pendency of a suit in which the only decree which can be passed is one simply declaratory of the plaintiff's right to recover rent at an enhanced rate, and fixing the rate to which the rent is to be enhanced, the notice is inoperative, and will not enable the Court to give a decree in that suit for the payment of a sum by way of rent from the year subsequent to the service of the notice. ROMANATH DUTT *v.* JOY KISHEN MOOKERJEE . . . . 6 W. R., Act X, 80

286. ——— **Notice of enhancement as distinct from requisition to tenant to come to terms**—*Notice to pay current rate of rent.*—Where a zamindar, after obtaining a decree declaring certain land to be invalid lakhiraj appertaining to his zamindari, serves a notice upon the occupier to pay rent at the rate current in the neighbourhood, such notice does not make the claim one for arrears of rent at an enhanced rate, but is simply a requisition to come to terms. DEEN DYAL PARAMANICK *v.* SUTTISH CHUNDER ROY . . . 15 W. R., 272

287. ——— **Joint application for issue of notice of enhancement**—*Collection of rent jointly made.*—Where collection is jointly made by the lumberdars, they both ought to join in the application for issue of notice of enhancement. RAM PERSHAD *v.* MAHOMED HASHIM . 2 Agra, 249

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*continued.*

(c) SERVICE OF NOTICE.

288. ——— **Person to serve notice**—*Act X of 1859, s. 13.*—According to s. 13, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zamindar, as the person to whom "the rent is payable," notwithstanding an agreement between the zamindar and the farmer, by which the zamindar reserved to himself the right of serving notices of enhancement. BINODEE LALL GHOSE *v.* MACKENZIE . . . 3 W. R., Act X, 157

DOORGA ROY *v.* SHYAM JHA . 8 W. R., 72

DOORGA CHURN CHATTERJEE *v.* GOLUCK CHUNDER BISWAS . . . . 23 W. R., 228

289. ——— **Person to be served**—*Personal service—Substituted service—Act X of 1859, s. 13.*—According to s. 13, Act X of 1859, a notice of enhancement must be served, not upon the under-tenant or raiyat or his agent, but personally upon the under-tenant or raiyat himself, in or before the month of Choitro. If it cannot be so personally served, it must be affixed at his usual place of residence in the district in which the land is situated; or if he have no such place of residence, at the mal cutcherry, etc. CHUNDER MONEE DOSSEE *v.* DHURONEEDHUR LAHOORY . . . . . 7 W. R., 2

290. ——— *Service of notice on wrong parties.*—A suit for arrears of rent at enhanced rates cannot be maintained where the notice of enhancement has been served on parties other than the one known to the zamindar as the actual tenant from whom he had received rents, and to whom he had given receipts, even though the parties served with the notice are the representatives of the registered tenant. HURO MOHUN MOOKERJEE *v.* GOLUCK CHUNDER SIRKAR . . . 12 W. R., 285

291. ——— *Registered and unregistered tenants.*—When a zamindar has received rent for twenty-two years from the tenant in possession, notwithstanding that he is not registered in his sherista, it is upon such recognized tenant, and not upon any other party, that his notice of enhancement must be served. NOBO COOMAR GHOSE *v.* KISHEN CHUNDER BANERJEE . W. R., 1864, Act X, 112

292. ——— *Service on husband when wife is tenant.*—Notice of enhancement to a husband is not sufficient when his wife is the acknowledged tenant. SREERAM GHOSE *v.* MOLOOK CHAND DEB . . . 4 W. R., Act X, 3

293. ——— **Service of defective notice.**—The service of a defective notice of enhancement (*i.e.*, one not containing the reasons assigned in s. 13 or 17, Act X of 1859) is tantamount to non-service. RAJKISHEN ROY *v.* PRANKISHEN ROY [W. R., 1864, Act X, 89

294. ——— **Notice where there are several defendants.**—Notices of enhancement must be duly served on each defendant before enhanced rent can be decreed. LYON *v.* BANESSUR PAUL . . . . 2 Hay, 120

ENHANCEMENT OF RENT—*continued*

GROUNDS OF ENHANCEMENT—*continued*

f land. SUKHI MANI HOLDAR *v* GUNGA GOBIND IUNDLE W. R., 1864, Act X, 126

ctual cultivators are assessed SWARNAMAYI *v* AURI PRASAD DASS 3 B L R, A. C, 270

320 ———— Unforeseen catastrophe—*nundation*—The occurrence of a catastrophe such s an inundation, during the year succeeding a otice of enhancement, was held to be sufficient to ender the demand of a higher rent unfair and in quitable BAMASOONDEREE DOSSEE *v* KALOO EADAH 10 W R., 395

(*b*) RATE OF RENT LOWER THAN IN ADJACENT PLACES

321 ———— Principle of adjustment of ent—*Act X of 1859, s 17*—Where enhancement f rent is sought on the ground 'that the rate of ent payable by such raiyat is below the prevailing ate payable by the same class of raiyats for land of similar description and with similar advantages in he places adjacent," the question of enhancement is o be determined by reference to such state of affairs s is provided for by Act X of 1859, s 17, and annot be decided merely on the ground that, lthough the value of the land has increased, there as also been an increase in the rate of wages and in he price of provisions consumed by the raiyats SAVI *v* JEETOO MEEAH

[Marsh, 166. W. R., F. B, 59
1 Ind. Jur, O S., 80. 1 Hay, 451

322. ———— Mode of calculating rate of rent—*Act X of 1859, s 17, cl 1*—In a suit under cl 1, s 17, Act X of 1859, to enhance rents, on the ground that the rates are below the prevailing rates payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent, the question whether and to what extent the rents ought to be enhanced is to be determined by a comparison of the rents actually paid by similar adjoining lands and without reference to the value of the produce SREERAM CHATTERJEE *v* LUCKHUN MAGILLA

[Marsh., 379: 2 Hay, 427

323. ———— *Act X of 1859, s 17*—In enhancing rents on the first of the grounds specified in s. 17, Act X of 1859, not only must the amount of rent paid by neighbouring raiyats be considered, but also the class of the raiyats, and whether the lands in question are similar to the lands held by the neighbouring raiyats and enjoying similar advantages. SHIB NARAIN DUTT *v* KERAMOONISSA BEGUM . 17 W. R., 355

324. ———— Necessity of specific finding as to rate paid by neighbouring raiyats. —In a suit for enhancement on the ground that the defendant pays a lower rent than that paid by neighbouring raiyats of the same class for similar lands, the Judge, instead of decreeing what he considers a fair rate, should find specifically whether the rate claimed by the plaintiff is actually paid by the neighbouring raiyats of the same class for similar lands, or what rate is so paid, and decide accordingly PALARAM KOTAL *v* NUND COOMAR CHUTTORAM

[6 W. R., Act X, 45

325 ———— Necessity to enquire into whole of clause as to rate of rent.—With reference to the first ground specified in s 17, Act X of 1859, it is not sufficient to find that the enhanced rent claimed is the same as that in an adjoining village, but it is also necessary to enquire whether that rent is paid by the same class of raiyats, or whether the land is of a similar description, or whether it possesses similar advantages. NOBOCOOMAR BISWAS *v* OMAN 7 W R., 148

326 ———— Claim to be rated at the "nerikh"—*Rate paid by same class of raiyats for similar land*—In a suit for a kabuliat at an enhanced rate, a claim to the nerikh may be considered to be a claim to the pergunnah rate, *i e*, the rate paid by the same class of raiyats for similar land in the neighbourhood. OMRIT LALL BOSE *v* ARBACH CAZI 4 W R., Act X, 47

3
of
185

rates of the pergunnah or of the village, but is to be according to the rates prevailing in the places adjacent. SUDUROODDEEN *v* BHETOO PULEE

[5 W. R., Act X, 70

328 ———— Cultivated land originally held on junglo-bori tenure.—In fixing the rent to be paid for cultivated land originally held on a jungle-bori grant, the Court should ascertain the rate payable by the same class of raiyats for lands of a similar description and with similar advantages. DEEN DYAL AGUSTEE *v* WATSON

[W. R., 1864, Act X, 113

329. ———— *Act X of 1859, s 17*—Where a raiyat, who had taken a clearing lease for certain jungles at a russuddee jumma rising by degrees to 10 annas, which had been reached and had been paid for some time, was sued for enhancement of rent, it was held that the mere fact of the raiyat's produce having largely increased in value, and of his rent being materially below that paid for similar lands in the neighbourhood, were not sufficient grounds for enhancement of rent under s. 17, Act X of 1859 It is essential to a right to enhance, under cl 1, s. 17, that the higher rates in the neighbourhood should be paid by the same class of raiyats, and by raiyats with similar advantages. PURMANUND SEIN *v* PUDDO MONEE DOSSEE 9 W. R., 349

330 ———— Assessment of rent on tanks—*Rent paid to Government*—A zamindar is entitled to as much rent for his tanks as is leviable on tanks in the neighbourhood, without reference to

ENHANCEMENT OF RENT—*continued.*

4. NOTICE OF ENHANCEMENT—*concluded.*

co-sharers is served with the notice. NOBODEEP CHUNDER SHAHA *v.* SONARAM DASS

[I. L. R., 4 Calc., 592 : 3 C. L. R., 359

307. ——— *Co-sharers—Beng. Act VIII of 1869, s. 14.*—Where personal service of notice upon a co-sharer, under Bengal Act VIII of 1869, s. 14, is found to be impracticable, the notice may be stuck up at the adjoining house of another co-sharer. MAHOMED ELAHEE BUKSH CHOWDHRY *v.* BROJO KISHORE SEN . 24 W. R., 14

308. ——— **Service of notice signed by only one of several share-holders**—*Suit by one of two joint khots for enhanced rent—Notice, Sufficiency of service of.*—In a suit brought by one of two joint khots to recover enhanced rent from a tenant, the notice of enhancement given to the tenant having been signed by the plaintiff alone, and not concurred in by the other joint khot,—*Held* by the High Court that the notice was insufficient to render the tenant liable for the increased rent, and that the plaintiff was not entitled to recover. BALAJI BAIKAJI PINGE *v.* GOPAL KULI

[I. L. R., 3 Bom., 23

309. ——— **Service of notice at instance of only some of several share-holders**—*Beng. Act VIII of 1869, s. 14.*—*Per* GARTH, *C.J.*, PONTIFEX and MITTER, *JJ.* (MORRIS and McDONELL, *JJ.*, dissenting)—A suit for arrears of rent at an enhanced rate brought by all the share-holders will lie, notice under s. 14 of Bengal Act VIII of 1869 having been issued at the instance of some of the persons entitled to the rent. CHUNI SINGH *v.* HERA MAHTO

[I. L. R., 7 Calc., 633 : 9 C. L. R., 37

Contra, KASHEE KISORE ROY CHOWDHRY *v.* ALIP MUNDUL

[I. L. R., 6 Calc., 149 : 7 C. L. R., 107

5. GROUNDS OF ENHANCEMENT.

(*a*) GENERALLY.

310. ——— **Distinction between raiyats with and without rights of occupancy**—*Act X of 1859, s. 17, cl. 1.*—In ascertaining the rates of rent, the Courts should not fail to recognize the important distinction between raiyats having a right of occupancy and other raiyats, in a case of enhancement under cl. 1, s. 17, Act X of 1859. LUCHMUN *v.* JOGUL KISHORE . . . 3 Agra, 99

311. ——— **Grounds in case of raiyat without right of occupancy**—*Act X of 1859, ss. 6 and 17.*—In a suit for enhancement of rent it was held that the provisions of s. 6, Act X of 1859, do not apply to the case of a raiyat not having a right of occupancy; and in fixing a fair and equitable rate for such a raiyat, Courts are not restricted to the grounds laid down in s. 17. PITAMBAR KURMOKAR *v.* RAMTUNOO ROY . . . 10 W. R., 123

312. ——— *Bengal Tenancy Act (VIII of 1885), s. 46, sub-ss. (6) and (9)—Non-occupancy raiyat—Enhancement of rent—Fair and equitable rent.*—Sub-s. (9) of s. 46 of the Bengal Tenancy Act is not exhaustive. It was not intended that, if there was no land of a similar description and with like advantage in the same village as the land in suit, it should be impossible to enhance the rent of a non-occupancy raiyat upon any other ground. HOSAIN ALI KHAN *v.* HATI CHARAN SHAW . . I. L. R., 27 Calc., 476

313. ——— **Grounds in case of raiyats treated as occupancy raiyats**—*Act X of 1859, s. 17.*—Where a landlord treats raiyats as having a right of occupancy subject to enhancement under s. 17 of Act X of 1859, he must, before he can enhance, show that some of the conditions of s. 17, Act X of 1859, exist. FITZPATRICK *v.* SEETA ROY

[1 Ind. Jur., N. S., 170

314. ——— **Grounds for enhancement, Enquiry into.**—A claim for enhancement of rent should not be disposed of without determining the propriety of the enhanced rent with reference to the ground on which it is claimed. HURDYAL OOPADHYA *v.* MAHOMED NAEEM

[1 N. W., Part 2, 19 : Ed. 1873, 79

315. ——— **Failure to prove one of several grounds**—*Act X of 1859, s. 17.*—There is nothing in s. 17, Act X of 1859, which provides that if one of the grounds specified in the notice of enhancement be not proved, there shall be no decree for enhancement on account of any other ground which is proved. RAM KANT CHUCKERBUTTY *v.* MOHESH CHUNDER SINGH . . 7 W. R., 172

316. ——— **Grounds, Procedure as to, where notice is bad**—*Power of remand.*—In a suit for enhancement against a raiyat having a right of occupancy, if the notice served is found to be bad in law, the Judge has no power under the Procedure Code to remand the case with a view to the ascertainment by local enquiry of the area of the land in dispute and the rates prevailing in its neighbourhood. HUREE DOSS *v.* PARBUTTY CHURN MOJOOMDAR . . . . . . 13 W. R., 227

317. ——— **Grounds, Onus of proof of**—*Act X of 1859, s. 17—Question of proper rate of rent.*—In an appeal from a decree for enhancement of rent, where the lower Court found that the defendant had failed to give evidence of non-liability,—*Held* that it should have enquired whether the rates assessed by the first Court were proper, and such as plaintiff would be entitled to have under s. 17, Act X of 1859. RUNGOMONEY DOSSEE *v.* CAMPBELL

[12 W. R., 111

318. ——— **Grounds in case of proprietor who has settled with Government**—*Increase in value of produce—Excess land.*—A proprietor who has settled with Government under a jummabundi cannot sue for enhancement on the mere ground that the rate is below the prevailing rate, but must sue either on the ground of increase in the value of the produce or of an excess quantity

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of castes. KUNUK SINGH *v.* GHOLAM JELANEE [2 Agra, 329

343. ——— *Difference of caste among raiyats*—Comparison must be made with raiyats of the same caste BAINEE PERSHAD *v.* MAHOMED UKBER HOSSEIN 3 Agra, Rev., 3

BHEEM SEIN *v.* HUR GOBIND [3 Agra, Rev., 12

344. — Comparison where no class of raiyats of same class—*Allowance for difference of class.*—*Held* that where cultivators of similar stamp were not to be found in the village or ... ith ... in ... to him KUNCHUN SINGH *v.* SHEORAJ [1 Agra, Rev., 7

... comparing each description of land with similar adjacent land held by the same class of cultivators, and not by applying indiscriminately the average rates of tenants having a right of occupancy MITHO LALL *v.* SEETA RAM . 1 Agra, Rev., 40

346 ——— *Mode of enhancement—Adjacent lands*—Where in places adjacent no land of similar description, with similar advantages to the land sought to be enhanced, is found to exist, it is not illegal to decree enhancement at the average of the rates paid for adjacent lands NUBEE BUKSH *v.* RAM SUHAI 1 Agra, Rev., 57

TIKARAM SINGH *v.* SANDES 22 W. R., 335

347. ——— Prevailing rates of rent—*Ascertainment of fair rate of rent.*—That the value of produce is said generally to have doubled or trebled is not a sufficient reason for doubling the rate of rent, except where new rates of rent are not to be found The best mode of ascertaining a fair rate is by finding what rate is paid by similar raiyats for similar lands. AMANOOLLA *v.* RAM NIDHEE GHOSE [9 W. R., 392

348. ——— *Sufficiency of evidence to prove prevailing rate.*—In a suit for enhancement of rent on the ground that the rates at which defendant held were below the prevailing rate paid by the same class of raiyats for adjacent lands of a similar description and with similar advantages, the evidence of three patwaris who put in their jummabundis showing the rates paid by almost all the raiyats, *i.e.*, the majority, was held sufficient to prove the prevailing rate. PRIAG LALL *v.* BRECKMAN [13 W. R., 346

349 ——— *Sufficiency of evidence to prove prevailing rate*—In a suit after notice for a kabuliat at enhanced rates, said to be those prevailing in the adjacent villages for similar lands held by the same class of raiyats as defendant, the evidence of seven occupant raiyats of the neighbourhood, though not a majority, was held to be legally sufficient to make a case which defendant was bound to rebut SARROOP MANNA *v.* BONOMALEE CHURN MYTEE . 15 W. R., 240

350. ——— *Sufficiency of evidence of prevailing rate*—The mere fact of a particular rate of rent having been decreed against two raiyats not having a right of occupancy is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood. SURAHUTOONISSA KHATOON *v.* GYANEE BUKTOOR . 11 W. R., 142

351. ——— *Act X of 1859, ss 13, 17—Raiyat without right of occupancy—Occupancy raiyats at lower rates*—In a suit for enhancement of rent after notice under s. 13, Act X of 1859 (such notice not treating the defendant as a raiyat having a right of occupancy), if the defendant claims to be protected from enhancement otherwise than under s. 17, it is for him to prove, or at least to allege, that he has a right of occupancy, before an issue can be received under the section last mentioned. If a defendant in such a suit has no right of occupancy, and the Judge considers the rate claimed represents the fair value of the land, he should give the plaintiff a decree, notwithstanding a very large number of ancient raiyats having right of occupancy at lower rates. DUFF *v.* SOWDAGUR SAHOO JOTEDAR [13 W. R., 255

352. ———*Proof of rate of rent—Mistake as to area of land.*—A suit for enhancement of rent after notice should not be dismissed merely because the landlord has made a mistake as to the exact area of the lands which his tenants hold. Where enhancement is sued for on the ground that the rent paid by the defendant is below the rate prevailing in the neighbourhood, it is not enough for the plaintiff to show that the adjacent lands are of a similar description to those held by defendant; he must also show that they are held by persons of the same class with the defendant WOOMANATH ROY CHOWDHRY *v.* ASHUMBUREE BISWAS [13 W. R., 476

353. ——— *Evidence by hy-* ... or even the certainty that, if the rents of the neighbouring occupants were re-adjusted, they would come up to the rate claimed. BRINDABUN DEY *v.* BUTONA BIBEE , 13 W. R., 107: 13 B. L. R., 200 note

354. ———*Failure to prove existence of ground for enhancement.*—Where the ground of enhancement was that defendant paid rent

the rent which Government may take from raiyats whose tanks it has resumed. KURRALY CHURN BANERJEE *v.* MODHOOSOODUN PATTER [3 W. R., Act X, 146

RAM CHURN BANERJEE *v.* KISTO DOOGAR [3 W. R., Act X, 132

331. ——— "Adjacent," Meaning of —*Act X of 1859, s. 17.*—*Held* that the word "adjacent cannot so narrowly be construed as to confine the enquiry to places bordering on the land, or even lying very near or close to it. TAIJA MULL *v.* OOMRAO [1 Agra, Rev., 61

332. ——— "Places adjacent," Meaning of—*Beng. Act VIII of 1869, ss. 17 and 18—Rate of rent.*—The words "places adjacent" in Bengal Act VIII of 1869, s. 18, cl. 1, cannot be restricted to lands in contact with that to which the rent suit relates. The general rule may be stated to be that the plaintiff is not, on the one hand, restricted to a comparison with lands immediately contiguous, and must not, on the other, pick and choose particular places, but should consider the rates prevailing in all the neighbouring places which are similarly circumstanced. The enhancement need not be to some rate which is actually paid. Where different raiyats holding similar lands with similar advantages in places adjacent pay at different but higher rates for lands of the same description and quality, and the only question is the extent to which the defendant is liable to enhancement, the clause must not be so construed as to deprive a zamindar of his fair rents; but the Court should be guided by a consideration of what is fair and equitable, as provided by s. 5, subject to the limitations prescribed in s. 17. If a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the Court is not in error in taking an average. DENA GAZEE *v.* MOHINEE MOHUN DOSS . 21 W. R., 157

333. ——— Varying rates—*Bengal Tenancy Act (VIII of 1885), s. 30, cl. (a)—Prevailing rate.*—In a suit for enhancement of rent under s. 30, cl. (*a*), where it is found that there is no one prevailing rate and that the raiyats holding land in the village of similar description and with similar advantage pay rent at varying rates, the lowest rate may be taken and the rent of the defendants may be enhanced up to that limit. ALEF KHAN *v.* RAGHU NATH PROSAD TEWARI. HIMMUT KHAN *v.* RAGHU NATH PROSAD TEWARI. HARI MOHAN GAZI *v.* RAGHU NATH PROSAD TEWARI [1 C. W. N., 310

334. ——— "Average rate" of rent —*Beng. Act VIII of 1869, s. 18.*—In trying a question of enhancement upon the first ground mentioned in s. 18 of the Rent Law, 1869, it is not allowable to a Court to strike an average on the rates of rent proved before it. AUDH BEHAREE SINGH *v.* DOST MAHOMED [22 W. R., 185

335. ——— Abwabs paid by neighbouring raiyats—*Act X of 1859, s. 17.*—In determining the enhanced rent which a raiyat is liable to pay under s. 17, Act X of 1859, a Court cannot legally include patwarian and other abwabs paid by raiyats in the neighbouring lands. BURMAH CHOWDHRY *v.* SREENUND SINGH . . . 12 W. R., 29

336. ——— Prevailing rate for neighbouring lands—*Intention of this portion of clause.*—The provision for enhancing rent to the rate prevailing for the same class of lands is exceptional, applying to cases in which, from some exceptional causes, a raiyat is holding at an unusually low rate, and is not intended—after the rent has been raised on some raiyats in any place for a special reason—to furnish a means for raising the rents of all the raiyats of the same place to the same rate. GLASSCOTT *v.* RAJ CHUNDER MOOCHY MUNDUL [25 W. R., 381

337. ——— Current rate prevailing in village—*Act X of 1859, s. 17.*—In a suit for a kabuliat at the rate mentioned on the allegation that that rate was the current rate prevailing in the village, it was held that this assertion may be read as sufficiently indicating that the ground for enhancing the rate was the first ground of s. 17. BHAMA *v.* MOHUR SINGH . . . 2 Agra, Rev., 2

338. ——— Cultivators of same class in places adjacent—*Calculation of rate.*—When application is made for enhancement of rent of a right-of-occupancy cultivator, care should be taken to compare his rent with that paid by cultivators of the same class in places adjacent, even if not in the same mouzah and cultivating under similar advantages in every way. ISMAIL KHAN *v.* BHONDOO [1 N. W., 26: Ed. 1873, 24

339. ——— "Same class" of raiyats, Meaning of—"*Prevailing rate*"—*Act X of 1859, s. 17.*—The words "same class" in s. 17, Act X of 1859, refer to the division of raiyats into two classes, *viz.*, those having, and those not having, rights of occupancy. The words "prevailing rate" in s. 17 mean the rate generally prevalent, or the rate paid by the majority of the raiyats in the neighbourhood. SHADHOO SINGH *v.* RAMANOOGRAH LALL [9 W. R., 83

340. ——— *Special class of raiyats—Standard of enhancement.*—In the absence of proof of any separate class of raiyats within the general body of occupancy raiyats, the general body of such raiyats must be held to be "the same class of raiyats" to whose standard a raiyat with a right of occupancy may be raised, although some may be more and some less ancient than he. RAM COOMAR DHARA *v.* BHOYRUB CHUNDER MOOKERJEE . . . . 6 W. R., Act X, 33

341. ——— *Raiyats holding under same class of landlord.*—Raiyats are not necessarily raiyats of the same class because they hold under a similar class of landlords. GOUREENATH ROY *v.* RAMGUTTY CHUNDER . 12 W. R., 102

342. ——— Same class of raiyats—*Cultivators of high and low caste—Calculation of rates of rent.*—It is not incorrect to accept the rates

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and zamindar in a fixed ratio. The result of a
ing this presumption would be that the new fai
equitable rent would be the same proportionat
of the new produce that the old rent was of th
produce. In all cases, the duration of the int
pottah must be taken into consideration as an el
affecting the question of fairness and equity.
NORMAN, J.—(1) With respect to the rents of r
having mere rights of occupancy, a zamind
entitled to claim from his raiyats such rents
paid by the same class of raiyats for land of a si
description and with similar advantages in
adjacent. (2) If such rents are too low, and
zamindar simply allege that the value of the pr
has become increased, otherwise than by the ag
or at the expense, of the raiyat, he shows an in
in the value of that which primarily belongs t
producer, to a proportion of which alone the z
dar is entitled. It is only necessary to give
zamindar an amount of rent which shall bea
same proportion to the old rent which the p
price of the produce does to the former. It mu
taken that the old rent was fair and equitable.
for the zamindar to prove his case, and he must
back his evidence, as nearly as he can, to the
when the rent was fixed. (3) If the rent co

ENHANCEMENT OF RENT—*continued*

5. GROUNDS OF ENHANCEMENT—*continued*

and could not, therefore, have created raiyats with hereditary rights of property in the soil After Regulation V of 1812, they could grant leases at any rate and for any term. By the retrospective effect of s 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid. In this case it was admitted that the value of the produce had increased otherwise than by *the agency or at the expense of the* raiyat, and that the notice required by s. 13, Act X of 1859, had been served before the end of Choitro in the year preceding that for which enhancement was claimed. Upon being served with that notice, the defendant had a right to quit according to s. 19 The Statute of Limitation does not give him a right of occupancy under s 6 by holding for twelve years. But for Act X of 1859, therefore, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the Permanent Settlement) would have been liable to have his tenancy deter-

[illegible]

After the Permanent Settlement, and before Act X of 1859, a right of occupancy was not acquired by a raiyat merely by holding or cultivating land for a period of twelve years. When that Act created the right, s. 5 declared that raiyats having rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Court to determine in every case of dispute what is a fair and equitable rate To be fair and equitable, it must be so as regards both parties ISHORE GHOSE *v* HILLS [W. R., F B, 148

380. ———— *Act X of 1859, ss 5, 6, and 13—Adjustment, Mode of—Proportion, Rule of.*—When there has been an increase in the value of the produce of land arising from an increase in prices, and the zamindar is entitled to a new kabuliat from an occupancy raiyat, at an enhanced rate, at fair and equitable rates,—*Held per* TREVOR, *J.* (concurred in by the majority of the Court)—The words "fair and equitable" in s. 5, Act X of 1859, are to be construed as equivalent to the varying expressions "pergunnah rates," "rates paid for similar lands in the adjacent places," and "rates fixed by the law and usage of the country,"—all which expressions indicate that portion of the gross produce calculated in money to which the zamindar is entitled under the custom of the country; that as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed, in all cases in which the presumption is not by the nature and express terms of the written contract rebutted, to be the customary rate included in the terms "pergunnah rates," "rates payable for similar lands in the places adjacent," and "rates fixed by the law of the country;" that

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in all cases in which the above presumption arises and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise in price, this method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil calculated on an average of three or five years next, *before the date of the alleged rise in value, bears to* its present value, that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based; and that in cases in which it appears from the express terms of the contract, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the raiyat to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down. *Per* MACPHERSON, *J*—The rule of proportion,—as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid,—is the rule which should be adopted in the absence of any recently-adjusted [illegible]

called upon in any given case to determine the rent which it is fair and equitable that the raiyat should pay, he ought to enquire: *1st* Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or otherwise, be taken to have been fair and [illegible]

him, then he must ascertain whether the raiyat is legally entitled by custom, based either on his personal status or on the character of the land occupied by him, to any definite share of the produce of the land or to any beneficial interest in it If the raiyat is so entitled, the rent must be adjusted accordingly. *3rd*—If neither express agreement nor legal right in the raiyat be found to have determined the amount of rent, the last arrangement must have been governed by some locally prevailing custom, or the rent regulated, tacitly, according to some locally prevailing rates; and in that case the custom ought to be complied with, and the rates adhered to. The fair presumption will be, in the absence of evidence or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the raiyat

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which the rate claimed for one year 1278 was the old rate and the rate claimed for 1279 was an enhanced rate after notice,—*Held* that, as the suit was from the beginning essentially a suit to recover arrears of rent due in respect of the years 1278 and 1279, and the question whether the plaintiff had made out a right to be paid rent at an enhanced rate for 1279 was only part of the larger question what was the rate at which rent was due for that year, there was no error in the lower Appellate Court's decreeing arrears of rent for 1279 at the rate which was found to be the true rate, although less than the enhanced rate claimed. *Held* that the increase of productive power alluded to in s. 18 of the Rent Law as a ground of enhancement must be an agency subsisting and operative at the time when the notice is issued. BROJONATH TEWAREE *v.* GRANT . . 22 W. R., 13

378. ——— *Beng. Act VIII of 1869, s. 18—Increase by natural agency.*—An increase, either permanent or likely to last for a considerable time, caused by natural agency in the productive powers of the land, is one of the elements to be taken into consideration in determining its increased value within the meaning of Bengal Act VIII of 1869, s. 18. ABDOOL GUNEE *v.* BHUTTOO SHEIKH . . . . . 22 W. R., 350

379. ——— *Rise in value owing to portion of town being swept away.*—A rise in the value of lands, owing to a considerable portion of the town in which the lands are situated having been swept away by a river, is not such an increase in the productive powers of the land as is contemplated by cl. 17 of s. 17 of Act X. KHONDKAR ABDOOR RUHMAN *v.* WOOMACHURN ROY . . . . . . 8 W. R., 330

380. ——— *Land improved otherwise than by cultivator.*—*Held* that, though the land may have been improved otherwise than by the exertions of the cultivator, yet the zamindar is not entitled to demand rent beyond what is fair and equitable for the same class of cultivators, as the cultivator sought to be enhanced to pay for such improved lands. JUMNA PERSHAD *v.* BHOWANEE [2 Agra, Rev., 1

381. ——— *Act X of 1859, s. 17—Embankment, Construction of.*—An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of enhancement under s. 17 of Act X of 1859. JADUB CHUNDER HALDAR *v.* ETWAREE LUSHKUR . . Marsh., 498: 2 Hay, 599

382. ——— *Canal, Construction of—Expenses of making ducts and for canal rates.*—A cultivator cannot claim altogether to be exempted from enhancement on account of the increase in the productive power of land which has been effected by a canal which was not made at his expense or labour, but he can fairly ask that the expenses, such as the cost of making ducts and the payment of canal rates, should be calculated and deducted from the total amount of increased value. PIRAN *v.* RAM BUKSH . . . 2 Agra, 346

383. ——— *Canal, Construction of—Expenses for canal dues.*—*Held* that a raiyat is entitled to deduction of the actual amount paid by him in the shape of canal dues, and also other expenses which are occasioned by bringing the water into the land, together with interest on the capital employed in such expenses and payment of canal dues. MAHEEPUT SINGH *v.* LOK INDER SINGH . . . . . . 2 Agra, 179

384. ——— *Middleman.*—A middleman is liable to enhancement when the productive powers of his land have been increased otherwise than by the agency or expense of the raiyat. Two-thirds was held to be a fair proportion of the surplus profits of the land to be awarded to the landlord. JADUB CHUNDER HALDAR *v.* ISHOREE LUSHKUR . . . W. R., 1864, Act X, 74

385. ——— *Fair and equitable rate—Act X of 1859, s. 17.*—S. 17 does not say that in every case the rate of rent may be raised to the prevailing rate, but only that the rent shall not be raised except on some one of the grounds specified. That section must always be read with reference to the general provision of s. 5, that the rent of a raiyat having a right of occupancy shall not be more than is fair and equitable; and in considering what is fair and equitable, the raiyat should not be called upon to pay to the landlord, under the name of rent, what is in fact not rent, but the produce of his own labour and capital sunk in the land. NOOR-MAHOMED MUNDUL *v.* HURRIPROSONNO ROY [W. R., 1864, Act X, 75

386. ——— *Grounds of exemption—Increase in value from natural causes.*—In a suit for enhancement of rent, bare proof that the productive powers of the land in suit have been increased by the agency, or at the expense of the defendant or his ancestor, is not sufficient to exempt the defendant altogether from enhancement. In such a case, where the value of similar lands in the same locality, but not sharing the especial advantages resulting from works or improvements erected or effected, by or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to enhancement. TEKAIT CHOORAMUN SINGH *v.* DUNRAJ ROY . . I. L. R., 5 Calc., 56

387. ——— *Act X of 1859, s. 17—Increase at expense of tenant.*—Where it is found that the productive powers of a holding have been increased at the expense of the tenant, and it is not found that they have increased otherwise, no grounds of enhancement under s. 17 of Act X of 1859 are shown. OUNDA *v.* RAHEEM SHERE KHAN [3 N. W., 138

388. ——— *Increase at expense of raiyat.*—If the tenant's expenditure has

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proportion as the present value of the produce bears to the old value DOORGANATH SHAH v KAZIM FAKIR 9 W. R., 348

SHIB NARAIN GHOSE v KASHEE PERSHAD MOOKERJEE 1 W. R., 226

365 ——— *Rule of proportion—Deduction for costs of production—Average values for series of years* —In applying the rule of proportion laid down in the Full Bench decision in the case of *Thakooranee Dossee, B L R., Sup Vol, 202 3 W R Act X, 29,* the Judge must consider the amount the raiyats actually paid, and not what they ought to have paid. The raiyat is not entitled to any deduction on account of cost of production. It is necessary to take the average values of the produce of a series of years, including the years of abnormal plenty and scarcity JOMEUT MUNDUL v SHOORENDER NATH ROY [25 W. R, 391

366 ——— *Accidental or exceptional increase in value—Drought or scarcity* —The increase in the "value of the produce" which is to form a ground for enhancement of rent under s 17 of Act X of 1859 means an increase in its natural and usual value in ordinary years The accidental and exceptional high prices of a particular year, in consequence of drought and scarcity, cannot be treated as a measure by which rent is to be adjusted A tenant takes land, not with reference to the exceptional high prices of a past year, but with reference to the prices he may reasonably expect to realize for the crops which he will raise in succeeding years BHAGRUTH DOSS v MAHASOOP ROY [6 W. R., Act X, 34

367. ——— *Casual increase in fertility* —A casual increase in the fertility of the land is not a ground for permanent enhancement of rent KRISTO MOHUN PATTUR v HUREE SUNKUR MOOKERJEE 7 W. R, 235

368 ——— *Casual increase in fertility* —In coming to a conclusion as to whether the produce or the productive powers of the land have increased otherwise than by the agency or [illegible]

[6 B. L. R., Ap., 124: 15 W. R., 109

369 ——— *Casual increase in fertility* —In deciding a suit for a kabuliat at enhanced rate for five years the probable result of an exceptional bad season should not be taken into consideration, but the average of the past five years. SHREESH CHUNDER DOSS v ASSIMONISSA [7 W. R, 334

370 ——— *Steady and normal increase* —The increase must be permanent i e, steady and normal. THAKOORANEE DOSSEE v BISHESHUR MOOKERJEE . 3 W. R., Act X, 142

371. ——— Inconsistent grounds of enhancement—*Increase of produce and value of produce—Lowness of rent compared with neighbouring rates* —Claims to enhancement on the basis of increased produce and increased value of produce are inconsistent and incompatible with one founded on an inequality between the rent paid by a tenant on the estate and paid by a tenant on a neighbouring estate SHREESH CHUNDER DOSS v ASSIMONISSA [7 W R., 234

372. ——— *Increase of produce—Increase of value of produce* —A claim to enhancement of rent on the basis of increased produce, and one on that of increased value of produce are not inconsistent and incompatible, and if they were so, they would not, by being advanced together cancel each other, and thus neutralize plaintiff's claim to the benefit of cl 2 s 17, Act X of 1859 GOPEE NATH MOOKERJEE v RAM HUREE MUNDUL [9 W R., 476

373 ——— Rule of proportion—*Rates of present and former value unascertainable* —The rule of proportion is not applicable where the rates between the present value of the produce of the soil and the former value at the time of the original taking cannot be ascertained and where it is only necessary to see what is a fair and equitable rate by comparison with the rate paid by the neighbouring raiyats for similar land. JADUB CHUNDER HOLDAR v ETBUREY LUSHKUR 3 W. R., Act X, 160

374. ——— *Calculation where adjustment has taken place* —In a suit for a kabuliat at enhanced rents if the rents of the adjacent lands have been already adjusted and enhanced the enhancement of the defendant's holding will depend on the rates paid by those adjacent lands, [illegible]

375 ——— Rate for lands allotted on batwara—*Reg XIX of 1793 s 19* —In a suit for khas possession of land made over to plaintiff on batwara the defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent as the lands were occupied by gardens made by his ancestor *Held* that the rate given in the batwara papers was not necessarily the fair rate for the lands; for under s. 19, Regulation XIX of 1793 the gross produce of each village is calculated with the proportion of the public jumma assessed thereon. LUKEET NARAIN SINGH v GOPAL SINGH 9 W R., 145

376 ——— Increase in productive powers—*Increase in rent* —By the words "increase of productive powers" in s. 17 Act X of 1859 the Legislature did not mean capacity for realizing a higher rent for building or other purposes but an increase of the productive powers of the land itself BISSESHUR CHUCKERBUTTY v WOOMACHURN ROY [9 W. R., 122

377. ——— *Agency operative at time of notice—Beng Act VIII of 1869, s 18.*—In a suit for arrears of rent for two years, of

ENHANCEMENT OF RENT—*continued.*

5. GROUNDS OF ENHANCEMENT—*continued.*

(*d*) LANDS HELD IN EXCESS OF TENURE.

398. ——— Excess lands—*Act X of 1859, s. 17, cl. 3.*—Lands in excess of the area recorded in a mokurrari pottah containing no boundaries are liable to assessment under s. 17, Act X of 1859. BIPRO DOSS DEY *v.* SAKEEMONEE DOSSEE [W. R., 1864, Act X, 38

399. ——— *Act X of 1859, s. 17, cl. 3.*—Where a tenant is found to be holding a greater quantity of land than that for which rent has been paid by him, and the excess land lies within the land originally leased to him, the landlord is entitled to enhanced rent under cl. 3, s. 17, Act X of 1859. GOPEENATH MOOKERJEE *v.* RAM HUREE MUNDUL [9 W. R., 476

400. ——— *Act X of 1859, s. 17, cl. 3.*—In a suit for enhancement under cl. 3, s. 17, Act X of 1859, on the ground that defendants held lands in excess of that originally granted to him, the mere fact that defendant held for twenty years at an unvarying rent does not excuse him from payment of rent on any land in excess of his jote, unless under special circumstances. REAZOONISSA *v.* DAD ALI . . . . 8 W. R., 326

401. ——— *Act X of 1859, s. 17, cl. 3.*—In order to maintain a suit for enhancement on the ground mentioned in cl. 3, s. 17, Act X of 1859, it is necessary to prove the existence of the alleged excess and the rate at which such excess land ought to be assessed. NUBO KISHORE MUNDLE *v.* FUKEER PARAMANICK . . 17 W. R., 558

402. ——— *Expenses of cultivating excess lands.*—Where a tenant holds excess lands for which no rent has hitherto been paid, the zamindar may treat him either as a trespasser or a tenant. In the latter case a suit will not lie for enhancement, but only for a kabuliat and for a determination of the rate at which the same should be delivered. See *Rajmohun Mitter* v. *Gooroo Churn Aych, 6 W. R., Act X, 106.* A raiyat is entitled to no deduction under s. 17, Act X of 1859, for the expenses which he has incurred in cultivating excess lands for which he had paid no rent. He is a mere squatter, and that section refers only to tenants with a right of occupancy. DAVID *v.* RAM DHUN CHATTERJEE . . . 6 W. R., Act X, 97

403. ——— *Rent of accreted land—Reg. XI of 1825, s. 4—Evidence that land has been subject of permanent settlement.*—Where the area of a tenure is increased by alluvion, the proper remedy of the landlord is not to sue for enhancement of the rent under the Rent Laws, but, under s. 4 of Reg. XI of 1825, to sue for an additional rent for the alluviated lands. Such additional rent cannot be considered as forming part of the rent of the original tenure. In a suit for enhancement it is not necessary to show that the land, the rent of which it is sought to enhance, has been the subject of permanent settlement. In such a suit the Government, as against the raiyats, is in no better position under the Rent Laws than other landlords.

ENHANCEMENT OF RENT—*continued.*

5. GROUNDS OF ENHANCEMENT—*concluded.*

Sudanundo Mytee v. *Nowrutton Mytee, 8 B. L. R., 280: 16 W. R., 289,* followed. GOPI MOHUN MUZOOMDAR *v.* HILLS . . . 5 C. L. R., 33

404. ——— *Accretion—Engagements of parties.*—In a suit for enhancement in respect of an accretion the plaintiff is not bound to show any established talukhdari rates, but, if entitled to enhance, ought to obtain a decree for enhancement at a rate proportionate to that paid for the parent tenure. In the case of accretions to recently-created tenures, the question of enhancement will mainly depend on the engagement of the parties. GOPAL LALL THAKOOR *v.* KUMUR ALI [6 W. R., Act X, 85

405. ——— *Accretion to original tenure—Ground of enhancement—Beng. Act VIII of 1869, s. 14 and s. 18, cl. 3.*—A suit for an enhanced rent brought against a tenant on the ground that the tenure has been increased by accretion must be after service of notice required by s. 14 of the Rent Act, the ground for enhancement in such case being substantially within the grounds of enhancement contained in cl. 3 of s. 18 of that Act. See *Ram Nidhee Manghee* v. *Parbutty Dassee, I. L. R., 5 Calc., 823.* HURRO SUNDERI DOSSEE *v.* GOPEE SUNDERI DOSSEE . 10 C. L. R., 559

406. ——— *Accretion—Notice to pay higher rent or give up possession.*—Where a kabuliat stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the residue: in default thereof rent to be realized according to law, or service made on the tenants of a notice "requiring them to take a settlement of the excess land, and to file a kabuliat and fixing the time at fifteen days," otherwise the excess land to be settled with others, the kabuliatdar measured the howla and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabuliat for the said amount of land and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land,—*Held* (1) that s. 14 of Bengal Act VIII of 1869 did not apply; (2) that the kabuliatdar was entitled to a decree fixing the extent of the excess land and assessing the rent payable for it; and was thereafter entitled to issue a fresh notice to the tenants to come to a settlement in respect thereof or to give up possession. RAM COOMAR GHOSE *v.* KALI KRISHNA TAGORE

[L. R., 13 I. A., 116: I. L. R., 14 Calc., 99

6. DECREASE IN QUANTITY OF LAND.

407. ——— Decrease in quantity of culturable land—*Deduction of rent in suit for enhancement.*—In a suit by the mother of the then zamindar of a talukh for enhancement of rent, a decree was made in 1821 in terms of a compromise,

ENHANCEMENT OF RENT—*continued.*

5. GROUNDS OF ENHANCEMENT—*continued.*

caused an increase in the productive power of the land, such expenditure once made cannot permanently bar enhancement of rent, but after the lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just share of profit in respect of it, his rent may be enhanced on any legal ground MUJLIS *v.* MOHER [3 Agra, 223

389. ———— *Increase in value of land by tenant's means*—In a suit for enhancement of rent of land originally leased for the [illegible] done wrong in allowing the tenant a reduction on account of the increase of value of the land induced by his energy NUFFER CHUNDER SHAH *v.* GUNGA DUTTA BHARUTTY . . . 11 W. R., 190

390 ———— *Right to enhance rent where increased facilities for irrigation are provided by landlord.*—Where a landlord provides facilities for irrigation, of which the tenants may without expense avail themselves, bringing the water to their holdings,—*Quære*—Whether, after proper notice, he would not be allowed to enhance the rent A tenant of unirrigated land, if the landlord make that land irrigable without cost to the tenant, must pay at the rates paid by other similar tenants for irrigable lands in the neighbourhood IKRAM ALI *v.* BABOO LALL 1 N. W., 178: Ed. 1873, 257

391. ———— *Right to increased rent where raiyat digs wells and does not use the irrigation already existing, though sufficient.*—*Semble*—If a zamindar has, before the construction of a well by a tenant, provided sufficient means of irrigation, he will be entitled to receive rent at the rate payable by the cultivators of the same class as his tenant for land with the like facilities for irrigation in places adjacent, and will not be [illegible] well which will not materially increase the productive powers of a holding to a greater extent than they would have been increased had the cultivator availed himself of the means of irrigation placed at his disposal by the zamindar SHEO CHURN *v.* BUSSUNT SING RAMJUTHUN SINGH *v.* MEHDEE [3 N. W., 282: Agra, F. B., Ed. 1874, 258

392. ———— *Improvements by agency of tenants*—The fact that at a distant time the raiyat or his ancestors have by their own agency or at their own expense made wells or effected improvements, is not a legal bar to the landlord's right to enhance LALLA SHEO NARAIN *v.* OODHUN SINGH . . 1 N. W., 160: Ed. 1873, 258

393 ———— *Reclamation of waste land by tenant*—In a suit to enhance rents the Deputy Collector found that the annual revenue obtained by the raiyats was R12 579, and that an increase in such rates was partly due to the exertion of the defendant in reclaiming some waste land, and he deducted R2 579 as the defendant's share, and awarded R10 000 as a fair and reasonable rate to be paid to the plaintiff *Held* that there was no reason for impeaching his award of this rate SURNO MOYE *v.* ADOITO CHURN ROY [Marsh., 605

394. ———— *Expenditure of labour and capital by tenant*—Where tenants held for some twenty five years upon a rent apparently much below that payable for lands of the same de[illegible] held not [illegible] a lrge the [illegible] against [illegible] nhanced rate PROSONO COOMAR PAUL CHOWDHRY *v.* RADHA NATH DEY CHOWDHRY . . 7 W. R., 97

395. ———— *Increase by exertion of tenants*—In a suit for enhancement of rent upon the ground that the rates were below the prevailing rates payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent, the Judge exempted from any enhancement a tank and garden, on the ground that the tank had been dry for public use, and that the garden had been rendered productive by the exertion of the tenants *Held* that neither reason was any ground of exemption from enhancement. SREERAM CHATTERJEE *v.* LACKHUN MAGILLA Marsh., 379: 2 Hay, 427

396 ———— *Care and labour expended by raiyat*—In a suit for a kabuliat at an enhanced rent, where in spite of the shortness or deficiency of the crops, their value, owing to the additional care and labour expended by the raiyat, had increased considerably above that in former years it was laid down that the Court must try and discover what the raiyat was entitled to as a set-off against the increased value of the produce for the additional care and labour expended by him and whether or not the zamindar was not entitled to some portion of the increased value of the produce in the shape of enhanced rent. SHODAMINEE DOSSEE *v.* HARAN CHUNDER SURMA [6 W. R., Act X, 103

397. ———— *Increase by agency of tenant—Beng. Act VIII of 1869, s. 19*—In a suit for enhancement of rent, defendant pleaded that the land was used solely for fruit trees, and that those trees were originally planted by the defendant; that consequently any increase in the value and productiveness of the land in consequence of the growth of the trees must be attributable to the agency of the defendant, and therefore by s. 19 of Bengal Act VIII of 1869 such increase would be no ground for enhancement. *Held* a bad defence OBHOY CHUNDER SIRDAR *v.* RADHA BULLUBH SEN [1 C. L. R., 549

ESCAPE FROM CUSTODY—*continued.*

sentence of transportation,—*Held* that he had committed an offence punishable under s. 224, and not under s. 226, of the Penal Code. QUEEN *v.* RAMASAMY . . . . . . 4 Mad., 152

16. ———— Apprehension without warrant—*Penal Code, s. 224.*—Where a person apprehended on a charge of a cognizable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the police officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224. QUEEN *v.* RAM SARAN TEWARY [24 W. R., Cr., 45

17. ———— *Penal Code (Act XLV of 1860), s. 224—Madras Salt Act (Madras Act IV of 1889), ss. 46 and 47—Right to arrest person without warrant in search for contraband salt.*—The Madras Salt Act, 1889, only authorizes searches for contraband salt and arrest of the parties concerned in the keeping of such salt to be made by officers of the Salt Department without search-warrant in cases where the delay in obtaining such search-warrant will prevent the discovery of such contraband salt. *Held* that, where the circumstances did not justify the officer in believing that the delay in obtaining a search-warrant would prevent the discovery of contraband salt, he had no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of s. 224 of the Penal Code. QUEEN-EMPRESS *v.* KALIAN . I. L. R., 19 Mad., 310

18. ———— Escape from confinement negligently suffered by public servant—*Escape from confinement intentionally suffered by public servant—Penal Code, ss. 222, 223—Criminal Procedure Code, ss. 61, 167.*—While a case was being investigated by *A*, a police officer, under the provisions of Ch. XIV of the Criminal Procedure Code, *T* presented a petition to the Magistrate having jurisdiction to try the case, in which he accused *W* of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the police officer investigating the case. *W* was accordingly arrested and brought before the Magistrate, who, having examined *T* on oath and taken *W*'s statement, made an order on the petition to the following effect: "As no police report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of *W* be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order, *W* was taken to the District Superintendent of Police, and was sent by that officer to *A*. *Held* that the Magistrate's order might be taken to have been passed under s. 167 of the Code, and therefore *W* was lawfully commit[illegible]stody of the police, and *A* was bound to d[illegible] custody until rele[illegible] therefrom by [illegible]; and that c[illegible]quently *A*, havin[illegible]ed *W* to esc[illegible]

ESCAPE FROM CUSTODY—*continued.*

had been properly convicted under s. 223 of the Penal Code. EMPRESS *v.* ASHRAF ALI [I. L. R., 6 All., 129

19. ———— Irregular endorsement of warrant—*Penal Code (Act XLV of 1860), s. 224—Criminal Procedure Code, 1898, s. 79.*—An endorsement on a warrant of arrest under s. 79 of the Criminal Procedure Code should be regularly made by name to a certain person in order to authorize him to make the arrest. Where an endorsement was made to the officer of a certain police station without the name of such officer being given,—*Held* that the arrest under the warrant was not legal so as to make any escape an offence under s. 224 of the Penal Code. DURGA TEWARI *v.* RAHMAN BUKSH [4 C. W. N., 85

20. ———— Obstructing public servant in his duty—*Penal Code, ss. 186, 224.*—Escaping from lawful custody is not obstructing a public servant in the execution of his duty within the meaning of s. 186 of the Penal Code. REG. *v.* POSHUBIN DHAMBAJI PATIL [2 Bom., 134: 2nd Ed., 128

21. ———— Right of entry in pursuit of prisoner escaped—*Entry into lodging-house.*—Court peons may pursue into the yard of a lodging-house, the door leading into which is open, a prisoner who has escaped from their custody. DUKHOO *v.* CHUNDRO KANT CHOWDHRY . 3 W. R., Cr., 68

22. ———— Rescue from lawful custody—*Penal Code, s. 225.*—Before a conviction can be had under s. 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time. QUEEN *v.* DEGUMBER AHIR . . . 21 W. R., Cr., 22

23. ———— *Penal Code, s. 225.*—Where a police officer, duly appointed under Act V of 1861, was engaged in the discharge of his duty as such police officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code. QUEEN *v.* ASSAM SHUREEFF [13 W. R., Cr., 75

24. ———— *Penal Code, s. 225—Criminal Procedure Code, s. 59—Arrest of thief—Rescue from custody of private person.*—To support a conviction under s. 225 of the Indian Penal Code, it is not necessary that the custody from which the offender is rescued should be that of a policeman: it is enough that the custody is one which is authorized by law. *Held*, therefore, that rescue from the custody of a private person who had arrested a thief in the act of stealing was an offence. QUEEN-EMPRESS *v.* KUTTI I. L. R., 11 Mad., 441

25. ———— *Person unlawfully arrested by a private person and made over [illegible] village-chowkidar—Rescue from custody of [illegible]llage-chowkidar—Lawful custody—Penal Code [illegible] XLV of 1860), s. 225—Criminal Procedure*

ENHANCEMENT OF RENT—*continued*

6 DECREASE IN QUANTITY OF LAND —*concluded*

enhancing the rent from R1,600 to R2 000 A subsequent suit, in which rent was claimed at R3,200, was finally decided in 1862, the compromise being thereby set aside and the liability of the talukh to enhancement finally established The ameen's report, which fixed the rent payable at R8,124, was not, however, made until 1869 In a suit to recover rent at R8,124 for the year 1871-72, the Subordinate Judge gave a decree for R5 062 15-6, a re-measurement of the talukh having shown a decrease in the amount of culturable land *Held*, reversing the decision of the High Court, that the Subordinate Judge was right in making such a decree SURAT SOONDARI DEBYA v PRANGOBIND MOOZOOMDAR [5 C. L. R., 262

7. RESISTANCE TO ENHANCEMENT.

408. ———— Purchaser of patni talukh —*Act X of 1859, s 14* —S 14, Act X of 1859, does not apply to the case of a purchaser of a patni talukh at a sale under Regulation VIII of 1819, unless the jumma is shown to be a mesne incumbrance which came into existence subsequently to the creation of the patni HURROMOHUN MOOKERJEE v BROJOKISHORE ROY . W. R., 1864, Act X, 103

409 ———— Suit to contest enhancement—*Act X of 1859, s 14—Question of rates* —In a suit by a tenant under s. 14, Act X of 1859, to contest the landlord's right of enhancement, the question of rates may be decided, whether at the instance of the tenant or landlord GOBACHAND v GUDADHUR CHATTERJEE . . 7 W. R., 470

410 ———— *Act X of 1859, s. 13—Pleading* —Where a raiyat brings a suit to contest the right to enhancement under s. 13 of Act X of 1859, it is not necessary to plead in terms that he held at a fixed rate from before the decennial settlement At the same time, parties should use the exact terms of the pleas to assist which the presumption laid down in s 4 of Act X of 1859 had been created. NOMUTOOLAH v GOVIND CHUNDER DUTT 1 Ind. Jur., N. S, 2: 4 W R, Act X, 25

KHODA NEWAZ v NUBO KISHORE RAJ [5 W. R, Act X, 63

411. ———— Suit for reversal of notice of enhancement—*Failure to prove holding at* [illegible]

[illegible] hance. GUNGAPERSAUD SINGH v RAMLOLL SINGH [Marsh., 185: W. R., F. B, 59 1 Ind. Jur., O. S, 118: 1 Hay, 452

PUDDOLOCHUN BHADOORI v CHUNDER NATH ROY [1 Ind. Jur., N. S, 171: 5 W. R., Act X, 51

412. ———— Suit to resist notice of enhancement.—All the pleas under which a raiyat can resist a notice of enhancement ought to be considered in the suit he brings to resist the notice. PUDDOLOCHUN BHUDOORI v CHUNDER NAUTH ROY

[1 Ind. Jur., N. S, 171: 5 W. R., Act X, 51

413 ———— Suit to contest enhancement—*Act X of 1859, s 14* —Where a raiyat on whom notice of enhancement has been served sues under s 14, Act X of 1859, and fails to show that any excessive rate is demanded from him, or that he is not liable to pay the rent demanded, his suit ought to be dismissed The Court ought not to go on to try defendant's case as if he were suing for enhancement GUNGA NARAIN CHOWDHRY v KOTA PALI . . 11 W. R., 377

8. RIGHT TO DECREE AT OLD RATE ON REFUSAL OF ENHANCEMENT

414. ———— Refusal of enhancement —*Arrears of rent at admitted rate* —Where, in a suit for arrears of rent at an enhanced rate, the rent was due under a kabuliat on the terms of which it was held that the rent was not liable to enhancement and the enhancement was consequently refused,—*Held* that a decree should not be given for arrears of rent at the rate agreed in the kabuliat SOORASOONDERY DABEE v GOLAM ALLY

[15 B L R., 125 note: 19 W. R., 142

Affirming the decision of the High Court in GOLAM ALLY v. GOPAL LALL THAKOOR 9 W R., 65

HURRONATH ROY v GOBIND CHUNDER DUTT [6 W. R., Act X, 3

SARODA MOHUN ROY CHOWDHRY v SHIBOROOREE DOSSEE . 24 W. R., 35

KASHEE PERSHAD SEN NAZIR v. JANU PARSHAD [3 C. L. R., 265

415. ———— *Failure to establish grounds—Admitted rate* —In a suit for rent [illegible]

[illegible]

BHUBO SOONDEREE CHOWDRAIN v KASHEENATH ACHARJEA . 22 W. R., 351

AKASHBUTTY KOOER v HEERA RAM MUNDUR [24 W. R., 82

416. ———— *Failure to prove notice—Decree at old rate of rent—Suit for arrears of rent* —The plaintiff sued for the arrears of rent of the years 1 84, 1285, and also for arrears of rent of the year 1286 the latter at an enhanced rate The notice of enhancement was not [illegible]

[illegible]

Mundul, 6 W. R., Act X, 96; Soorasoondery Dab[illegible]

ESTATES-TAIL.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, ETC. [4 B. L. R., O. C., 103
9 B. L. R., 377

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS . . I. L. R., 7 Calc., 269
[I. L. R., 11 Calc., 684
L. R., 12 I. A., 103
I. L. R., 16 Calc., 383
L. R., 16 I. A., 29

ESTATES PARTITION ACT (BENGAL ACT VIII OF 1876).

See CASES UNDER PARTITION.

———— s. 31.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION. [I. L. R., 15 Calc., 198

———— ss. 112, 116.

See PENAL CODE, s. 186. [I. L. R., 22 Calc., 286

———— ss. 116, 150.

See LIMITATION ACT, ART. 14. [I. L. R., 24 Calc., 149

———— s. 123.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859. [I. L. R., 24 Calc., 887

ESTOPPEL.

See CASES UNDER ACQUIESCENCE.

See CASES UNDER JUDGMENT IN REM.

See LACHES . . 14 B. L. R., 386

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS ON LAND . . I. L. R., 17 Bom., 736
[I. L. R., 18 Bom., 66
I. L. R., 16 All., 328

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENT.

———— of minor by act of guardian.

See LAND ACQUISITION ACT, s. 19. [I. L. R., 17 Bom., 299

1. STATEMENTS AND PLEADINGS.

1. ———— **Proof of estoppel.**—Estoppels must be made out clearly. TWEEDIE *v.* POONOCHUNDER GANGOOLY . . . . 8 W. R., 125

ESTOPPEL—*continued.*

1. STATEMENTS AND PLEADINGS—*continued.*

2. ———— **Statement in former suit**—*Estoppel in pais—Pleadings—Decision on pleadings.*—An estoppel *in pais* need not be pleaded in order to make it obligatory. With the Indian system of pleading, a party's statement in a judicial proceeding cannot be excluded like allegations in bills in equity and pleadings at common law. But mere statements for the purpose of a particular judicial proceeding can only be conclusive evidence in another proceeding as to such material facts embodied therein as must have been found affirmatively to warrant the judgment of the Court upon the issues joined. They are then conclusive between the same parties, not because they are the statements of those parties, but because, for all purposes of present and prospective litigation, they must be taken as truth. *A* brought a pauper suit, and virtually denied possession of certain property. *B* petitioned to dispauper *A*, alleging that *A* was possessed of such property. The Court decided that *A* was in possession, and rejected her prayer to be allowed to sue as a pauper. *Held* in a subsequent suit by *A*'s representative against *B*'s representative for the property that, even if *A*'s allegation, found to be false, could be treated as an estoppel, *B*'s allegation, found to be true, would also be an estoppel; and "estoppel against estoppel setteth the matter at large;" but that, although *A*'s allegation was receivable evidence against *A* and her representative, they were not concluded by such allegation and the decision thereon. CIVA RAU NANAJI *v.* JEVANA RAU . . . . 2 Mad., 31

3. ———— *Admission.*—A plaintiff's statement in a former suit held not to bind him conclusively. It should be taken as an admission. JUGUTENDUR BUNWAREE *v.* DIN DYAL CHATTERJEE . . . . . . 1 W. R., 310

BISSESSUREE DEBEE *v.* JANKEE DOSS [1 W. R., 162

KHANTOMONEE DEBIA *v.* KOMODINEE DEBIA [25 W. R., 69

4. ———— *Denial of genuineness of mortgage—Subsequent suit to redeem.*—*V* sued to eject *K* from certain land, alleging that *K*, having entered under a lease, held as a trespasser. *K* pleaded that he held as mortgagee. It was found that *K* obtained possession under a mortgage-deed for R1,000, which had not been registered, and that he held also a second mortgage for R50, and it was held on second appeal that *K* was entitled to defend his possession by virtue of the mortgage for R50, and as *V* had not offered to redeem the charge, but had sued on false averments, the suit was dismissed. *V* then sued *K* to recover the land on payment of R50. In his plaint *V* stated that, though the mortgage-deed for R50 was fabricated, the High Court had decided that he was bound to pay R50 before recovering the land from *K*. The District Court on appeal dismissed the suit on the ground, *inter alia*, that, as *V* denied the genuineness of the mortgage, he could

ESCAPE FROM CUSTODY—*concluded.*

Code (Act V of 1898), s. 59—Village Chowkidari Amendment Act, 1870 (Bengal Act I of 1892), s 13. —*S*, who was alleged to have committed theft, was unlawfully arrested by a private person and made over to the custody of the village chowkidar. The theft was not committed in view of such private person. *S* was rescued from the custody of the village-chowkidar by the accused The accused were convicted under s 225 of the Penal Code, and [illegible]

Conviction and sentence set aside KALAI *v* KALU CHOWKIDAR . . . I. L R., 27 Calc , 366 [4 C. W. N., 252

26 [illegible] Escape where detention is [illegible]

arrested, tried, and acquitted. Whilst under arrest, the accused escaped from custody. *Held* that he was not liable to conviction under s 224 of the Penal Code An escape from custody when such detention is not for an offence is not punishable under that section. GANGA CHARAN SINGH *v.* QUEEN-EMPRESS [I. L. R., 21 Calc., 337

27. ———— Escape from lawful custody —*Penal Code (Act XLV of 1860), s. 224* —The accused, having been legally arrested, was subsequently left unguarded, and he escaped He was then re-arrested, and was tried and convicted under the Penal Code, s 224 *Held* that the conviction was right QUEEN-EMPRESS *v* MUPPAN [I. L. R., 18 Mad , 401

28 ——— Omission to notify substance of warrant—*Criminal Procedure Code* [illegible]

ful arrest, and resistance to such an arrest is not an offence under s 225B of the Penal Code. SATISH CHANDRA RAI *v.* JODU NANDAN SING [I. L. R., 26 Calc., 748 3 C. W. N., 741

But *see* QUEEN-EMPRESS *v* BASANT LALL [I. L. R., 27 Calc , 320

ESCHEAT.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS [I. L. R., 13 Mad., 237

See GRANT—CONSTRUCTION OF GRANTS [I. L. R , 1 Calc., 391

See ILLEGITIMACY . 11 B. L. R., 144

See MALABAR LAW—MORTGAGE [I. L. R., 10 Mad., 160

ESCHEAT—*concluded.*

1. ———— Onus probandi—*Jus tertii* — In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the parties claiming as heirs the onus is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. GIRIDHARI LALL ROY *v.* GOVERNMENT OF BENGAL [1 B L. R., P. C., 44: 10 W R., P. C , 31

S C. in High Court. GOVERNMENT *v.* GREEDHAREE LALL ROY . 4 W. R., 13

2 ———— Territorial law of India.— The illegitimate son of an Englishman by a Mahomedan woman died intestate without lawful issue, leaving him surviving his mother, his mistress, and several illegitimate children *Held* that his property passed to the Crown in default of heirs. The territorial law of British India is a modified form of English law SECRETARY OF STATE *v.* ADMINISTRATOR GENERAL OF BENGAL [1 B. L. R., O C , 87

3 ———— Cause of action—*Possession—Title* —The period during which the Government may sue on total failure of natural heirs dates from the time when the failure of heirs or reversioners became apparent In the case of parties without any legal title, a possession of sixty years is necessary to create a title against the Government PURSUN LAL *v* GOVERNMENT . . W R., 1864, 102

[illegible]

estate by escheat, subject, however, to the trusts and charges previously affecting the estate. COLLECTOR OF MASULIPATAM *v* CAVALY VENCATA NARAINAPAH [2 W. R , P. C , 59, 8 Moore's I. A , 500

5. ———— Sale by proprietors free of revenue—*Death of holder without heirs* —The proprietors of a mehal held free of revenue transferred by sale all their rights and interests in a garden situated within the area of the mehal. When revenue was imposed on the mehal, no interference with the rights of the holder of the garden took place Revenue engagements were not taken from him, and he remained, as before, a proprietor, although not a proprietor who engaged for the revenue of the mehal. It was held that the garden did not escheat to the zamindars of the mehal on the death of the holder without heirs CHIRAGHAN *v* HARBANS . [7 N. W., 313

6. ———— Failure of male heirs—*Acquiescence—Waiver of right—Succession of females* —A suit by the Government for the possession of the pollum of Frasca Naikoor in Madras as an escheat for want of male heirs dismissed, the Government having acquiesced in the right of female succession to the pollum and possession having been held for a period of eighteen years after the alleged escheat. COLLECTOR OF MADURA *v* VEERACAMOO UMMAL [9 Moore's I. A., 446

ESTOPPEL—*continued.*

1. STATEMENTS AND PLEADINGS—*continued.*

or interest in the property, and did not conduct the Act IV proceeding with any authority from the plaintiffs. *Held*, too, that plaintiffs were not estopped by statements made by them as parties in another suit, which did not affect their status, nor by their failure to set forth their title in a former suit brought against them for mesne profits of the land in dispute. MOHENDRA NATH MULLICK *v.* RAKHAL DOSS SIRCAR [10 W. R., 344

17. ——— *Finding against statement.*—The allegation of a plaintiff in a former suit, which was referred to arbitration, having been overruled by the arbitrators, and another state of things found by them to exist, he is not estopped by his former allegation from bringing a further suit founded on the finding of the arbitrators. RAM CHUNDER DEY *v.* KISSEN MOHUN SHAHA [6 W. R., 68

18. ——— Plaintiffs sued for their share in the property of their family. The Judge rejected their claim, mainly on the ground that, when parties in a former suit respecting the same property, they had pleaded division, and the Court found that the family was undivided. *Held* that the Judge was wrong in attributing to the plaintiff the plea of division in the former suit, and, even if such plea had been raised, the judgment in that suit, pronouncing the status of the family to be that of non-division, was conclusive on that subject, and that it was open to the plaintiffs to sue for enforcement of their rights to effect a division. SANGOOVIEN *v.* KOLLATHOORAYEN . . 1 Ind. Jur., O. S., 116

WATSON *v.* POKHUR DOSS PAUL. MOHINEE DOSSEE *v.* POKHUR DOSS PAUL . . 4 W. R., 2

19. ——— *Disclaimer of defendant.*—The plaintiff sued for a quantity of land which was family property in the possession of his brother, the defendant. The defendant in a former suit declared that the land sued for was not family property, but belonged to his sister, and in this suit he claimed the property under her will. The lower Court found that the property was family property, but that the plaintiff was entitled to a decree for the whole property on the ground that the disclaimer of the defendant in the former suit amounted to an estoppel and forfeiture of his share. *Held* that the effect of the defendant's conduct did not operate either as an estoppel or a forfeiture, and that the plaintiff was only entitled to a decree for a moiety of the property. VELLAYAN CHETTY *v.* AIYAN *alias* THUNDAVAMURTY CHETTY . . . . 4 Mad., 374

20. ——— False statement in plaint.—A plaintiff is not estopped by an evidently false statement in his plaint as to possession, but the Court may look behind the statement and determine upon its truth or otherwise and affirm or disallow it, as may seem right and proper. CHOONEE LALL *v.* KERAMUT ALI . . . . . W. R., 1864, 282

21. ——— Erroneous admission in petition.—A party is not bound by an erroneous admission in a petition. KRISTO PREA DOSSEE *v.* PUDDO LOCHUN MYTEE . . 6 W. R., 288

22. ——— Statement of dispossession in petition—*Suit subsequently brought alleging possession.*—A statement of dispossession made in a petition preferred under s. 269 of Act VIII of 1859 by a person claiming land sold in execution of a decree, and ordered to be put in possession of the auction-purchaser, cannot operate as an estoppel in a suit subsequently brought by the claimant to "establish her right" on the allegation of her being in possession of the land in question. KHANUM JAN *v.* RUTTON LAL . . . 8 W. R., 95

23. ——— Statement by stranger to suit—*Transfer of interest of judgment-debtor —Liability.*—Where a person filed a petition in a suit stating that all the interests of the judgment-debtor had been transferred to him, and for several years thereafter opposed all attempts on the part of the decree-holder to issue execution,—*Held* that the person who had so come forward, and had so interfered in the suit, was liable as a defendant, and that execution could be issued against him. A stranger to a suit cannot (even with the decree-holder's consent) so deal with a judgment-debtor as to acquire an interest in the suit which will enable him to oppose and prevent the execution of the decree, without rendering himself liable to be put upon the record as a judgment-debtor. LALLA POOROHIT LALL *v.* SABEERUN . . . . . 7 W. R., 368

24. ——— Contradictory statements—*Admission.*—In proceedings under Act XXVII of 1860 the plaintiff, a widow, called herself the guardian and trustee of her minor adopted son, but the certificate was granted to the defendant, who claimed under the husband's will. The plaintiff afterwards sued as her husband's widow, without an adopted son, to call in question the will set up by the defendant, the so-called adopted son supporting her action. *Held* that the plaintiff's former statement in the Act XXVII case was no bar to her present action. SOORJ MONI DOSSEE *v.* SUROOP CHUNDER SHAH [W. R., 1864, 198

25. ——— Admission of father as to ancestral property—*How far binding on sons.* —In the case of ancestral property the admission of a father may be used as evidence against his sons, but is not conclusive, and does not stop the sons from contending that such admission was collusive or erroneous. NOWBUT RAM *v.* DURBAREE SINGH [2 Agra, 145

26. ——— Plea in former suit—*Denial of will.*—*Held* the plaintiffs were not estopped in a suit under a will for a legacy, by the denial of the will by the persons through whom they claimed. NANA NARAIN RAO *v.* RAMA NUND . 2 Agra, 171

27. ——— Erroneous pleas—*Subsequent contradictory evidence.*—In a suit for land the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then first obtained, to show that the land had in 1814 been

ESTOPPEL—*continued*

1. STATEMENTS AND PLEADINGS—*continued.*

not sue for redemption. *Held* that *V* was entitled to redeem VARATHAYYANGAR *v* KRISHNASAMI
[I. L. R., 10 Mad., 102

5. ———————— *Admission not amounting to estoppel—Statement in suit for enhancement as to certain person being tenant.*—A patnidar obtained decrees for enhancement of rent on kabuliats signed by a widow for her minor son, by which she agreed to pay it *Held,* while finding that the minor was liable for the enhanced rent, that the patnidar was not precluded by the fact that he had, after the son had attained full age, sued the mother as tenant, stating that she, and not the son, was tenant. WATSON & Co *v.* SHAM LALL MITTER . . I. L R., 15 Calc., 8
[L. R., 14 I. A., 178

6. ———— Plea in former suit—*Contrary defences —Held* that the defendants, having in a previous suit set up the defence that *K* was disqualified by insanity and taken the decision of the Court on that ground, were estopped now from setting up the defence that he was not so disqualified, and that he was entitled to succeed. BRIJBHOOKUN LAL AWASTEE *v* MAHADEO DOBEY
[15 B. L. R., 145 note: 17 W. R., 422

7. ———————— The plaintiff sued the defendant for rent, basing his claim upon a kabuliat bearing date 6th Srabun 1258 B S His suit was dismissed, and the kabuliat pronounced to be spurious. *Held* that he was not estopped from afterwards suing the same defendant to set aside a pottah of the 27th Aughran 1244 B S, under which the defendant claimed, the validity of the pottah not being in issue in the former suit OOMANATH ROY CHOWDHRY *v* RAGHOONATH MITTER
[Marsh, 43: W. R., F. B, 10: 1 Hay, 75

JUGGUT MISSER *v.* BABOO LAL
[5 W. R., Cr., 50

8 ———— [illegible]

who are not proved to have ever heard of it, or to have been misled by it, or to have acted in reliance upon it. CHUNDERKANT CHUCKERBUTTY *v* PEAREE MOHUN DUTT . . . . . 5 W. R., 209

9. ———— Statement in former suit—*Assertion as to nature of tenure of land —Held* that the plaintiff's assertion in a former suit claiming as "malikana" the land now in dispute, even if the identity of the land now claimed with the land then in suit be established (which had not been done), does not absolutely preclude him from asserting "mourasi" right to the same land and the Court from adjudging his true right. RAM SAHAI MISSER *v.* BISHAI SINGH . . . 1 Agra, Rev., 19

10. ———————— *Denial of pottah.*—A raiyat is estopped from pleading, in a suit for a kabuliat and for determination of the rate at which such kabuliat is to be delivered, a pottah which he denied in a former suit for rent MAHOMED HOSSEIN *v.* PEEROO MULLICK W. R., 1864, Act X, 115

11. ———————— *Objection to regular suit.*—A [illegible] sal of certain [illegible] on the groun[illegible] and carried c[illegible] *B* had that o[illegible] that there wa[illegible] which such an [illegible] a regular suit [illegible] when *B* object [illegible] under the pro[illegible] *Held* that *B* was estopped from taking that objection in the present suit. HUR PROSHAUD ROY *v.* ENAYET HOSSEIN . . . . 2 C. L. R., 471

12 ———————— *Admission—Receipt of money.*—The plaintiffs, in their answer to a plaint by the defendants, admitted that they had [illegible] sued for the sum the receipt of which they had so admitted *Held* that such admission was evidence against them BHUGMUNT NARAIN JHA *v* LOLL JHA
[Marsh., 48 : 1 Hay, 114

LOLL JHA *v* BHUGMUNT NARAIN JHA
[1 Ind. Jur., O. S., 104

13. ———————— *Contradictory statements —Held* that the former statement of the plaintiff, which was at variance with the one now made, was not an estoppel, but the Court ought to have determined which of the two statements was correct JOY NARAIN *v* TORABUTT . 3 Agra, 216

14. ———————— *Pleading — Inconsistent claims*—Where a plaintiff deliberately claimed lands as rent-free, he was not allowed, merely on the ground of the proprietor admitting the lands to be leased to plaintiff's vendors, or even of the defendant making a somewhat similar admission, to benefit by such admissions and vary his claim NIDHA CHOWDHRY *v.* BUNDA LALL TACOOR . 6 W. R., 280

15. ———————— *Admission*—Because the decree in a former suit against the present plaintiff and the alleged holders of a separate half share awarded to another co-sharer who was the plaintiff in that case, owing to a mistake of that plaintiff, supported by the admission of the present plaintiff less than he was legally entitled to, the mistake need not be perpetuated, nor will his former admission estop the plaintiff in a subsequent suit. RAM SUBORNE SINGH *v.* KASHEE ROY 6 W. R., 176

16. ———————— *Survey award made without authority*—In a suit for certain immoveable property it was held that the plaintiffs were not bound by an Act IV award against a person in whose name the property had been purchased by the father of the plaintiffs, but who had not either title

ESTOPPEL—*continued.*

1. STATEMENTS AND PLEADINGS—*concluded.*

that it was not intended that the property should pass by the instrument creating the benami, and that in truth it still remained with the person who professed to part with it. DEBIA CHOWDHRAIN *v.* BIMOLA SOONDUREE DEBIA . . 21 W. R., 422

GOPEENATH NAIK *v.* JODOO GHOSE [23 W. R., 42

See RAM SURUN SINGH *v.* PRAN PEAREE [15 W. R., P. C., 14: 13 Moore's I. A., 551

UDEY KUNWAR *v.* LADU [6 B. L. R., 283: 15 W. R., P. C., 16 13 Moore's I. A., 588

BYKUNT NATH SEN *v.* GOBOOLLAH SIRDAR [24 W. R., 391

ASHRUF SIRDAR *v.* BHUBO SOONDUREE [25 W. R., 40

See MUKUN MULLICK *v.* RAMJAN SIRDAR [9 C. L. R., 64

and cases there cited.

38. ———— Entry in settlement papers—*Persons not parties to administration paper.*—*Held* that a cultivator is not bound by a condition entered in the village administration paper to which he was no party. MEHUR ALI *v.* KUNHYEE [1 Agra, Rev., 13

CHUNDUN SINGH *v.* NIRTO . . 3 Agra, 11

GIRDHAREE LALL *v.* OOMRAO SINGH [3 Agra, 249

39. ———— Return of income tax—*Income Tax Act XXXII of 1860, s. 97, rule 4—Perpetuity of tenure.*—Under rule 4, s. 97 of the Income Tax Act (XXXII of 1860), a return made to the Income Tax officer is not conclusive evidence against the party making it upon the point of perpetuity of tenure. JOWAHIR LALL *v.* POOKURUM SINGH . . . . 6 W. R., 252

40. ———— Petition submitting account of income—*Act IX of 1869, s. 19—False statement of income.*—A petition submitting the schedule of his income, filed by a petitioner in the Income Tax Office, is admissible as evidence against the person submitting and subscribing it; but it is not conclusive, and a false statement made in it, though it may render the petitioner amenable to a prosecution under Act IX of 1869, s. 19, does not estop the person verifying the petition from proving that he made the statement to evade the income tax, and that the fact was otherwise than as stated. GREEDHAREE SINGH *v.* FOOLJHUREE KOOER [24 W. R., 173

2. DENIAL OF TITLE.

41. ———— Parol evidence to prove different title from that in lease—*Suit for rent.*—*A* executed a kabuliat for a term of years to *B* as zamindar. *B* gave a patni of the zamindari to *C*. *C* instituted a suit for arrears of rent under the lease for a term of years against *A*, the lessee.

ESTOPPEL—*continued.*

2. DENIAL OF TITLE—*continued.*

A, in defence, admitted the execution of the lease to *B*, but denied that *B* was his real lessor and beneficially entitled to the rent, alleging that *B* was only a benamidar for a third party. *Held* that in India the English doctrine of estoppel did not apply, and that *A* was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. DONZELLE *v.* KADERNATH CHUCKERBUTTY 7 B. L. R., 720: 16 W. R., 186

But *see* JAINARAYAN BOSE *v.* KADUMBINI DASI [7 B. L. R., 723 note

42. ———— Evidence Act, s. 116—*Landlord and tenant.*—S. 116 of the Evidence Act does not debar one who has once been a tenant from contending that the title of his landlord has been lost or that his tenancy has determined. It precludes him only during the continuance of the tenancy from contending that his landlord had no title at the commencement of the tenancy. AMMU *v.* RAMAKRISHNA SASTRI . . I. L. R., 2 Mad., 226

43. ———— Denial by tenant of his landlord's title—*Ejectment, Suit for.*—In a suit to eject a tenant holding over after the expiration of his lease, it is not competent to the tenant to set up that his landlord, the plaintiff, holds under an invalid lakhiraj tenure, and that the zamindar and not the plaintiff is entitled to the land. MOHESH CHUNDER BISWAS *v.* GOOROOPERSAD BOSE [Marsh., 377: 2 Hay, 473

44. ———— *Suit by landlord for possession—Ejectment, Suit for.*—The plaintiff sued for possession of a certain house, alleging the expiry of the lease (kabuliat), on which the defendants held it as tenants. The mamlatdar dismissed the suit, being of opinion that the plaintiff had no title to the house when he granted the lease, and the house belonged to the defendants when they executed the lease. *Held*, reversing the decree, that the defendants (tenants), having executed the kabuliat, could not deny the plaintiff's title as a ground for refusing to give up possession, and the mamlatdar himself, therefore, could not go into the question. *Parbhudas* v. *Fulba*, *I. L. R., 19 Bom., 133 note,* distinguished. PATEL KILABHAI LALLUBHAI *v.* HARGOVAN MANSUKH [I. L. R., 19 Bom., 133

45. ———— *Regular suit by tenant.*—If the existence of a tenancy be established by the fact of the tenant's payment of rent to his landlord or otherwise, the tenant cannot ordinarily dispute the title of his landlord in a suit brought against him for recovery of possession. He must first give up possession, and then, if he has any title *aliunde*, that title may be tried in a suit of ejectment against the landlord. VASUDEV DAJI *v.* BABAJI RANU . . . 8 Bom., A. C., 175

46. ———— Denial of title as holding under unregistered document—*Admission of landlord's right.*—Where a tenant has repeatedly acknowledged that a person in possession of the proprietary right was entitled to receive rent, and has in

ESTOPPEL—*continued*

1. STATEMENTS AND PLEADINGS—*continued*.

mortgaged to, and in 1831 bought by, his father. *Held* that the evidence was receivable notwithstanding the erroneous plea RANGASVAMI AYYANGAR *v.* KRISTNA AYYANGAR . . 1 Mad., 72

28. ——— Admission by reversioner—*Suit by party to prevent sale of property in which he has an interest*—*Held* that a party was not

PAYAG PATUK

[1 N. W., Part II, p 5: Ed. 1873, 65

29. ——— Admission of predecessor in title—*Interest in property*—*Decree.*—When the

30 ——— Admission of having transferred rights—*Failure of transferee to prove it*—*A* sold his right and interest under a decree to *B*

inam rights therein, as well as the lien of the mortgagees. The present zamindar, son and successor of the grantor of 1863, now sued claiming that he had determined the tenancy by a notice to quit. *Held* that the above did not operate as any estoppel as between the plaintiff and the inamdars, the zamindar not having been a party to the suit, but was only an admission, and not conclusive. MAHARAJA OF VIZIANAGRAM *v.* SURYANARAYANA

[I. L. R., 9 Mad., 307

32. ——— Difference between contention in Original Court and Appeal Court.—*Quære*—Whether the plaintiff, having successfully contended before the Assistant Judge that his plaint was for a declaration of right merely without consequential relief, and therefore properly stamped, could be permitted to say in appeal that the house was the subject-matter of the suit within the meaning of s. 11 of the Bombay Courts Act XIV of 1869 MOTICHAND JAICHAND *v.* DADABHAI PESTANJI

[11 Bom., 189

ESTOPPEL—*continued*

1. STATEMENTS AND PLEADINGS—*continued*

33 ——— Diverse contentions in pleading—*Account*—*Limitation*—A defendant, having by his written statement pleaded that, if a general partnership account were taken, he would be found not to be indebted to the plaintiff in respect of contribution claimed, cannot also plead the Limitation Act as a bar to the taking of such account. DAYAL JAIRAJ *v.* KHATAY LADHA . 13 Bom., 87

34. ——— It is not open to a defendant to change the whole nature of his defence at the last moment, and to set up in a Court of appeal a plea which he has directly and fraudulently repudiated in the Court below In an ejectment

statement an adverse title in themselves The lower Court found the plaintiff's allegation to be true *Held* that the defendants were estopped from contending on appeal that they were occupancy raiyats, and therefore not liable to be ejected, and that by

[illegible]

35. ——— False admission of ancestor.—A false admission made by a serishtadar to avoid losing his appointment does not estop his heirs from afterwards setting up the truth MAHOMED WAJEZ *v.* SUGHEROONISSA 6 W. R., 38

36 ——— Fraudulent statement—*Admission*—When, in answer to a suit, two parties combine to make a statement to defeat a third party, it is competent to either of those parties, when they are opposed to each other in a suit, to say that the combined statement was false, and intended as a fraud against the third party The admission in the former suit is not to be regarded as an estoppel against either of the two parties in a subsequent suit, but the Court is competent to enquire into the character of the transaction and to declare it void, if it is satisfied that the transaction is not a *bonâ fide one* RAM SARUN SINGH *v.* PRAN PIAREE 1 W. R., 156

Affirmed by P. C. in RAM SURUN SINGH *v.* PRAN PEAREE

[15 W. R., P. C., 14: 13 Moore's I. A., 551

37. ——— Statement in former suit to defeat claim—*Benami transaction to defeat creditors*—*Proof of true nature of transaction.*—Where the lower Appellate Court did not allow a defendant in the present suit to deny the truth of admissions made by her in a former case, or to adduce evidence of her own falsehood and deceit, it was

be no estoppel to the party's showing the real truth of the transaction. Even where the object of a benami transaction is to obtain a shield against a creditor, the parties are not precluded from showing

ESTOPPEL—*continued.*

2. DENIAL OF TITLE—*continued.*

his fixed rate holding by a usufructuary mortgage and put the mortgagee in possession, was ejected by the zamindar, subsequently sued the mortgagee, who had remained in possession after his mortgagor's ejectment, for redemption, it was *held* that the mortgagee could plead successfully that the mortgagor's interest in the holding had determined by the ejectment of the mortgagor. NAKCHEDI BHAGAT *v.* NAKCHEDI MISR

[I. L. R., 18 All., 329

55. ———— **Application for tenure to Collector under wrong impression**—*Liability for rent.*—Where application is made to a Collector for a tenure liable to pay revenue on account of an estate which applicant has carved out of unoccupied waste, and it is found that Government is not in a position to create such a tenure, the applicant is not bound by his offer made under an erroneous impression, nor is he estopped thereby from pleading as against the landlord that he is not liable to pay any rent. BRIJONATH CHOWDRY *v.* LALL MEAH MUNNEEPOOREE . . . . . 14 W. R., 391

56. ———— **Denial in former suit of relationship of landlord and tenant**—*Suit for possession.*—A rent suit having been dismissed upon defendant denying that he was a tenant of the plaintiff, the latter sued the former for khas possession. *Held* that, after his former denial, defendant could not now claim a settlement and refuse the khas possession sought. SONAOOLLAH *v.* IMAMOODDEEN

[24 W. R., 273

DABEE MISSER *v.* MUNGUR MEAH

[2 C. L. R., 208

57. ———— **Payment of rent, Suit to contest title after**—*Payment under erroneous impression.*—The plaintiffs were the registered holders of the village of Mahkoli, in the Ahmedabad Collectorate, for which they obtained a sanad in 1864, under Bombay Act VII of 1863. The defendants were the descendants of the original owners of the village, who, about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs, on condition of retaining a third of the lands rent-free as their vanta or share, subject to no other condition but a house tax. *Held* that the circumstances did not constitute the relationship of landlord and tenant between the parties. The fact that the defendant had for some years paid to the plaintiffs part of the amount of quit-rent levied from the plaintiffs by Government did not estop the defendants, when better informed of their rights, from contesting the title of the plaintiffs to any further payments. JESINGBHAI *v.* HATAJI . . . I. L. R., 4 Bom., 79

58. ———— **Acceptance of lease under coercion**—*Payment of rent.*—A person accepting a lease under coercion is not bound by such acceptance, nor do payments of rent by him to the person granting the lease estop him from questioning the title of the payee, unless the payee let him into possession. Even then the effect of the payment as an estoppel would be confined to the title of the payee at the time possession was given. COLLECTOR OF ALLAHABAD *v.* SURAJ BAKSH . . 6 N. W., 333

3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

59. ———— **Deed, Construction of.**—Those who rely upon a document as an estoppel must clearly establish its meaning; if there is any ambiguity, the construction may be aided by looking at the surrounding circumstances. MEWA KUWAR *v.* HULAS KUWAR

[13 B. L. R., 312

60. ———— **Statement in bond**—*Evidence of amount of consideration actually received.*—Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. The strict technical doctrine of English law as to estoppels in the case of deeds under seal does not apply to the written instruments ordinarily in use amongst the natives of India. GAUREVALLABA RAMCHANDRA BOMAYA NAYIK *v.* VIRAPPA CHETTI . . . 2 Mad., 174

61. ———— **Stipulation in bond**—*Proof of payment—Omission to endorse payment.*—A stipulation in a bond that all payments should be endorsed on the back thereof, and that all other pleas of repayment would be futile, does not estop the defendant from proving by other means that the debt, or part of it, has been satisfied. KALEE DOSS MITTRA *v.* TARACHAND ROY . . . 8 W. R., 316

See GIRDHAREE SINGH *v.* LALLOO KOONWUR

[3 W. R., Mis., 23

NARAIN UNDIR PATIL *v.* MOTILAL RAMDAS

[I. L. R., 1 Bom., 45

62. ———— **Agreement of parties**—*Irregular procedure, Agreement to be bound by.*—Where a Court has a general jurisdiction over the subject-matter of a claim, parties may be held to an agreement that the questions between them should be heard and determined by proceedings contrary to the ordinary *cursus curiæ.* SADASIVA PILLAI *v.* RAMALINGA PILLAI 15 B. L. R., 383: 24 W. R., 193

[L. R., 2 I. A., 219

SHEO GOLAM LALL *v.* BENI PROSAD

[I. L. R., 5 Calc., 27: 4 C. L. R., 29

63. ———— *Acquiescence of judgment-debtor in irregular procedure—Omission to proceed under s. 90 of the Transfer of Property Act.*—Where the mortgaged property was sold in execution of a mortgage-decree, but the sale-proceeds not having been sufficient to satisfy the decree, the decree-holder, without proceeding under s. 90 of the Transfer of Property Act, made applications for the execution of the decree for recovery of the unsatisfied balance by the attachment and sale of other properties of the judgment-debtor, and the applications

ESTOPPEL—*continued*

2 DENIAL OF TITLE—*continued*

fact attorned to him, he cannot afterwards be allowed to question the validity of the title of such person on the ground that the instrument by virtue of which possession of the proprietary right had been obtained was unregistered SHUMS AHMUD *v* GOOLAM MOHEE OOD DEEN 3 N. W., 153

47. ———— Denial by tenant of landlord's title—*Evidence Act (I of 1872), s 116—Derivative title* —*A*, a raiyat, being in possession of a certain holding, executed a kabuliat regarding this holding in favour of *B* (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to *B* there- [illegible]

to whom they have attorned, and not to cases in which the tenants have previously been in possession LAL MAHOMED *v* KALLANUS

[I. L R, 11 Calc, 519

48 ———— Denial of lessor's title—*Co-sharers—Lease from one of several co-sharers* — A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment JAMSEDJI SORABJI *v* LAKSHMIRAM RAJARAM I. L R, 13 Bom, 323

49. ————Unassessed waste reclaimed by plaintiff—*Evidence Act (I of 1872), s 116—Pottah granted to defendant* —The plaintiff, who was the holder of a warg in Canara, demised adjacent waste land to one who brought it into cultivation and remained in occupation for two years The land was not assessed to revenue in the name of either of these persons At the end of two years, the tenant let into occupation a sub tenant who subsequently assigned his right to the defendant, the holder of a neighbouring warg The defendant obtained a pottah for the land from the revenue authorities In a suit by plaintiff to eject the defendant,—*Held* that the defendant was not estopped from setting up a title adverse to the plaintiff, and that his possession became adverse when the pottah was granted to him. SUBBARAYA *v* KRISHNAPPA

[I. L R., 13 Mad, 423

50 ———— Denial of right of fishery in river—*Licensee on payment of rent of fishery in navigable river—Suit for ejectment* —In an ejectment suit in respect of a julkur in a navigable river, the defendant, if he has paid rent to the plaintiff or his predecessors, is precluded from raising a defence that the plaintiff cannot have an exclusive right of fishery in a navigable river GOUR HARI MAL *v* AMIRUNNISSA KHATOON 11 C. L R, 9

51. ———— Denial of title of person supposed to be landlord—*Payment of rent—Title* —In a suit for rent by a patnidar, who claimed under a lease granted him by a Hindu widow, whose husband had left a will giving her no power to alienate,—*Held* that, although it was shown that the widow had been in receipt of rents, the suit was rightly dismissed. One who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other so here the defendant was not estopped from showing that, under the deceased husband's will, the plaintiff had no title BANEE MADHUB GHOSE *v* THAKOORDAS MUNDUL

[B L R, Sup Vol, 588 6 W. R., Act X, 17

TILLESSUREE KOER *v* ASMEDH KOOER

[24 W. R., 101

52 Landlord and tenant—*Collusion* —The plaintiff in an ejectment suit had established in a former suit that land formerly the property of the second defendant's father had been sold under a decree and purchased benami for him (the plaintiff) and that a rent agreement in respect of the same lands entered into between the ostensible purchaser and the first defendant had also been entered into by the former on his behalf; and possession had been formally delivered to the plaintiff under process of Court It now appeared [illegible]

53 ———— Mortgagor and mortgagee —The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraima right in a certain public devasom to which other land belonged, demised lands of both descriptions on kanom to the defendants' tarwad and subsequently executed to the plaintiff a melkarom of the first mentioned land and purported to sell to him the jenm title to the last mentioned land. In a suit brought by the plaintiff to redeem the kanom and to recover arrears of rent,—*Held* that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the devasom; and that the plaintiff, who had denied the title of the devasom in the Court of first instance, [illegible] by [illegible] mises [illegible] ARA [illegible], 328

54. ———— *Mortgage by tenant at fixed rates—Ejectment of mortgagor by zamindar—Suit for redemption against mortgagee in possession of the mortgaged property* —The rule of law which prohibits a mortgagee or tenant from disputing his mortgagor's or landlord's title does not bar the mortgagee or tenant from showing that the title of his mortgagor or landlord under which he entered has determined. Hence where a tenant at fixed rates, who having mortgaged

ESTOPPEL—*continued.*

3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*continued.*

arrangement and made an order in conformity with it, and the agreement has been acted upon, neither party is at liberty to resile from it. The question whether such an agreement does or does not violate the rule that a Court cannot add to its decree, becomes under the circumstances one which the Court will not enter into; the party who seeks to raise such question being estopped by his own conduct, and the action of the Court taken thereunder. SHEO GOLAM LALL *v.* BENI PROSAD

[I. L. R., 5 Calc., 27 : 4 C. L. R., 29

68. ———— Benami leases—*Lease in name of wife—Showing true nature of transaction.—Held* that it would be very inequitable that there should be anything in this country of the nature of the old English doctrine of estoppel by deed. A party giving a kabuliat nominally in favour of *A* is not estopped from pleading that he did not contract with *A* at all, and that he did not obtain the leased premises from her, but that she knew nothing of the transaction, her name being used merely as a matter of convenience between the lessee and her husband. KEDARNATH CHUCKERBUTTY *v.* DONZELLE

[20 W. R., 352

69. ———— Admission of validity of deed.—An admission by an adoptive mother in a suit brought by her mother-in-law to set aside the adoption, that an alleged unomuttee-puttur under which her mother-in-law had previously professed to adopt a son to her deceased husband was valid, would not estop her adoptive son from denying the validity of that instrument in a suit subsequently brought by him for the assertion of his rights under the adoption. ANNUNDMOYE CHOWDHRAIN *v.* SHEEB CHUNDER ROY . . . . Marsh., 455

70. ———— Admission of execution of deed—*Contest as to validity.*—The mere fact of a person having in a previous suit admitted the execution of a deed did not preclude her from contesting its validity and maintaining that it was a colourable and not a real conveyance. USHRUFOONESSA BEGUM *v.* GRIDHAREE LALL 19 W. R., 118

71. ———— Agreement not to execute decree—*Wrongful execution in breach of agreement—Deed of conditional sale—Defeating claims of third persons—Maxim, "In pari delicto potior est conditio possidentis.*—The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex-parte* decree dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale dated the 24th December 1853 executed by the plaintiff in favour of the defendant. The plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and the plaintiff sought to set it aside on account of defendant's breach of an agreement dated the 16th January 1856, whereby the defendant stipulated that plaintiff's possession should not be disturbed. The defendant, *inter alia*, pleaded estoppel. *Held* that plaintiff was not estopped from showing the real truth of the transaction between plaintiff and defendant, and from obtaining relief through the Court against defendant's breach of good faith, because of plaintiff's attempt to hinder or defeat the possible claim of a third party, the maxim "*In pari delicto potior est conditio possidentis*" not being applicable without qualification to India, where justice, equity, and good conscience require no more than that a party should be precluded from contradicting, to the prejudice of another, an instrument pretending to the solemnity of a deed, when the parties claiming under it or their representatives have been induced to alter their position on the faith of such instrument. PARAM SINGH *v.* LALJI MAL

[I. L. R., 1 All., 403

72. ———— Benami conveyance—*Relation of landlord and tenant.*—The plaintiff having sued to obtain possession of certain land which the defendant held as tenant, and in respect of which he had for some years paid rent, the defendant alleged that, prior to the time when he became tenant, the plaintiff had for good consideration conveyed to him the premises leased, together with other property. This conveyance was found to be a mere benami transaction. *Held* that the plaintiff was not estopped from asserting the tenancy, and under the circumstances was entitled to recover. SABUKTULLA *v.* HARI . . . . . 10 C. L. R., 199

73. ————Mortgage fraudulently made to defeat execution of decree—*Right of mortgagor to sue subsequently to recover possession.*—In 1851 *T* obtained a decree against *G*, the father of the plaintiff. In order to defeat the execution of that decree, *G*, in collusion with one *B*, permitted the latter to obtain a decree based upon an award against him, and to sell the land in execution, at which sale *B* himself and another person purchased it. In 1857 these purchasers sold the property to *V* (defendant No. 1). In 1858 *T* attached the land in execution of his decree, but the attachment was raised on the application of defendants Nos. 1 and 3, who alleged that the property was theirs. In 1876 the plaintiff, who was the son of *G*, sued the defendants to recover possession. He alleged that the transaction was only ostensibly a sale, but was really a mortgage made by his father to the defendants, and that the defendants held as mortgagees. Two documents were produced (exhibits 19 and 18), dated respectively in the years 1855 and 1862, whereby defendant No. 1 as a mortgagee acknowledged the receipt of two sums of R375 from *G*. It further appeared that on the faith of exhibit 18 the defendants had been permitted to remain in possession for ten years without disturbance as mortgagees. The subordinate Courts held that the decree, sale, and re-sale of the lands were fraudulent and collusive transactions, and that, *G* having been a party to the fraud, the plaintiff could not recover the lands from the defendants. On appeal,—*Held* that the plaintiff was entitled to recover; that the defendants, having accepted repayment of R750 as mortgagees, and, as such, having

ESTOPPEL—*continued.*

3 ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*continued.*

were allowed and subsequently struck off, and the

no decree as provided for in s 90 of the Transfer of Property Act had been obtained,—*Held* that the effect of the previous proceedings being struck off

a decree under s 90) allowing execution to proceed against other properties of the judgment debtor

CHACKERBUTTY *v.* KAILASH CHUNDER BRAHMACHARI [2 C. W. N., 254

64. ———— *Agreement to abide by punchayet—Proceedings to show decision*

so as to bar either party from showing the determination of the punchayet to be inequitable MOKUDDIMS OF MOUZA KUNKUNWADEY IN PERGUNNAH JAMU CUNDI *v.* EMAMDAR BRAHMINS OF MOUZAH SOORTAL

[7 W. R., P. C., 8: 3 Moore's I. A., 383

65. ———— Effect of valid award on reference to arbitration—*Defence of submission*

mistake al peals, concludes the parties who have sub

brought this suit for her share in the estate against the other who had obtained possession of the whole The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held* that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. BHAGOTI *v.* CHANDAN

[I. L. R., 11 Calc., 386: L. R., 12 I. A., 67

66. ———— *Contract—Con*

goods of the same description to others before 1st

ESTOPPEL—*continued*

3 ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*continued*

December 1881; and the contract contained an arbi-

reasonably adequate compensation to the buyers for such variance, difference, inferiority, damage, or defect, if any, and such decision shall be final and binding on both parties' If either buyers or sellers

the defendant, these contracts were on the terms that the goods were not to arrive in Calcutta until after the 31st December 1881 The defendant refused to accept the goods on the ground that the plaintiffs had committed a breach of the contract by entering into other agreements for sale of the same description of goods before the 1st December, and refused to pay the difference between the contract price and the market value which the plaintiffs demanded from

the amount due to them under the award, or in the

the suit *Per* GARTH, C.J —The question whether the plaintiffs, by making the other contract, had committed a breach of the stipulation was not properly

RICKNAUTH BUCKTEARMALL

[I. L. R, 8 Calc, 809

67. ———— Agreement not to execute under terms—*Order in conformity with agreement* —Where the parties to a suit have by mutual agreement made certain terms and informed the Court of them, and the Court has sanctioned the

ESTOPPEL—*continued.*

3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*continued.*

at auction were purchased by the plaintiff, who sued to set aside the lease. *Held,* on the construction of the lease, that the proprietor professed it to be a perpetual lease, without reference to its determination on the expiry of the sub-lease, and that the auction-purchaser, being the *locum tenens* of the person whose rights he purchased, was estopped, as would have been the latter, from questioning the validity of the lease in favour of the defendant. KURN CHOWBEY *v.* JANKEE PERSAD . **1 Agra, 164**

82. ———— **Acquiescence**—*Right of Hindu widows—Effect of alienation of interest in subject of suit.*—A Hindu dying intestate left two widows (*D* and *M*) as his co-heiresses. A document put forward by a third party (*H*) as a will of the deceased having been set aside by the Courts, an order was passed in a summary suit, under Act XIX of 1841, by which the property was equally divided between the widows. One of them (*D*) subsequently died, leaving a will disposing of her share to her relatives. Steps were taken during *D*'s life by the other widow (*M*) and by *H* to resist the registration of the will; and after *D*'s death *M* applied for the attachment of *D*'s share and the appointment of a curator. Her application being dismissed, she commenced a regular suit. *Held* that *M*'s original acquiescence in the title set up by *H* did not deprive her of any rights which accrued to her as one of the co-heirs of her husband when that claim was decided to be untenable, nor could her alleged alienation of her share bar her present suit. BHUGWANDEEN DOBEY *v.* MYNA BAEE **[9 W. R., P. C., 23 : 11 Moore's I. A., 487**

83. ———— **Solehnamah, Effect of**—*Finding by Judge on remand—Special appeal.*—In a case which was remanded to be tried on its merits, the remanding Judges being of opinion that it was not barred, the additional Judge of the zillah adhered to his former opinion that the plaintiff's claim was barred by limitation, but found as a fact that she had been a party to a solehnamah and other acts by which she was estopped from her present claim. *Held* that the additional Judge was wrong in entering again into the question of limitation; but that his finding of fact could not be interfered with in special appeal, and that the plaintiff was barred by the solehnamah from maintaining this suit. *Bhugwan Deen Dobey* v. *Myna Baee, 9 W. R., P. C., 23,* distinguished. JUDOOBUNSEE KOOER *v.* ASMAN KOOER . . . . . **14 W. R., 370**

84. ———— **Minor, Contract by**—*Deed of relinquishment executed by minor—Ratification by acquiescence.*—*A* sued in 1885 to recover certain estates from *B*, alleging claim under his adoption, which took place in 1865. In 1875 *A*, being still a minor, relinquished by deed his claim to the estates for R12,000, but now alleged that he thought he was relinquishing it only in favour of the defendant's predecessor in title, who died in 1883, having been in possession of the estates since 1867. The plaintiff attained his majority in 1878. *Held* that, whether the cause of action arose in 1865 or 1867, it was equally barred from 1879 : and that the plaintiff was bound by the deed of relinquishment. Assuming the plaintiff was a minor of 15 years of age at the date of the deed of relinquishment, it is not likely he would not have understood its effect, or that he failed to ascertain it when he attained his majority in 1878. His conduct of acquiescence in it had, moreover, acted as a ratification of the contract of relinquishment. VENKATACHALAM *v.* MAHALAKSHMAMMA **[I. L. R., 10 Mad., 272**

ESTOPPEL—*continued.*

3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*concluded.*

85. ———— **Objection of minority raised after completion of purchase and possession by vendees.**—The vendees in a suit to enforce a right of pre-emption set up as a defence to the suit that the sale was invalid, on the ground that they were minors, and therefore incompetent to contract. *Held* that, as they had paid their money to the vendor and the conveyance had been perfected, and they were in possession of the property, they were estopped from urging such ground. KHEM KARAM *v.* HAR DAYAL . **I. L. R., 4 All., 37**

86. ———— **Plea of non-liability to pre-emption of property acquired by pre-emption.**—The fact that a property has been acquired under a claim of pre-emption does *not* estop the person who has acquired it from pleading that the right of pre-emption did not extend to such property. SALIG RAM *v.* DEBI PARSHAD . **7 N. W., 38**

87. ———— **Signature on blank bond**—*Blank stamped paper.*—Where a person chooses to entrust to his own man of business a blank paper duly stamped as a bond and signed and sealed by himself, in order that the instrument may be duly drawn up and money raised upon it for his benefit, if the instrument is afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bonâ fides* of the transaction, it must, in the absence of any evidence to the contrary, be taken that the bond was drawn in accordance with the obligor's wishes and instructions. WAHIDUNNESSA *v.* SURGADASS . **I. L. R., 5 Calc., 39**

88. ———— **Destruction of document**—*Omnia præsumuntur contra spoliatorem.*—In a suit brought against a Collector to compel him to refrain from preventing the plaintiff executing his decree against certain land, the only issue being whether the land was the private property of the judgment-debtors or Government service land, the plaintiff alleged that the land had been granted in fee mainly by a sanad which he petitioned the mamlatdar of the pergunnah to search for and send to the Collector; and on reference by the High Court, the District Judge found that the Collector did destroy the document that purported to be a copy of a sanad, such as the plaintiff petitioned the mamlatdar to send for. *Held* that it was not competent for the defendant to say that the document was not such a one as could be legally admitted in evidence, and that the case came within the rule, *Omnia præsumuntur contra spoliatorem.* ARDESHIR DHANJIBHAI *v.* COLLECTOR OF SURAT . . **3 Bom., A. C., 116**

ESTOPPEL—*continued*

3 ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—*continued.*

been permitted to remain in possession of the lands without disturbance, were estopped from setting themselves up as purchasers or owners, which false character had been merely assumed for the purpose of defeating the execution of the decree obtained by *T.* MAHADAJI GOPAL BAKLEKAR *v.* VITTBAL BALLAL [I. L. R., 7 Bom., 78

74. ——— **Mortgage without being owner of property**—*Subsequent ownership by mortgagor of the same property—Auction-purchaser—Validity of mortgage*—In 1871, *M*, the mortgagee of certain property, styling himself the owner of it, mortgaged it to *S* In 1875 *M* became the owner of such property by purchase. In 1877 such property was put up for sale in execution of a decree against *M*, and *A* purchased it *S* subsequently sued *M* and *A* to enforce the mortgage of such property to him by *M*. *Held* that, inasmuch as, if *S* had at any time sued *M* to enforce such mortgage after he had become the owner of the mortgaged property and before *A* had purchased it, *M* would have been estopped from denying the validity of such mortgage, and as there was nothing fraudulent in such mortgage, and *A* had purchased with a knowledge of the facts, after *M* had become the owner [illegible] of such m[illegible] liable in [illegible] BAKHSH [illegible] I. L. R., 5 All., [illegible]

75. ——— **Declaration in deed of sale**—*Admission*—The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety, and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety, nor to injure the right of a purchaser from her of such moiety NUNHOO SAHOO *v* BOODHOO JUMMADUR [13 W.R., 2

76. ——— ***Suit on a document executed* by defendant in which he was described as a trader**—*Plea in suit that he was an agriculturist—Dekkan Agriculturists' Relief Act (XVII of 1879).*—The mere fact that the defendant described himself in the instrument, on which the [illegible] "trader" he represented himself as a trader, and intended that that representation should be acted on by the plaintiff KADAPPA *v* MARTANDA [I. L. R., 17 Bom., 227

77. ——— **Statement in deed of assignment**—*Evidence of knowledge of alteration in purpose of assignment*—The plaintiffs received an assignment of debt due to a third person not a party to the suit The document assigning the debt showed on the face of it that the assignment was an absolute payment to the plaintiff, and evidence went to show that such payment was in part payment of a debt due from the defendants to the plaintiff. *Held* that, in default of evidence to show that the defendants were aware of any intended alteration in the apparent purpose of the assignment, the plaintiff was precluded from saying that he had received it in any other light. SCINDE, PUNJAB, AND DELHI BANK *v.* MUDHOOSOODUN CHOWDHRY [Bourke, O. C., 322

78. ——— **Recital in kobala**—*Title, Proof of—Variance between Pleading and Proof*—*A* claimed certain property from *B*, the daughter of *C*, on the ground that on the death of *C* it had descended to *D* as the heir of *C*, and produced a kobala containing a recital that on the death of *C*, who had died childless, it had descended to *D* *Held* that *A* was not estopped from proving that *C* had left a son, *E*, who survived him, and that *D* was entitled to the property as *E's* heir, and that *D's* heir could give the title to such property GOUR MONEE DEBEA *v.* KRISHNA CHUNDER SANNYAL [I. L. R., 4 Calc., 397

79. ——— **Estoppel of judgment-debtor by previous petition**—*Application to set aside sale in execution of decree not mentioning fraud and irregularity.*—The fact that a judgment debtor, who petitions to have the sale in execution of the decree against him set aside on the ground of fraud and irregularity, has, in a petition made previous to the sale asking for its adjournment, made no mention of the irregularities relied on does not create an estoppel *Mahatab Deo v Leelanund Singh, I L. R, 7 Calc 613* followed RAMAN *v* KUNHAYAN I. L. R., 17 Mad., 304

80. ——— **Parties to suit both deriving title from the same document**—*Question of validity of document—Suit for possession*—The plaintiff sued the defendant to recover a sum of money by attachment and sale of certain property in the legal possession of the defendant. Both the plaintiff and the defendant professed to derive their title by virtue of a document which the Court found was invalid according to Mahomedan law *Held* that the defendant was not estopped from denying its validity, and the Court was not bound to hold that the document, as between the parties, was valid. The defendant being in possession, it was for the plaintiff to establish her right to attach and sell the property by showing superior title in herself, whatever might be the rights of the defendant KUVARBAI *v* MIR ALAM KHAN I. L. R., 7 Bom., 170

[illegible] sub-lessee, in consideration of a certain [illegible] a perpetual lease in favour of the defendant at a certain annual quit rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of farm) was made with the sub-lessee, whose proprietary rights having been sold

ESTOPPEL—*continued.*

4. ESTOPPEL BY JUDGMENT—*continued.*

from now re-asserting his claim. KRISHNAN *v.* CHADAYAN KUTTI HAJI . I. L. R., 17 Mad., 17

99. ——— *Civil Procedure Code (Act VIII of 1859), s. 246—Civil Procedure Code (Act XIV of 1882), ss. 281, 283—Limitation Act (XV of 1877), sch. II, art. 11—Limitation Act (IX of 1871), sch. II, art. 15—Suit for possession.* —In certain execution-proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the plaintiffs. Previous to this sale, certain persons had come forward in the execution-proceedings, and had claimed the land as having been sold to them by the father of the judgment-debtors: this claim was disallowed in November 1876. In 1881 the plaintiffs, alleging that they had been dispossessed by certain persons, amongst whom were the claimants in the execution-proceedings, brought a suit to recover possession of this land against these persons. This suit was decided against the plaintiffs in the lower Appellate Court, on the ground that they had failed to prove that they had been in possession of the land twelve years before suit. On appeal to the High Court, the plaintiffs, appellants, contended that the claim of the defendants in the execution-proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from contending that the plaintiffs had *not* been in possession at the time of that order. *Held* that the order did not operate as an estoppel against the defendants; and even if it could so operate, it would not do so until the time had run out within which they could have brought a suit to establish their right to possession, and that such time had not expired. GEND LALL TEWARI *v.* DENONATH RAM TEWARI . . . I. L. R., 11 Calc., 673

100. ——— **Construction of decree made in order in execution-proceedings**—*Finality of such order—Omission to appeal against order.*—A Court having jurisdiction decided in the course of execution-proceedings (in an order which was not appealed) that the decree to be executed awarded mesne profits according to its true construction. *Held* that this decision had become final between the parties, not under s. 13 of Act X of 1877, but upon general principles of law, as an interlocutory order in the suit. The order construing the decree having been made in the same suit in which the application was made, the question whether the law of *"res judicata"* applied was not relevant, that term referring to a matter decided in another suit. RAM KIRPAL *v.* RUP KUARI

[I. L. R., 6 All., 269 : L. R., 11 I. A., 37

101. ——— *Civil Procedure Code, s. 13, expl. II—Execution of decree—Principle of res judicata as applied to execution-proceedings—Decision not in another suit, but in same suit.*—Where a person on his own application was added as a party respondent to an appeal, and on the case on appeal being remanded under s. 562 of the Code of Civil Procedure for re-trial on the merits, practically took no steps whatever to defend the suit,—*Held* that he could not afterwards plead, by way of objection to execution of the decree, matters which ought to have formed part of his defence to the suit, had he chosen to defend it. *Ram Kirpal* v. *Rup Kuari, I. L. R., 6 All., 269,* referred to. KISHAN SAHAI *v.* ALADAD KHAN

[I. L. R., 14 All., 64

102. ——— In reference to an application for execution of a decree, a Court made an order between the parties construing the decree to award interest at a certain rate till payment. *Held* that no contrary construction could be placed upon the decree in a subsequent application in the execution proceedings. *Ram Kirpal* v. *Rup Kuari, I. L. R., 6 All., 269,* referred to and followed. BENI RAM *v.* NANHU MAL

[I. L. R., 7 All., 102 : L. R., 11 I. A., 181

103. ——— **Decree in suit to set aside adoption**—*Reversioner.*—*Quære*—Whether a decree in favour of the adoption passed in a suit by a reversioner to set aside an adoption is binding on any reversioner except the plaintiff; and whether a decision in such a suit adverse to the adoption would bind the adopted son as between himself and any other than the plaintiff. JUMOONA DASSYA *v.* BAMASOONDARI DASSYA

[I. L. R., 1 Calc., 289 : 25 W. R., 235
L. R., 3 I. A., 72

See BHAGWANTA *v.* SUKHI I. L. R., 22 All., 33

and CHHEDDU SINGH *v.* DURGA DYI

[I. L. R., 22 All., 352

104. ——— **Effect of decree appealed from after compromise on appeal**—*Limit of rule—No bar to persons contesting inter se under a title derived from one of the original litigants.*—An adoption having been held to be valid by the High Court on appeal from a Subordinate Court, an appeal to the Privy Council was preferred, when the parties entered into a compromise and the appeal was permitted to be withdrawn. *Held* that the decree of the High Court as to the validity of the adoption became final and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between *A* and *B* may, in any subsequent proceedings between *A* and those claiming under him on the one side and *B* and those claiming under him on the other, estop the parties to such proceedings from again questioning the validity of the adoption, yet in a suit where both the contesting parties claim under *B*, such decision will not operate as an estoppel so as to prevent the validity of the adoption being again questioned by either party to such suit. VYTHILINGA MUPPANAR *v.* VIJAYATHAMMAL

[I. L. R., 6 Mad., 43

105. ——— **Decree in compromised suit**—*Purchaser pendente lite.*—A person who buys with her eyes open, *pendente lite,* cannot

ESTOPPEL—*continued*

4 ESTOPPEL BY JUDGMENT.

89. ———— **Civil Procedure Code, 1882, s 13 (1859, s. 2)**—The doctrine laid down in the *Duchess of Kingston's case (2 Sm L. C , 679)* as to estoppel by judgment is applicable to cases tried under the Civil Procedure Code, s. 2 of which is consistent with that rule KHUGOWLEE SINGH *v* HOSSEIN BUX KHAN
[7 B. L. R., 673 : 15 W. R., P. C., 30

90. ———— **Decree**—*Difference between decree and agreement on which it was based*—So long as a decree subsists unreversed and unvaried, the parties thereto and those claiming under them are bound by it, and no effect can be given to any prior agreement regarding the same matter on the ground that the terms of the decree differ from those of the prior agreement, notwithstanding that the parties had requested the Court which passed the decree to draw it up according to the terms of the agreement JANKIBAI *v* ATMARAM BABURAV
[8 Bom , A. C., 241

91. ———— **Decree in suit on kabuliat**—*Subsequent suit on same kabuliat*—A suit for rent was brought against the guardian of a minor, [illegible] from denying the validity of the kabuliat TARINEEPERSAUD GHOSE *v* SREEGOPAUL PAUL CHOWDHRY . . . Marsh., 476 : 2 Hay, 593

92. ———— *Dismissal of suit on failure to prove kabuliat—Pleadings, Admission in statement in*—Plaintiff sued before on a kabuliat of 1864, and did not admit in his plaint that he had cancelled a former kabuliat of 1862, but merely alleged that the defendant had executed the kabuliat of 1864, which recited that the kabuliat of [illegible] 1862, and saying that that kabuliat was not legally cancelled by him DOYNE *v*. KHOODEE RAM MUNDUL . . . 5 W. R., S. C. C. Ref., 16

93 ———— **Decision of genuineness of documents**—An affirmation in general terms of the right of a plaintiff in a suit, which was based in some measure upon certain documents, is not such a decision between the parties as precludes the defendant from raising a question as to the genuineness of these documents in a subsequent suit between the same parties. HURREEHUR MOOKERJEE *v* OOMA MOYEE DOSSEE . . 12 W. R., 525

94. ———— **Order for execution of decree without notice to judgment-debtor.**—A judgment-debtor, against whom an order for execution has been obtained behind his back, is not estopped from afterwards contending that there exists no decree which can be executed ISHWARDAS JAGJIVAN DAS *v* DOSIBAI . . I. L. R., 7 Bom., 316

ESTOPPEL—*continued*

4 ESTOPPEL BY JUDGMENT—*continued*

95 ———— **Order disallowing objections to attachment**—*Civil Procedure Code (1859), s 246, (1879), s 283*—*L*, in execution of a decree against *S*, a member of an undivided Hindu [illegible] who purchased the right of *S* in the lands attached and sold, did bring a suit within a year from the date of the order to obtain what he had bought at the Court sale from *K* and others. *Held* that *K* was estopped from again pleading that the same property was not family property or partible BAILBUR KRISHNA RAU *v* LAKSHMANA SHANBHOGUE
[I. L. R., 4 Mad., 302

96. ———— *Civil Procedure Code, 1859, s 246, Rejection of claim under—Limitation—Adverse possession, Plea of.*—An order passed under s. 246 of the Code of Civil Procedure, 1859, rejecting a claim after investigation, will, if not contested by suit by the claimant, estop him afterwards from pleading adverse possession at the date of the order in a suit brought to eject him by the decree-holder VELAYUTHAN *v* LAKSHMANA
[I. L. R., 8 Mad., 506

97. ———— *Civil Procedure Code, 1882, s 335—Order rejecting claim petition*—An order rejecting a claim petition under s 335 of the Civil Procedure Code, not being appealed against within one year, acquires the force of a decree. *Velayuthan v. Lakshmana, I L R, 8 Mad, 506,* followed. ACHUTA *v* MAMMAVU
[I. L. R., 10 Mad., 357

98. ———— *Order rejecting claim under Civil Procedure Code (1882), s. 281—Parties—Non-joinder of puisne mortgagee in a mortgage suit—Right of redemption—Transfer of Property Act (IV of 1882), s 85—Claim in execution to mortgage premises*—A mortgagee sued on his mortgage and obtained a decree against the mortgagor for the principal, together with the interest accrued due thereon, and for the sale of the mortgage premises in default of payment A second mortgagee, who was not a party to the suit, intervened in execution, alleging that the land was not liable to be attached and sold by reason of his mortgage, and the Court made an order recognizing the priority of the decree-holder's lien and giving to the second mortgagee the opportunity of discharging it. No suit was brought to question this order The first mortgage was not paid off, and the mortgage premises were brought to sale The purchaser, who was the first mortgagee, now sued for possession of the land, and his claim was resisted by the second mortgagee *Held* (1) that the non-joinder of the present defendant in the suit on the mortgage constituted no bar to the present suit ; (2) that the second mortgagee was estopped

ESTOPPEL—*continued.*

4. ESTOPPEL BY JUDGMENT—*concluded.*

117. ———— Decree against karnavan, Effect of—*Representation by karnavan of members of Malabar tarwad—Civil Procedure Code (1882), ss. 13 and 30.*—Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record. *Ittiachan* v. *Vellappan, I. L. R., 8 Mad., 484;* and *Sri Devi* v. *Kelu Eradi, I. L. R., 10 Mad., 79,* followed. KOMAPPAN NAMBIAR *v.* UKKARAN NAMBIAR **[I. L. R., 17 Mad., 214**

5. ESTOPPEL BY CONDUCT.

118. ———— Representation made to, and acted upon by, party.—*When a person wilfully induces another to believe the existence of a certain state of things, and to deal with him on the faith of it, he and those who claim under him are conclusively bound by the representation so made.* AMEER ALI *v.* SYET ALI . . **5 W. R., 289**

BANEEPERSHAD *v.* MAUN SINGH . **8 W. R., 67**

119. ———— Evidence Act, 1872, s. 115—*Permitting person to believe in and act upon the truth of anything.*—S. 115 of the Evidence Act, which contemplates a person "by his declaration, act, or omission intentionally causing or permitting another person to believe a thing to be true and to act on that belief," in which case he cannot "deny the truth of the thing," refers to the belief in a fact and not in a proposition of law. RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE CO. . **I. L. R., 7 Calc., 594 [10 C. L. R., 561**

120. ———————— *Admission of point of law.*—An admission on a point of law is not an admission of a "thing" so as to make the admission matter of estoppel within the meaning of s. 115 of the Evidence Act. *Jotendro Mohun Tagore* v. *Ganendro Mohun Tagore, 9 B. L. R., 377: L. R., I. A., Sup. Vol., 47,* and *Gopee Loll* v. *Chundraolee Buhoojee, 11 B. L. R., 391,* referred to. JAGWANT SINGH *v.* SILAN SINGH . **I. L. R., 21 All., 285**

121. ———————— *Estoppel caused by representation on which action has followed—Title, as between rival purchasers supported by an estoppel affecting the assignee of the person estopped—Notice.*—The law enacted in the Evidence Act, 1872, s. 115, relating to estoppel as a consequence of declaration, act, or omission causing another's belief, and action thereon, does not differ from the English law on that subject, of which the general principle is stated in *Cairncross* v. *Lorimer, 3 H. L. C., 829.* The main question, in determining whether estoppel has been occasioned, is whether the representation has caused the person to whom it has been made to act on the faith of it. The existence of estoppel does not depend on the motive, or on the knowledge of the matter, on the part of the person making the representation. It is not essential that the intention of the person whose declaration, act, or omission has induced another to act, or to abstain

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

from acting, should have been fraudulent, or that he should not have been under a mistake or misapprehension. The word "intentionally" seems to have been used in s. 115 for the purpose of declaring the law as it had been stated to be in judgments in England. On this point, the opinions expressed in the judgments in *Ganga Sahai* v. *Hirah Singh, I. L. R., 2 All., 809,* and in *Vishnu* v. *Krishnan, I. L. R., 7 Mad., 3,* referred to and disaffirmed. A widow had held benami, for her husband during his life, property as to which he had executed a hibanama in her favour. After his death, she mortgaged the property, her son representing her in the transaction. After her death, in a suit between rival purchasers of part of the property comprised in the hibanama and in the mortgage, the plaintiff derived his title from the son, having purchased his inherited share of the estate, while the defendants relied on a purchase at a sale in execution of a decree obtained by the mortgagee. *Held* that s. 115 of the Evidence Act was applicable. The son had represented that the hiba gave a right to his mother to mortgage, and consequently neither he nor his representative in estate could be allowed to deny the truth of this representation, intentionally made on his part, which also had been acted on by the mortgagee; and it made no difference that the son had not had a fraudulent intention. As a result of the estoppel upon the son, any purchaser of the mortgagee's interest, at a sale regularly carried out, would have acquired a valid title to the property, although such purchaser might have been fully aware of all the circumstances. SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA . . **I. L. R., 20 Calc., 296 [L. R., 19 I. A., 203**

122. ———————— *Representation by person other than party through whom plaintiff claims—Suit for property through prior holder.*—Where a person claims property as the representative of another, the doctrine of estoppel cannot apply to representations made by any one except that other person. RANGA RAU *v.* BHAVAYAMMI **[I. L. R., 17 Mad., 473**

123. ———————— *Fraud—Fraudulent representation by minor that he was of age—Contract by minor.*—A minor representing himself to be of full age sold certain property to *A* and executed a registered deed of sale. The deed contained a recital that he was twenty-two years of age. *Held,* in a suit by him to set aside the sale on the ground of his minority, that he was estopped. GANESH LALA *v.* BAPU . . . **I. L. R., 21 Bom., 198**

124. ———— Intention of parties as evidenced by their acts—*Execution of deed of partition—Vendor and purchaser.*—Whatever may be the real intention amongst themselves of some of the members of a Hindu joint family in executing a deed of partition, purchasers from them have an undoubted right to bind them by the execution of the deed and their public acts attending it to the fulfilment of those obligations which such public acts cast upon them. SUKHIMANI DASI *v.* MAHENDRO NATH DUTT . . . . **4 B. L. R., P. C., 16**

ESTOPPEL—*continued*

4 ESTOPPEL BY JUDGMENT—*continued*

maintain a suit involving a revival and re trial of the very question decided in her vendor's suit NADUROONISSA BIBEE v AGHUR ALI CHOWDHRY

[7 W. R , 103

106 ———— **Decree in suit to impeach conditional sale**—*Purchaser from conditional vendor* —The purchaser of the conditional vendor's interest pending the suit to impeach the conditional sale must be bound by the decree in that suit GHAZEE OODDEEN v BHOOKUN DOOBEY . 2 Agra, 301

107.———— **Decrees against sisters with life-interest in property of father**—*Effect of, on survivor* —The survivor of several Hindu sisters is not bound by decrees obtained against her sisters during their lives, whose interest was only a life-interest in their father's property, which on their death passed to the survivor as heir of her father JOYGOBIND SOHOY v MAHTAB KOONWAR

[7 W. R., 1

108 ———— **Decree as to right of way** —*Effect of, as against auction-purchaser of lands in mortgage suit.*—*A* brought a suit against *B* to have it declared that *B* possessed no right of way over his lands This suit was dismissed, and *B* obtained a decree establishing his right Previous to the institution of this suit, *A* had mortgaged the same lands to *C*, who, after the suit, caused the lands to be sold under his mortgage, and became the purchaser at the auction sale In a suit by *C* against *B* to have it declared that no such right of way existed over the lands,—*Held* that *C* was not estopped by the previous decision against *A*, his mortgagor, from again raising the question of the validity of the right of way over the said lands. BONOMALEE NAG v KOYLASH CHUNDER DEY I. L. R., 4 Calc , 692

109. ———— **Reliance by plaintiff on** [illegible] d. [illegible] er [illegible] a [illegible] m-bodied it in t[illegible] lar of the [illegible] to establish [illegible] High Court to object to the reception by the lower Appellate Court of the judgment in question as evidence in the present cause, on the ground that they were not parties to that case, although the Judge, on review, reversed the judgment he had already passed in favour of these plaintiffs on the strength of the decision of the High Court, which reversed the judgment in the previous suit on which the plaintiffs had relied. PANIOTY v PARBUTTY CHOWDHRAIN . . 8 W. R , 493

110 ———— **Decree in former unsuccessful suit**—*Raising same title as defence in subsequent suit* —The fact that a person failed to establish a prescriptive title in a suit in which he was plaintiff, does not debar him from defending his right of possession against another plaintiff suing him for the property SHRIDHAR VINAYAK v BABAJI BIN JIVAJI . 6 Bom., A. C., 220

ESTOPPEL—*continued*

4 ESTOPPEL BY JUDGMENT—*continued*

111. ———— **Suit for wasilat after decree for possession**—*Setting up title of third party* —In a suit for wasilat brought after a decree awarding possession to the plaintiff the defendant cannot set up the title of a third person. BENGAL COAL COMPANY v DAREEMBAH DAHEA

[Marsh , 105 : 1 Hay, 181

112 ———— **Decision in former suit declaring patni sale valid**—*Claim in another form* —Where a patni talukh had been sold for arrears of rent, and certain persons, claiming to have been in possession of the superior zamindari rights in the estate, had sought on a former occasion to set aside the sale, but had failed, and now renewed the attempt,—*Held* that, even if the claim of these persons to the zamindari rights had been proved, which was not the case, they could not now repeat their old suit against the patnidar in a new form still less could they, after having always denied the existence of the patni talukh, now claim in appeal to be its owners, if it existed HURO NATH DASS v ROMA NATH SURMA 25 W. R , 321

113 [illegible] by [illegible] of [illegible] wr [illegible]

114. ———— **Decree by consent in former suit**—*Evidence Act, s 116—Suit for possession* — [illegible] of rent *Held*, in a suit brought to recover possession on the ground of the tenancy having expired, that the decree worked no estoppel against *B* by virtue of s. 116 of the Evidence Act, and did not relieve the plaintiff from the necessity of proving his case completely SOLDAR MUNDUL v. NILCOMUL CHATTERJEA . . 1 C. L. R., 528

115. ———— **Judgment by consent.**—A judgment by consent raises an estoppel just in the same way as a judgment after the Court has exercised a judicial discretion in the matter LAKSHMISHANKAR DEVSHANKAR v VISHNURAM

[I. L. R., 24 Bom., 77

116 ———— **Decree establishing joint liability** *Suit for contribution—Denial of liability* —Where a joint decree, passed against several defendants has been satisfied out of the property of one of them, and then a subsequent suit for con [illegible] liable to satisfy the decree in the former suit, and that consequently they are not liable to contribute ARMAN SINGH v. AJNAS KOER 3 C. L. R., 406

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

ground that he is not a tenant, but a mere trespasser. BALDEO SINGH *v.* IMDAD ALI [I. L. R., 15 All., 189

134. ———— **Application for ejectment as a tenant**—*N.-W. P. Rent Act (XII of 1881), s. 36—Subsequent suit for ejectment as a trespasser—Civil and Revenue Courts—Jurisdiction.*—*Held* that the mere fact of a plaintiff in a suit for ejectment in a Civil Court having on a previous occasion applied to the Revenue Court for the ejectment of the defendant would not estop him from asserting that the defendant was unlawfully in possession, that is, as a trespasser. ZUBEDA BIBI *v.* SHEO CHARAN [I. L. R., 22 All., 83

135. ———— *N.-W. P. Rent Act (XII of 1881), ss. 36, 96 (b)—Subsequent suit for ejectment as a trespasser—Civil and Revenue Courts—Jurisdiction.*—*Held* that the fact that a plaintiff in a civil suit for ejectment of an alleged trespasser has on a previous occasion taken proceedings against the defendant under s. 36 of the Rent Act, 1881, is not of necessity fatal to the suit in the Civil Court. *Baldeo Singh* v. *Imdad Ali, I. L. R., 15 All., 189,* and *Deo Narain Rai* v. *Sheo Charan Rai, W. N., All., 1893, 166,* distinguished. *Zubeda Bibi* v. *Sheo Charan, I. L. R., 22 All., 83,* followed. HAMID ALI SHAH *v.* WILAYAT ALI [I. L. R., 22 All., 93

136. ———— **Transfer of occupancy-rights with zamindar's consent**—*Acceptance of rent by zamindar from vendees—Contract Act, ss. 2, 23—Evidence Act, ss. 115, 116.*—Under a deed, dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zamindars instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognized them as tenants. *Held* by OLDFIELD, J. (whose opinion prevailed), that sales of occupancy-rights were not void under s. 9 of Act XVIII of 1873, when made with the consent of the landlord; that the sale which the zamindars had consented to was valid; and that, under any circumstances, they were estopped by their conduct from bringing a suit to set aside the sale. *Per* MAHMOOD, *J.*—That the sale-deed was invalid with reference to the provisions of ss. 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy-rights, which was prohibited by s. 9 of Act XVIII of 1873. Also *per* MAHMOOD, *J.*—That s. 115 of the Evidence Act implies that no declaration, act, or omission will amount to an estoppel, unless it has caused the person whom it concerns to alter his position, and to do this he must both believe in the facts stated or suggested by it, and must act upon such belief; that in the present case it could not be said that the vendee was misled by the fact that the zamindars were consenting parties to the sale-deed; that he could not plead ignorance that the deed was unlawful and void; that it had not been shown that he acted upon the zamindars' agreement to take no action, so as to alter his position with reference to the land; and that, under these circumstances, the zamindars were not estopped from maintaining that the sale-deed was invalid. DURGA *v.* JHINGURI . I. L. R., 7 All., 511

Reversed on appeal under the Letters Patent and the judgment of MAHMOOD, J., upheld in JHINGURI TEWARI *v.* DURGA . . I. L. R., 7 All., 878

137. ———— **Receipt of rent from mortgagee**—*Denial of mortgage.*—*Held* that the plaintiffs, zamindars, who had received rents from the mortgagee as such, were estopped from pleading the invalidity of the mortgage. GUNGA BISHEN *v.* RAM GUTI RAI . . . . . 2 Agra, 49

138. ———— **Delivery under contract**—*Subsequent repudiation.*—*Held* that, where a person delivered indigo pursuant to the terms of a sutta made by a third party professing to act on his behalf, he must be considered to have assented to the engagement, and was not afterwards competent to repudiate it. MAHOMED NUZZEROOLLAH *v.* FERGUSSON [2 Agra, 139

139. ———— **Agreement signed by parties and acted on, but not executed under seal as provided in Madras Act III of 1871**—*Tolls, Farming of.*—An agreement was entered into between the Commissioners of the town of *V* and the defendant, farming the tolls of the town of *V* to the defendant for one year. The agreement was duly signed by the defendant, but was not executed under seal by the Commissioners as required by Madras Act III of 1871. In a suit by the President, on behalf of the Commissioners, brought after the expiry of the year, for a portion of the sum due to them by the defendant,—*Held* that, inasmuch as the plaintiff had fully performed all things to be performed on his part and both parties had acted under the agreement, though it was not formally executed by the Commissioners, and as the defendant had had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as ground of defence that there was no contract in point of law. GOODRICH *v.* VENKANNA [I. L. R., 2 Mad., 104

140. ———— **Account made up in accordance with usual course of dealing.**—Where an account was made up in accordance with the course of dealing which had practically been assented to by him and had been followed between the parties for many years,—*Held* the defendant could not refuse to be bound by it. THAKOOR PERSHAD SINGH *v.* MOHESH LALL . 24 W. R., 390

141. ———— **Disputing validity of will by devisee**—*Previous acquiescence in will.*—Where devisees under a will had, on attaining majority, made no objection to the will, but had, on the contrary, impliedly adopted the acts of their mother and guardian, and had by their conduct and acts agreed to treat the will as a valid will,

ESTOPPEL—*continued.*

6. ESTOPPEL BY CONDUCT—*continued.*

S. C. SOOKHEEMONEE DOSSEE *v.* MOHENDRO NATH DUTT . . . 13 W. R., P. C., 14

125. ——— False representations to induce others to contract.—Parties who by false representations induce others to enter into contracts are estopped from afterwards falsifying their statements, and, if necessary, may be compelled to make them good. RADHAKISHEN *v.* SHUREEFUNNISSA . . . . . W. R., 1864, 11

126. ——— Conduct of complainant conducing to acts complained of—*Claim to relief.*—If the person who asks for redress is a party who has countenanced the acts of which he complains, the Court is bound to refuse him any redress or assistance. BHYRO DUTT *v.* LEKHRANEE KOOER [16 W. R., 123

127. ——— Suit by guardian to set [illegible]

next friend. MONMOHINEE JOGINEE *v.* JUGOBUNDHOO SADOOKHA . . . 19 W. R., 233

128. ——— Mortgage by minor—*Voidable mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Specific Relief Act (X of 1877), ss. 38, 41.*—[illegible]

benefit of a plea of infancy; but he who invokes the aid of the Court must come with clean hands and must establish, not only that a fraud was practised on him by the minor, but that he was deceived into action by the fraud. *Ganesh Lala* v. *Bapu, I. L. R., 21 Bom., 198,* dissented from. *Sarat Chunder* v. *Gopal Chunder Laha, I. L. R., 20 Calc., 296; Mills* v. *Fox, L. R., 37 Ch. D., 153; Wright* v. *Snow, 2 De Gex and S., 321;* and *Nelson* v. *Stocker, 4 De Gex and J., 458,* discussed. DHURMO DASS GHOSE *v.* BRAHMO DUTT [I. L. R., 25 Calc., 616
3 C. W. N., 330

Held on appeal (affirming the above decision) [illegible]

changeable, and mean such a person as is referred to in s. 11 of that Act, *i.e.*, a person competent to contract. A mortgagor employing an attorney, who also acts for the mortgagee in the mortgage transaction, must be taken to have notice of all facts brought to the knowledge of the attorney; and therefore, where the Court rescinded the contract of mortgage on the ground of the mortgagor's infancy, and found that the attorney had notice of the infancy, or was put [illegible]

I. L. R., 21 Bom., 198, dissented from. *Mills* v. *Fox, L. R., 37 Ch. D., 153,* distinguished. BROHMO DUTT *v.* DHARMO DAS GHOSE [I. L. R., 26 Calc., 381
3 C. W. N., 468

129. ——— Fraudulent conduct of parties—*Pleading illegality of agreement.*—In a case of fraudulent misdealing with property mort- [illegible]

by the payees, who at the time of endorsement knew that the hundi was forged, sued the payees on the [illegible]

131. ——— Laches of purchaser—*Acquiescence.*—Where a purchaser of land lies by for five years allowing another person to occupy the land and afterwards to sell it, he is estopped by his own conduct from afterwards claiming the land from a *bonâ fide* purchaser without notice. MOHESH CHUNDER CHATTERJEE *v.* ISSUR CHUNDER CHATTERJEE . . . 1 Ind. Jur., N. S., 266

132. ——— Recognition of status of defendant as occupancy raiyat—*Suit subsequently treating him as occupying seer land.*—*Held* [illegible]

plaintiff's puttee, possession never having been acquired by the plaintiff since partition. KALOO RAI *v.* MUHUNT RAI . . . . 1 Agra, 259

133. ——— Suit in ejectment as against trespassers—*Previous admission by plaintiff of defendant's tenancy—N.-W. P. Rent Act (XII of 1881), s. 36.*—The service of a notice of ejectment under s. 36 of Act No. XII of 1881 is, as between the person who causes such notice to be served and the person on whom it is served, a conclu- [illegible]

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

afterwards pleading want of jurisdiction. KANDOTH MAMMI *v.* NEELANCHERAYIL ABDU KALANDAN [8 Mad., 14

155. ———— **Suit on judgment of foreign Court**—*Waiver of objection to jurisdiction.*—In a suit in a foreign Court where the defendant took no objection to the jurisdiction, but appeared by an agent and defended the suit on the merits,—*Held* that he must be held to have waived the jurisdiction; and in a suit brought on the judgment of the foreign Court, he was estopped from taking any exception to the jurisdiction. FAZAL SHAU KHAN *v.* GAFAR KHAN [I. L. R., 15 Mad., 82

156. ———— **Defence suppressed in former suit**—*Right to rely on it in subsequent suit.*—In a former suit the present defendant sued as owner by right of inheritance to recover the property of her deceased husband, and the present plaintiff resisted that suit on the ground of her preferable right to inherit. Having failed in that suit, plaintiff brought the present suit to recover half the property on the basis of a family agreement made between her and the present defendant's deceased husband. This agreement was designedly suppressed at the period of the former suit. *Held* that the suit should be dismissed; that plaintiff in the present suit insisted upon a valid family compact varying the ordinary rules of inheritance, having, however, previously appealed to that general rule and designedly kept back the compact upon which she now sought to insist; and that there could be no stronger case of an absolute waiver of that contract and of conduct rendering it wholly inequitable to permit her now to insist upon it. *Semble*—Where a defendant has been sued by a plaintiff upon his right of ownership, plaintiff's recovery negatives all grounds of defence to that action then existent and within the plaintiff's knowledge. JANAKI AMMAL *v.* KAMALATHAMMAL [7 Mad., 263

157. ———— **Omission to object to decree**—*Portion of case referred to arbitrators—Objection to award.*—The plaintiff in the suit, which was one on an account stated, agreed to refer to arbitration the question whether the accounts were correct or not. It was unnecessary for the arbitrators to determine whether the account stated was proved. The decree was passed on the very day the award was filed. The plaintiff was not estopped from taking objections to the award by reason of his silence when the decree was pronounced. PHIRAN *v.* BAHORAN . . . . . 7 N. W., 367

158. ———— **Arbitration**—*Umpire—Acquiescence in award, though irregular.*—Where the parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision, and undertook to abide by such decision as might be passed by them unanimously or by a majority of them,—*Held* that the plaintiff, having appeared before the umpire and taken no objection to the procedure of the umpire from March to August, was estopped from raising the objection that an award of the umpire alone was invalid. KUPU RAU *v.* VENKATARAMYYAR . . I. L. R., 4 Mad., 311

159. ———— **Omission to plead agreement**—*Suit to set aside decree for rent.*—When an ekrar (providing for payment of rent by deduction from larger profits), which might have been pleaded as a bar to a suit for rent, has not been so pleaded, and a decree has been obtained under Act X, the matter cannot be re-opened in a subsequent civil suit. KOYLASH CHUNDER GHOSE *v.* KHETTERMONEE DOSSEE . . . . 2 W. R., Act X, 57

160. ———— **Omission to assert a claim in execution-proceedings**—*Execution of decree.*—Defendants Nos. 1 and 2 were sued by a creditor of their undivided grand-uncle *D* as his legal representatives, and a decree was obtained against them as such. In execution of that decree, the house in dispute was put up for sale and purchased by the plaintiff. After satisfying the decree, the surplus of the sale-proceeds was paid to the defendants, who received it and divided it between themselves. Plaintiff, having been obstructed by the defendants in obtaining possession of the house, brought the present suit to recover possession. The Court of first instance rejected the plaintiff's claim on the ground that the house was the undivided family property of the defendants, and that the plaintiff should bring a partition suit. The plaintiff appealed to the Assistant Judge, who was of opinion that the defendant's omission to set up their title to the property in question at the execution-sale and the acceptance of the surplus of the proceeds of sale estopped them from impeaching the sale and setting up their title. He therefore reversed the lower Court's decree, and awarded the house to the plaintiff. On appeal by the defendants to the High Court,—*Held*, reversing the decree of the lower Appellate Court, that the defendants were not estopped from setting up their title. Proceedings in execution are *in invitum* as regards the judgment-debtor, and he is in no way called upon to notice them. It was not suggested that the defendants took any part in the execution-proceedings or stood by so as to induce bidders to suppose that they claimed no interest other than as representatives of the original judgment-debtor, or that their silence misled the bidders at the sale. As to the reception of the residue of the purchase-money after satisfaction of the judgment-debt, it took place after the sale was completed. GURUPADAPA *v.* IRAPA [I. L. R., 14 Bom., 558

161. ———— **Acceptance of sum and receipt in full in satisfaction of decree**—*Omission to allow for difference in exchange on Privy Council decree.*—*A* obtained a decree against *B* in the Privy Council for the sum of £213-10. *A* applied to the High Court to direct execution of this decree for the sum of R2,500-1, being the equivalent of £213-10, at the then rate of exchange. This application, together with the Privy Council decree, was sent down to the lower Court, where execution was issued for the equivalent in rupees of £213-10, taking the rupee as equivalent to two shillings. This

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued*

they were held to be estopped from disputing its provisions LAKSHMIBAI *v.* GUNPAT MOROBA. GUNPAT MOROBA *v.* LAKSHMIBAI

[5 Bom., O. C., 128

142. ———— Repudiation of character of heir—*Proceedings disclaiming inheritance*—An heir is not deprived of what he is entitled to as such by having, in proceedings taken against the property claimed, repudiated heirship and denied that he had inherited KHEMUNKUREE DOSSEE *v.* GOOROO PROSAD MYTEE

[11 W. R., 379

**143. ———— ** *Setting up will* [illegible]

144. ———— Disclaimer of will—*Suit subsequently setting up will.*—Where *A*, having used a document in a suit and disclaimed all right under it as a will, on the ground that it was not of a testamentary nature, brought a suit to recover property in which he set up the document as a valid will and testament, the Privy Council held that the suit could not proceed, because, *A* having used the document and abandoned all right to it as a will, he could not again use it as a will, though for a different purpose RAGHOONADHA PERYA OODYA TAVER *v.* KATTAMA NAUCHEAR

[10 W. R., P. C., 1: 11 Moore's I. A., 50

145. ———— Permitting conduct of suit as if fact were admitted—*Tacit admission.*—Where parties allow a suit to be conducted in the lower Courts as if a certain fact was admitted, they cannot afterwards, on special appeal, question it and recede from the tacit admission MOHIMA CHUNDER ROY CHOWDHRY *v.* RAM KISHORE ACHARJEE CHOWDHRY

[15 B. L. R., 142: 23 W. R., 174

146. ———— Waiver of objection to remand—*Alleging illegality of procedure in remanding*—A party who submits without resistance to a remand cannot afterwards be allowed to complain of the legality of the step as an integral part of the proceedings GHOLAM MORTEZA CHOWDHRY *v.* GOLUCK CHUNDER ROY . 3 W. R., 191

147 ———— Contesting suit—*Subsequent objection to being made a party*—A person cannot at one time set himself up as a substantial party in a suit, contesting it in both the lower Courts on the merits, and then turn round and say in special appeal that he has nothing to do with it, and has been unnecessarily brought in. KRISTO GOPAL SHAHA *v.* KASHEENAUTH SHAH . 6 W. R., 66

148. ———— Evidence Act (I of 1872), s. 115—*Decree, if binding on a person who ought to have been sued and who has conducted defence in a suit wrongly instituted against another.*—A son, against whom a suit ought to have been instituted, conducted on behalf of his mother a suit wrongly brought against her, knowing all the time that he, and not the mother, should have been sued, but there being nothing to shew that it was by reason of any representation or conduct of the son that the plaintiff was led to think that the mother was the right person to be sued. *Held* that the decree in that suit was not binding on the son, [illegible] against [illegible] decree.

[illegible]

149. ———— Settlement of issues—*Omission of material issues—Consent of parties*—A statement was prefixed to the issues settled in the Court below to the effect that "the vakils of the parties accept the following issues." *Held* that it was not competent after such consent to object on special appeal that a material issue was omitted SABITRA MONEE *v.* MUDHOO SOODUN SINGH . . . . . Marsh., 510

150. ———— Valuation of suit—*Adoption by defendant of plaintiff's valuation*—A defendant to a suit, having adopted a certain valuation, cannot in the same suit object to that valuation KRISTO INDRO SAHA *v.* HUROMONEE DOSSEE

[L. R., 1 I. A., 84

151. ———— Failure to appear at local [illegible]

152. ———— Suit for declaration of title.—Where the defendant resists the plaintiff's title, he is estopped from afterwards objecting that a suit for a declaratory decree will not lie SHIB JATON ROY *v.* PANCHANAN BOSE

[3 B. L. R., Ap., 65
11 W. R., 497

153. ———— Omission to plead co-parcenership—*Joint property—Onus probandi*—Suit for share of joint ancestral property The plaintiff claimed under *A*, who, when sued in 1812 as trustee for the defendant's father, then a minor, never pleaded that he was a co-parcener *Held* that the plaintiff, if not estopped from contending that the property was joint, had still the full burden of proving that it was joint. SUBNOMOYEE DEBIA *v.* GUNGA GOBIND ROY . 2 W. R., 264

154. ———— Omission to plead jurisdiction in foreign Court—*Raising plea in suit on decree of foreign Court*—Defendants appeared in the French Court at Mahé, defended a suit, and made no objection to the jurisdiction. In a suit upon the decree of the said Court, defendants pleaded want of jurisdiction *Held* that a man who has thus taken the chances of a judgment in his favour, which would, if obtained, have relieved him from all liability, is equitably estopped from

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

appeared that in a former suit the defendants had already been adjudged a 12-annas share in the mouzah. The plaintiff, who became the purchaser, claimed to be entitled to the whole 16 annas, alleging that he had been misled by the description of the property sold, and contending that the defendants were estopped, under s. 115 of the Evidence Act, from denying that 16 annas had been put up for sale. *Held* that, to bring the case within s. 115 of the Evidence Act, the following findings were necessary: (1) That the plaintiff believed that the judgment-debtor, whose rights and interest were sold, was the owner of the whole 16 annas; (2) that acting upon that belief he purchased the property at the sale; (3) that belief, and the plaintiff's so acting upon that belief, were brought about by some declaration, or act, or omission, on the part of the defendant, which declaration, act, or omission were *intentionally made in order to produce that result;* and that, inasmuch as the finding of the District Judge had not amounted to this, there was no estoppel. SOLOMON *v.* LALLA RAM LALL

[7 C. L. R., 481

168. ———— *Petition to postpone sale in execution of decree.*—To petition for the postponement of a sale in execution of decree is not an intentional causing or permitting the decree-holder to believe that the judgment-debtor admits that the decree can be legally executed, and occasions no estoppel within the Evidence Act, 1872, s. 115. The judgment-debtor can, notwithstanding his having filed such a petition, maintain that execution is barred by lapse of time. MINA KONWARI *v.* JUGGAT SETANI . . I. L. R., 10 Calc., 196

[13 C. L. R., 385

L. R., 10 I. A., 119

169. ———— **Causing sale of right**—*Subsequent plea that right was barred.*—A party by whom malikana was payable obtained a decree against the maliks, and executed it by selling their right to malikana. The purchaser then sued the decree-holder for arrears of malikana, and the plea set up by the defendant was limitation. *Held* that, as the defendant had caused the right to malikana to be sold, he could not avail himself in equity of the plea of limitation, and say that what was purchased was not a substantial right actually existing at the time. ALAI AHMED *v.* BODHOO SINGH

[14 W. R., 204

170. ———— **Sale of non-transferable holding by kobala**—*Landlord and tenant.*—Where a non-transferable holding is sold by a tenant by a kobala, he is estopped from setting up the invalidity of the sale by him. The remarks of GARTH, *C.J.* in *Ganges Manufacturing Co.* v. *Soorajmull, I. L. R., 5 Calc., 669, at p. 678,* referred to. BHAGIRATH CHANGA *v.* HAFIZUDDIN

[4 C. W. N., 679

171. ———— **Acquiescence of decree-holder**—*Waiver of heir.*—Where a decree-holder brings to sale in execution of his decree property on which he holds a mortgage, without notifying his encumbrance upon it, and, on being asked by any intending bidder at the time of the sale whether there is any encumbrance on the property, gives an evasive answer which misleads the bidder and induces him to purchase the property as unencumbered, he cannot subsequently claim as against such bidder to enforce his mortgage. McCONNELL *v.* MAYER

[2 N. W., 315

DOOLAB SIRCAR *v.* KRISTO COOMAR BUKSHEE

[3 B. L. R., A. C., 407 : 2 W. R., 303

172. ———— **Inducing person to buy property by denying existence of claim upon it**—*Subsequent attempt to enforce charge.*—A man who has represented to an intending purchaser that he has not a security in the property to be sold, and induced him under that belief to buy, cannot, as against that purchaser, subsequently attempt to put his security in force. MUNNOO LALL *v.* LALLA CHOONEE LALL . . . 21 W. R., 21

[L. R., 1 I. A., 144

173. ———— **Evidence Act (I of 1872), s. 115**—*Execution-purchaser without notice of mortgage.*—The plaintiff sued to realize his security under a mortgage executed to him by defendant No. 1, by sale of the mortgaged premises which were in the possession of defendants Nos. 2 and 3. It appeared that the plaintiff had previously attached and brought to sale the mortgaged premises in execution of a decree against defendant No. 1, and that the other defendants had purchased at the Court-sale without notice of the plaintiff's mortgage, which was not referred to in the attachment lists or sale certificates. *Held* that the plaintiff was estopped from setting up his present claim. JAGANATHA *v.* GANGI REDDI

[I. L. R., 15 Mad., 303

174. ———— *Omission to give notice of prior encumbrance to executing decree-holder—Subsequent suit to enforce encumbrance.*—A hypothecation bond executed in 1878 by the husband (deceased) of defendant No. 1 to secure a debt due by him to a partner of the plaintiff was assigned to the latter in 1888. In 1882 the plaintiff, who was aware of the existence of this instrument, brought the land comprised in it to sale in execution of a money-decree obtained by him against the executant, and defendant No. 3 became the purchaser. At the time of the sale the plaintiff gave no notice of the existence of the encumbrance. In a suit to recover the principal and interest due on the hypothecation bond,—*Held* that the plaintiff was estopped from recovering the secured debt against the land. KASTURI *v.* VENKATACHALAPATHI . I. L. R., 15 Mad., 412

175. ———— **Sale in execution of decree against wrong person as representative of deceased**—*Subsequent claim by proper representative—Quiescence of real representative.*—One *S* died indebted to the second defendant, *M.* On his death his widow, *T*, became his heir, as he left neither son nor brother surviving. In 1878 *M* brought a suit

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

[illegible]

162. ——— Return to compromise after contesting suit.—A defendant cannot fall [illegible]

DWARKANATH SURMA MOJOOMDAR *v.* UNNODA SOONDUREE . . . 5 W. R., Mis., 30

163. ——— Kistbundi given by party on attaining majority—*Subsequent dispute of* [illegible]

for the payment of the debt by instalments, and a kistbundi was accordingly executed. *Held* that the respondents could not now, after the death of [illegible]

[8 Moore's I. A., 447

[illegible]

on the faith of which *A* filed a razeenamah, stating that his claim was satisfied, and allowed a decree to go against him in terms of the razeenamah. The defendants failed to carry out their part of the arrangement. [illegible] to withdraw h[illegible] the suit migh[illegible] passed, but tl[illegible] principal place of business of the defendants was in Calcutta. In the Court below an application was made to have the plaint taken off the file on the ground that it disclosed no cause of action, but showed that the plaintiff was estopped from suing, but the application was rejected. *Held* on appeal that *A* was not barred from bringing a suit in the High [illegible]

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

Zillah Judge. KALLY NAUTH SHAW *v.* RAJEEB LOCHUN MOOKERJEE

[2 Ind. Jur., N. S., 123 : on appeal, Id., 343

165. ——— Compromise of execution of decree—*Execution of compromise as a decree—Acquiescence*—The parties to a decree for the payment of money altered by agreement such decree as regards the mode of payment and the interest payable. For many years such agreement was executed as a decree, without objection being taken by the judgment debtor. On the 1st March 1878, the holder of such decree applied for execution of such agreement. The judgment-debtor objected that such agreement could not be executed as a decree, and such application should, therefore, be disallowed. *Held* [illegible]

the execution of such agreement as a decree, estopped from objecting to its continued execution as a decree. DEBI RAI *v.* GOKAL PRASAD I. L. R., 3 All., 585

See STOWELL *v.* BILLINGS I. L. R., 1 All., 350

RAMLAKHAN RAI *v.* BAKHTAUR RAI

[I. L. R., 6 All., 623

166. ——— *Contract super-* [illegible]

ing [illegible] attachment [illegible] had been att[illegible] decree-holde[illegible]

[illegible] be executed. *Debi Rai v. Gokal Prasad, I. L. R., 3 All., 585,* distinguished. GANGA *v.* MURLI DHAR

[I. L. R., 4 All., 340

See DABBHA VENKAMMA *v.* RAMA SUBBARAYADU

[I. L. R., 1 Mad., 387

167. ——— Evidence Act, s. 115—*Sale in execution of decree—Erroneous impression of what was sold.*—In execution of a decree for costs, the defendants caused the "rights and interest of the judgment-debtor to the extent of 16 annas" in a particular mouzah to be put up for sale. It

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

decree were not estopped from asserting, as against a person claiming to be a mortgagee prior to the sale of the property purchased, that in fact the property was their own, independently of the auction-sale. At the most, their conduct in making the purchase could only be regarded as some evidence of an admission of title in the judgment-debtor, which they could explain or rebut. HANUMAN DAT *v.* ASSADULLAH [7 N. W., 145

181. ———— Benami purchase—*Mortgage by benami purchaser.*—*A* purchased immoveable property in the name of *B*, and allowed *B* to occupy and retain possession of the property. *B* mortgaged the property to *C* for a valuable consideration. *Held* that *A* and those claiming through him were estopped from asserting, as against *C*, his or their title to the property, and tha[illegible] valid. KALLY DOSS MITTER *v.* [illegible] PAUL . . . . . . Marsh., 569

See RAM MOHINEE DOSSEE *v.* PRAN KOOMAREE [3 W. R., 88

and SMITH *v.* MOKHUM MAHTON [18 W. R., 526

182. ———— *Purchaser at execution-sale—Representative—Mortgage by alleged benamidar—Evidence Act I of 1872, s. 115.*—*E*, being in possession of the documents of title, mortgaged land to the plaintiff. *E* and his father *A* borrowed money from one *R*, who obtained a decree against *A*, and purchased the land at the execution-sale. In a suit for foreclosure of the plaintiff's mortgage against *E* and *R*, the lower Courts held that *A* was the true owner, but the lower Appellate Court did not decide whether the plaintiff's mortgage was a valid transaction. *Held* on second appeal that *R* acquired the property adversely to *A* and not as his representative, and that there was no estoppel against him. *Dinendranath Sannial* v. *Ramkumar Ghose, I. L. R., 7 Calc., 107: L. R., 8 I. A., 65,* and *Lala Parbhu Lal* v. *Mylne, I. L. R., 14 Calc., 401,* followed. BASHI CHUNDER SEN *v.* ENAYET ALI [I. L. R., 20 Calc., 236

183. ———— Benami transaction—*Execution of deed.*—*A* executed a deed of sale of a house in favour of *B*, which was duly registered. *B* afterwards mortgaged the house to *C*. *Held* that *A* and those claiming through him were estopped as against *C* from setting up that the sale of the house to *B* was a benami transaction, and that *A* continued notwithstanding to be the true owner. RAKHALDASS MODUCK *v.* BINDOO BASHINEE DEBIA [Marsh., 293: 2 Hay, 157

See RAM MOHINEE DOSSEE *v.* PRAN KOOMAREE [3 W. R., 88

184. ———— *Right of creditor to question acts of debtor's benamidar.*—The creditor of a deceased proprietor is not estopped, in the way in which the deceased would have been were he alive, from questioning acts done by the said proprietor's benamidar; for the rule of law by which an heir or assignee stands in no better position than the party through whom he derives his title admits of an exception in favour of those who would be themselves aggrieved or defrauded by the party through whom they claim. LEKHRAJ ROY *v.* MOTEE MADHUB SEIN . . . . 15 W. R., 333

185. ———— Benami suit—*Suit brought by one person in name of another.*—Defendant, in consideration of money advanced by *A*, chose to enter into a mortgage with *B*, who now sued for possession after foreclosure. *Held* that it did not lie in the defendant's mouth to object to the suit being brought by *A* in *B*'s name. SREE NATH NAG *v.* CHUNDER NATH GHOSE . . . . 17 W. R., 192

186. ———— Recital in conveyance—*Purchaser, Effect of admissions on—Admissions by conduct.*—The deed of conveyance of land in Calcutta recited that the vendor was "seised of, or otherwise well entitled" to, the property intended to be sold "for an estate of inheritance in fee-simple," and it purported to convey such an estate. In a suit for dower by the vendor's widow against the heirs of the purchaser,—*Held* that, although, as between the plaintiff and the defendants, there was no estoppel which could prevent the defendants from proving that the estate sold was other than an estate in fee-simple, yet, as the purchaser bought the property as and for an estate of inheritance and paid for it as such, the recital was *primâ facie* evidence against the purchaser and persons claiming through him, that the estate conveyed was what it purported to be, it being an admission by conduct of parties, which amounted to evidence against them. SARKIES *v.* PROSONOMOYEE DOSSEE [I. L. R., 6 Calc., 794: 8 C. L. R., 79

187. ———— Endorsement on deed of conveyance—*Authority to convey.*—The defendant had received a conveyance of half a certain piece of land from *S J* (*S J* having the right to convey only two-fifths of the said land, the remaining two-fifths and one-fifth belonging respectively to a brother and sister of *S J*). When *S J* gave the conveyance, it was endorsed by his sister. This endorsement amounted to an estoppel as against her, or any one claiming through her, against saying that *S J* had not a full right to convey. BLAQUIERE *v.* RAMDHONE DOSS . . . Bourke, O. C., 319

188. ———— Alteration of written agreement—*Inference drawn from acts of parties.*—Where it was clearly inferable from the subsequent acts and conduct of the parties that an arrangement reduced to writing has been modified and tacitly cancelled, one of the parties cannot, in the absence of any understanding to return to it, be allowed to enforce the original agreement and set aside the arrangement subsequently agreed to. NUNKEE *alias* PARBUTTEE *v.* BESSUSSURNATH . . . 3 Agra, 428

189. ———— Failure to put in defence in former suit—*Consent implied.*—The failure of a party to put in an answer in a former suit, which in no way threatened his title as a reversioner, cannot

ESTOPPEL—*continued*

5 ESTOPPEL BY CONDUCT—*continued*

to enforce payment of the debt due by the deceased *S*, and he made *B*, the mother of *S*, defendant in the [illegible] On 20th August 187[illegible]

[illegible]

chased it On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R* was put into possession. On the 10th of December 1880, one *S B* presented a petition on behalf, as he alleged, of the plaintiff *T*, the widow of *S*, to set aside the sale He did not produce any authority from her, and his [illegible] On [illegible] *B*, [illegible] ised husband *S* In 1881 *T* filed the present suit on behalf of her adopted son *B* to set aside the sale and to recover the house *Held* that the plaintiff was entitled to have the sale set aside, and to recover possession of the house The estate was vested in *T* as legal representative of her deceased husband Had *T* wilfully put forward *B* as the representative of *S* so as to deceive and mislead *M*, then, no doubt, she might be held bound by the decree obtained by the latter against *B* Her mere quiescence while *M* wilfully sued the wrong person could not affect her legal rights or deprive her adopted son, the plaintiff *B*, of his rights He could not be bound by suit and sale to which he was not a party either in person or by representation *Held* also that *T* was not bound to come forward to assert her ownership when the property was attached and sold under *M's* decree The rule—that one who, knowing his own [illegible]

[illegible]

176. ——— Acquiescence in execution-proceedings—*Representatives of judgment-debtor—Death of party to suit before final decree in appeal—Subsequent proceedings in execution taken against representatives of such party*— [illegible]

[illegible]

decree of the Sadr Diwani Adalat was passed, Dawan Singh died. No application was made to put any representative of Dawan Rai on the record; but in 1881 (the amount of the mesne profits payable under the decree having been finally determined in 1877) certain persons were made parties, as representatives of Dawan Rai, to various proceedings in execution of the decree for mesne profits, which ended in the sale of certain property which had been of Dawan Rai in his lifetime. Subsequently, the said representatives of Dawan Rai brought a suit to recover the property sold as above described on the ground that they were no parties to the decree under execution *Held* that, as it had not been shown that by reason of the plaintiffs not objecting that they had been improperly brought on to the record of the execution of proceedings the defendant had been induced to accept a less favourable arrangement for the satisfaction of the decree that he might otherwise have done, there was no estoppel against the plaintiffs. BENI PRASAD KUNWAR *v* MUKTESAR RAI I. L. R., 21 All., 316

177. ——— Mistake as to what was sold in proclamation of sale—*Purchase by dec*[illegible]

[illegible]

for sale and purchased by the decree-holder himself, and was subsequently put up for sale and purchased by *T* In a suit brought by *T* against *M* to restrain *M* from entering on the land,—*Held* that *M* was estopped by his conduct from setting up his title as purchaser against *T*. TUMAPPA CHETTI *v* MURUGAPPA CHETTI . I. L. R., 7 Mad., 107

178 ——— Disclaimer of title in former suit—*Evidence Act, s 115—Sale in execution of decree—Intervenor in rent suit*—A purchase by a mortgagee, at a sale in execution of a decree [illegible]

[illegible]

gagee, and set up a decree on his mortgage followed by a purchase of the tenure at a sale in execution. He was thereupon allowed to intervene in a suit for rent brought by the zamindar and patnidar against an ijaradar of lands within the darpatni estate *Held* that, notwithstanding this purchase, the intervening mortgagee was bound by the estoppel arising out of the mortgagor's disclaimer of title in the suit above mentioned. PORESHNATH MUKERJEE *v* ANATHNATH DEB I. L. R., 9 Calc., 265: L. R., 9 I. A., 147

179 ——— Mortgagee purchasing at sale in execution of his decree on mortgage [illegible]—A mort[illegible] cution of [illegible] estoppel [illegible] *nath Nath Mukerjee v. Anath Nath Deb, I. L. R., 9 Calc., 265: L. R. 9 I. A. 147*, followed KISHORY MOHUN ROY *v*. MAHOMED MUJAFFAR HOSSEIN [I. L. R., 16 Calc., 188

180 ——— Assertion of title by auction-purchasers independently of sale—*Admission of title by purchase*.—It was held that the auction purchasers at a sale in the execution of a

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

conduct of his father. *Held* that the Government ought not to have been made a party, for the plaintiff did not couch his plaint in any degree adversely to Government; and that the father's acts were no estoppel to the plaintiff such as to prevent him from instituting the present suit against *S* and *G*. RAM RUNJUN CHUCKERBUTTY *v.* COURT OF WARDS [21 W. R., 192

198. ———— Acquiescence—*Estoppel by acts of mother.*—The plaintiff having known the nature of an original grant, and herself recognized and acquiesced in the acts of the lessee,—*Held* that she was bound by the acts of her mother, which as a whole resulted beneficially for the estate; and that in any case she was precluded from questioning them now by the law of limitation, the present suit having been brought more than twelve years subsequent to the death of the mother. PUDDOMONEE DOSSEE *v.* DWARKANATH BISWAS . . 25 W. R., 335

199. ———— Acquiescence in adoption —*Subsequent objection to validity of adoption.*—Where the defendant actively participated in the adoption of the plaintiff, the defendant's brother, and by many acts signified to the plaintiff and to his adopting father the defendant's complete acquiescence in the adoption, and thereby encouraged the plaintiff, who was an adult, to assent to such adoption, and allowed the adopting father to die in the belief that the adoption was valid, and finally concurred in the performance, by the plaintiff, of the funeral ceremonies of his adopting father,—*Held* that the defendant was estopped from disputing the validity of the adoption. SADASHIV MORESHVAR GHATE *v.* HARI MORESHVAR GHATE . . 11 Bom., 190

CHINTU *v.* DHONDU . 11 Bom., 192 note

200. ———— Evidence Act, s. 115—*Auction-purchaser—Representation.*—*A*, a Hindu governed by the Mitakshara law, died on the 12th May 1867, leaving a widow *B* and a brother *R*, who was admittedly the next reversioner. In July 1867, *B* purpoted to adopt a son *D* to *A*, and subsequently in September 1867 obtained a certificate under Act XL of 1858. In 1872 *B* obtained a loan from the plaintiff *M* of R9,000, and to secure its repayment executed as guardian of *D* a mortgage of seven mouzahs in favour of *M*. The money was advanced and the mortgage executed at the instigation of *R* and with his consent, and on his representation that *D* was the duly adopted son of *A*, and it was admitted that the money was advanced for, and specifically applied towards the payment of, decrees obtained against *A* in his lifetime and against his estate after his death. *B* died in 1878. On the 14th August 1880, *M* instituted a suit against *D* upon his mortgage, and in that suit he made *S* a party defendant, as being a purchaser of the mortgagor's interest in one of the mouzahs included in his mortgage. On the 26th June 1882, *M* obtained a decree declaring that he was entitled to recover the amount due by sale of the mortgaged mouzahs. In the proceedings taken in execution of that decree, *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1880, purchased five out of the seven mouzahs at a sale in execution of certain decrees against *R*. On the 28th February 1884, *L*'s claim was allowed, and on the 11th August 1884 *M* brought this suit against *L*, *S*, *R*, and *D* and the decree-holders in the suit against *R* for a declaration of his right to follow the mortgaged property in the hands of *S*. It was found as a fact that the adoption of *D* was invalid; that the advance by *M* to *B* was justified by legal necessity, and that *L* was the benamidar of *S*. It also appeared that *M* had himself become the purchaser of one of the mortgaged mouzahs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage-money from the five mouzahs in the hands of *S*. *L* and *S* appealed, and *M* filed a cross-appeal, alleging the adoption to be valid and binding on *S*. It was contended that *S*, as the representative of *R*, was estopped from denying the validity of *D*'s adoption, and thus, having been a party to *M*'s first suit, the question as to the liability of the mouzahs to satisfy the mortgage lien was *res judicata* as against him. *Held* that a purchaser at an execution-sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act. *Held* further that, though *R* was estopped by his conduct from disputing the validity of the adoption or of *M*'s rights as mortgagee, *S*, being an auction-purchaser, was not bound by *R*'s acts, and was not estopped from disputing the adoption, as he derived his title by operation of law adversely to *R*, and was thus in a different position from a person claiming under a voluntary alienation. LALA PARBHU LAL *v.* MYLNE . . . I. L. R., 14 Calc., 401

201. ———— *Adoption — Suit to establish validity of adoption.*—In a suit to establish the validity of an adoption of the plaintiff by the defendant, where it was shown that she had taken him in adoption, brought him up, and married him as the adopted son of her husband, and had put herself forward as his mother,—*Held* that the defendant was estopped from denying the validity of the plaintiff's adoption, and could not, when the plaintiff might have lost all right in his natural family, assert that she had not validly adopted him. RAVJI VINAYAKRAV JAGGANNATH SHANKARSETT *v.* LAKSHMIBAI . . I. L. R., 11 Bom., 381

202. ———— *Hindu law — Adoption.*—A Hindu widow, professing to have authority from her husband to do so, took the second defendant in adoption, brought him up as her adopted son, and permitted him to perform the funeral ceremonies of her husband. Land to which she otherwise would have been entitled was attached in execution of a decree against defendant No. 2. She now sued to release the attachment, alleging the adoption was bad as having been unauthorized. *Held* that the plaintiff was estopped from raising this contention. KANNAMMAL *v.* VIRASAMI [I. L. R., 15 Mad., 486

203. ———— *Admission — Conclusive proof of adoption—Description of*

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

[illegible]

190. ——— Consent to allow joint property to be dealt with in certain way—*Power to withdraw consent.*—After the several owners of joint property have given their assent to its being employed in a particular way, and such consent has been acted on, it is not competent to an individual owner or a purchaser under him to retract his consent. ROOP DEBEE *v.* GUNGOO MULL [3 N. W., 66

191. ——— Disqualification of a brother to share—*Intention as evidenced by conduct—Waiver of rights—Hindu law—Inheritance—Mitakshara family.*—Between the two surviving brothers of a Mitakshara family, the action of the elder to the younger, who had been born deaf and dumb, was such as to recognize for some years that the latter had a joint interest in the family property. The proper inference to be drawn from this was that the elder treated his brother as a member of the family, and entitled to equal rights until it had become clear that his disqualification would never be removed by his being cured. Their Lordships would not infer that there was an intention shown by the acts of the elder to waive the rights accruing to him in consequence of this disqualification, nor would they hold that his acts operated to create a new title in the younger. LALA MUDDUN GOPAL LAL *v.* KHIKHINDA KOER

[I. L. R., 18 Calc., 341
L. R., 18 I. A., 9

[illegible] landed estate, her deceased husband's mistress, and his illegitimate daughter, and the next reversioner to such estate, with the object of adjusting family [illegible] such conduct from afterwards questioning the legality and genuine character of such distribution and the validity of assignments made by the persons who shared in such distribution. SIA DASI *v.* GUR SAHAI [I. L. R., 3 All., 362

193. ——— Acquiescence in decree binding joint family for debts—*Sale in execution of joint property for decree against manager.*—In a suit by *A*, a member of a Mitakshara joint family, to recover possession of a share of certain property sold in execution of a decree, dated 21st April 1870, against his father only in a suit to which *A*, although he came of age in 1868, was not a party,

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

[illegible] [15 C. L. R., 60

194. ——— Recognition of adoption by widow—*Subsequent objection on ground of its* [illegible] [illegible]

195. ——— Adoption made in full belief it is valid—*Inducing adopted person from claiming share of inheritance in his natural family.*—The rule of estoppel by conduct does not apply where an adoption is made by a person in full belief that the adoption is valid in law, and thereby, and by the subsequent conduct of the adopter, the person [illegible] ILLATH VISHNU NAMBUDRI *v.* ERANJOLI ILLATH KRISHNAN NAMBUDRI I. L. R., 7 Mad., 3

196. ——— Conduct of ancestor—*Acquiescence.*—A person on attaining majority cannot contest an arrangement which the person from whom he inherited had during his minority acquiesced in. TRIPOORA SOONDAREE *v.* GOPAL NATH ROY [25 W. R., 358

197. ——— Estoppel by acts of ancestor when claiming through him—*Taking lease from Government.*—In a suit against *S* and *G* to recover possession with mesne profits of land of which the plaintiff had been dispossessed by *G* as lessee of the Government, he claimed the land as part of an estate (*M*) which belonged to him and his ancestors by the title under which it was held, and had been in their possession very long under that title, and that he had held the property as of right adversely to *S* for a period which sufficed to give him a title. The lower Court made the Government a party, and finding that the plaintiff's father had repeatedly taken from Government a farm of the villages in question after they had been declared not to be a portion of *M*, but of a resumed talukh, concluded that the plaintiff was estopped by the

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

failed, the revenue authorities having eventually resolved to leave the question of *K's* title by adoption to be determined by the Civil Court. In 1884 *K* filed the present suit against the widows of *G* for a declaration of his adoption by *G* and for possession of *G's* estate in British territory. The widows denied the factum of the adoption, and disputed its validity. They also contended that the suit was barred by limitation. The Agent for Sardars in the Dekkan, who tried the case, dismissed the suit, holding that the plaintiff's adoption by *G* was not proved, and that the claim was barred by limitation, the widows having been in adverse possession of the property in British territory for more than twelve years. The plaintiff appealed against this decision to the High Court, contending (*inter alia*) that the widows were estopped by their conduct from denying the plaintiff's adoption. *Held* that the widows were not estopped. *Per* BIRDWOOD, *J.*—The fact that the plaintiff was put forward by the widows as thier adopted son in the Baroda territory did not estop them from disputing the plaintiff's allegation that he was adopted by *G.* Nor was the circumstance that the widows and the plaintiff obtained a joint certificate of heirship to *G* in British territory conclusive as an estoppel. *Per* JARDINE, *J.*—There was now no estoppel (1) because there was nothing to show that the plaintiff had been led to alter his position in life through belief in any misrepresentations made by the widows; and (2) because the widows might have been, under the same mistake of law as the plaintiff, *viz.*, that the Gaekwar's recognition of his adoption created a status operative everywhere, as well in British territory as in the Gaekwar's territory. KUVERJI *v.* BABAI

[I. L. R., 19 Bom., 374

208. ———— Contradicting conduct in former case—*Allowing attachment of property.*—Plaintiffs, who have in a former case allowed property attached as theirs by their creditors to be claimed and taken by the defendants, are estopped in a subsequent suit from making a contrary averment. ERSKINE & CO. *v.* OKHOY CHUNDER DUTT

[W. R., 1864, 58

209. ———— Transfer for fraudulent purpose—*Subsequent suit to recover property.*—A father who transferred property to his sons for the sake of defrauding creditors, and permitted the sons to put forward claims on the property founded on a title inconsistent with his own, was held to have created a state of circumstances in which the sons were entitled to say that he could not afterwards sue to recover the property from them. HURRY SUNKUR MOOKERJEE *v.* KALI COOMAR MOOKERJEE

[W. R., 1864, 265

210. ———— Transfer by trustee in breach of trust—*Suit by trustee to recover possession—Boná fide transferee for value without notice.*—A trustee, alleging that the trust property, consisting of land, was his own property, mortgaged it. The mortgagee took the mortgage in good faith for valuable consideration and without notice of the trust. The mortgagee obtained a decree against the trustee for the sale of the land, and the land was sold in execution of that decree. The trustee subsequently brought a suit to recover the land from the purchaser on the ground that it was trust property, and that he had no power to transfer it. To this suit none of the beneficiaries under the trust were parties. *Held* that the plaintiff was estopped by his conduct from recovering possession of the land. GULZAR ALI *v.* FIDA ALI . . . **I. L. R., 6 All., 24**

211. ———— Declaration of husband as to wife's ownership of property—*Subsequent claim of his heirs.*—Where the husband during his lifetime did in every way, both publicly and privately, whenever called upon to make any representation on the subject, always represent that certain immoveable property was his wife's, the purchasers from her could not after his death be equitably turned out of property in favour of his heirs. The heirs after his death would be as much bound by the father's misrepresentations as he would have been during his life. LUCHMUN CHUNDER GEER GOSSAIN *v.* KALLI CHURN SINGH . . . . . **19 W. R., 292**

212. ———— Benami transaction—*Misrepresentation—Heir when bound by the acts of ancestor.*—*B* purchased some property from *D* (a member of a joint Mitakshara family) in the name of his wife *K*, with the object of concealing from certain persons that he was the real purchaser, and further lest, in the event of a dispute arising in respect of such property, which was heavily encumbered, his exclusive property might be prejudiced and attached with debt. After the death of her husband, *K* obtained a certificate of guardianship of her infant son *S*, in which she did not include this property, and in fact continued to treat the property as her own. During *S's* minority, *O*, the nephew of *D*, who was now of age, brought a suit for pre-emption against *K* in respect of this property, and obtained a consent decree under which he took possession. *S* then, on attaining majority, instituted a suit against *C* for the recovery of the property as the heir and representative of his father on the ground that *K* was a mere benamidar. The defence taken by *C*, amongst others, was that *K* was the real owner he believed her to be. *Held* that on the authority of *Luchmun Chunder Geer Gossain* v. *Kalli Churn Singh, 19 W. R., 292*, it was a good defence, for, even on the assumption that the purchase was benami, *S* as heir of *B* was bound by the misrepresentation of the latter. CHUNDER COOMAR *v.* HURBUNS SAHAI

[I. L. R., 16 Calc., 137

213. ———— *Persons claiming under person who creates the benami.*—The mere fact of a benami transfer does not in itself constitute such misrepresentation as to bind all persons claiming under the person who creates the benami. *O* made a benami gift of his property to his wife *A*. The deed of gift was registered and purported to be made in consideration of the fixed dower due to *A*. There

ESTOPPEL—*continued*

5 ESTOPPEL BY CONDUCT—*continued*

person as adopted son —*A*, a Hindu, died leaving him surviving a mother *B* and three sisters *A* had a brother *P*, who had been given in adoption to his maternal uncle *R* On *A*'s death, his property devolved on his mother *B* *B* mortgaged the property to the defendant. The mortgage-bond was attested by *P*, who described himself as the adopted son of *R* The defendant obtained a decree on the mortgage and himself became the auction purchaser at the execution sale Thereupon *A*'s sisters sued as reversionary heirs for a declaration that the sale to the defendant was valid only to the extent of *B*'s life-interest in the property sold The defendant pleaded that *P*'s adoption was invalid that on *A*'s death the property vested in *P*, and that the plaintiffs had therefore, no interest in the property in dispute The Court of first instance allowed these pleas, and dismissed the suit The Appellate Court held that the description in the mortgage bond that *P* was the adopted son of *R*, amounted to an admission of the adoption by the defendant (mortgagee) and that he was therefore estopped from contesting the adoption *Held* that the defendant was not estopped The mere fact that *P* was described in the mortgage bond as *R*'s adopted son was not any evidence of an admission; and even if it were it was not conclusive proof of the adoption (s 31 of the Evidence Act I of 1872) *Held* further that the fact treated by the lower Appellate Court as an estoppel had no such effect, as it had not caused or permitted the plaintiffs to believe the adoption to be valid and to act upon such belief YASHVANT PUTTU SHENVI *v* RADHABAI

[I. L. R , 14 Bom., 312

204 ———— *Suit to set aside adoption in which the plaintiff has concurred—Hindu law, adoption* —The plaintiff claiming a remote reversionary interest in the estates of a deceased Hindu sued for a declaration of the invalidity of an adoption made by the widow It appeared that the plaintiff himself had concurred in it at the time when it took place *Held* that the plaintiff was not estopped from impugning the adoption by reason of his conduct at the time when it took place GURULINGASWAMI *v* RAMALAKSHMAMMA

I. L. R., 18 Mad., 53

205 ———— *Hindu law, adoption—Treating invalid adoption as effective and subsequently repudiating it—Suit to uphold adoption* —A childless Hindu widow, aged 19 agreed with the plaintiff's father to adopt the plaintiff stating that her husband who died at the age of 12 had given her authority to adopt Subsequently she adopted the plaintiff and had his upanayanam performed in the adoptive family next day, and administered her husband's property as the minor's guardian for about 18 months when she repudiated the adoption and refused to maintain the plaintiff *Held* that, the adoption being invalid on the ground that the widow had not as a fact acted under authority from her husband she was not estopped from denying the adoption by the fact of her having treated it as effective for the period of 18 months. In order that estoppel by conduct may raise an invalid adoption to the level of a valid adoption, there must have been [illegible]

[illegible] *layyan v Raghupatiayyan* 7 *Mad* 250 followed PARVATIBAYAMMA *v* RAMAKRISHNA RAU

[I. L. R., 18 Mad., 145

206 ———— *Treating adoption as valid for a long period* —In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman it appeared that he had been taken in adoption by the widow of the deceased acting on the authority of her late husband that datta homam was performed subsequently, and that the plaintiff had since been recognized as the adoptive son of the deceased and had acted accordingly during a period of twenty five years The defendant was in possession under a claim of title as reversionary heir the widow having died shortly before suit *Held* on the evidence that the defendant was estopped from denying the validity of the adoption SANTAPPAYYA *v* RANGAPPAYYA

I. L. R., 18 Mad., 397

207 ———— *Mistake of law—Acknowledgment of adoption—Effect of recognition of status of adopted son as to property in Native State on his status as to property in British territory* —One *G* was possessed of considerable property both in British territory and in the territory of the Gaekwar of Baroda. He died in 1858, leaving three childless widows, *L S*, and *B* Shortly after his death the plaintiff *K* who was then a minor, was taken to Baroda by *L*, and on her representations as well as those of her co-widows, he was acknowledged by the Gaekwar as their adopted son and as such entitled to succeed to all the estate and privileges enjoyed by the deceased *G* For several years afterwards the widows treated the plaintiff as the legitimate heir and successor of *G* in respect of the Baroda property With regard to the estate in British territory, the widows at first put forward *K* as the adopted son of *G* On their application a certificate of heirship was issued under Regulation VIII of 1827, declaring that "the [illegible] were the [illegible]

the summary settlement in respect of the inam holdings of their deceased husband and thereupon the holdings were entered in their names in the Government records. Finding themselves secure in the posses[illegible]

sought to have part of the property in British territory transferred to his own name as the adopted son of *G* The widows resisted this attempt and denied his adoption. In 1851 *K* made a similar attempt but

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

sale disclosed the existence of the incumbrance now sued upon; that the plaintiff was entitled to assume that intending purchasers would read the notification or search the register for the purpose of ascertaining what was the property being sold; and that his rights were not affected by his not having personally announced his incumbrance, nor could it be said that solely by bidding at the sale he had encouraged the purchaser to buy. *Mackenzie* v. *British Linen Co., L. R., 6 App. Ca., 82,* and *Gheran* v. *Kunj Behari, I. L. R., 9 All., 413,* referred to. *Held* also that it could not be said that under the circumstances the plaintiff must be taken to have sold in execution of his decree the interest which he held under the bond now in suit; that he could not be compelled to proceed first against those portions of the mortgaged property which had not been sold; and that the bond was enforceable against a purchaser of part of the mortgaged property who had never obtained possession. BANWARI DAS *v.* MUHAMMAD MASHIAT

[I. L. R., 9 All., 690

219. ———— *Sale of mortgaged property in execution of a money-decree without express notice of mortgage—Omission to declare mortgage at time of sale—Civil Procedure Code (1882), s. 287—Right of mortgagee to enforce mortgage against the property in hands of purchaser.*—A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of Civil Procedure Code (Act XIV of 1882), and the auction-purchaser had no actual knowledge of the mortgage. In a suit brought by the mortgagee against the mortgagors and the auction-purchaser to recover the mortgage-debt by sale of the mortgaged property,—*Held* that the omission to declare the mortgage at the time of the sale could not be treated as an estoppel. DHONDO BALKRISHNA KANITKAR *v.* RAOJI . **I. L. R., 20 Bom., 290**

220. ———— *Rights of purchasers at sale in execution of a mortgage-decree—Purchase without notice that mortgagor was only benami-holder for the judgment-debtor.*—The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution and defended the possession which they obtained. *Held* that the defendants, in whose favour the decree had been made upon a *bonâ fide* mortgage, without notice that the mortgagor had been only holding benami for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs that this defence, as distinguished from the defendants' answer that the widow was the real owner, had not been set up or decided in the Court of first instance; and *held* that the owner, having in his lifetime authorized his wife to hold herself out as proprietor in her own right, could not have succeeded in a suit to disentitle the mortgagees without proving that they either had taken the mortgage with such notice or that they had been put upon inquiry; that the same principle applied to these plaintiffs, who had purchased his right, title, and interest; and that they were bound equally with him. *Ramcoomar Coondoo* v. *Macqueen, L. R., I. A., Sup. Vol., 40: 11 B. L. R., 46,* referred to and followed as to the application of estoppel. MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN ROY . **I. L. R., 22 Calc., 909**

[L. R., 22 I. A., 129

221. ———— *Lease by mortgagor to mortgagee—Subsequent sale of equity of redemption by mortgagor—Suit by purchaser to redeem and for possession—Acquiescence.*—The purchaser from the mortgagor of the equity of redemption having brought a redemption-suit, the mortgagee contested his right to recover possession on the ground that prior to the purchase, the mortgagor had granted to him (the mortgagee) a mulgeni or permanent lease. *Held* that the plaintiff was not bound by the lease, although a long period had elasped since it was granted, it having appeared that the plaintiff had on a former occasion contended that the lease was a forgery and fraudulent; and as the mortgagee was then entitled to possession under his mortgage, no aquiescence in the lease could be inferred from the mere fact of the mortgagee having remained in possession, it not being alleged that rent was ever paid to the plaintiff. SUBRAO MANGESHAYA *v.* MANJAPA SHETTI . **I. L. R., 16 Bom., 705**

222. ———— *Suit for sale by mortgagee against auction-purchaser, mortgagee having accepted part of the proceeds of former sale.*—On the 10th of February 1873, one *S R* mortgaged to the plaintiff an undefined one biswa share out of three biswas owned by him. On the 20th of March 1877, *J P* and *G P* brought to sale in execution of money-decrees against *S R* two out of those three biswas, which two biswas were purchased by the defendant. The sale was confirmed on the 23rd of April 1877. Out of the proceeds of that sale, R1,464-14-9 were appropriated by the plaintiff in part satisfaction of his mortgage. On the 16th of April 1877, the plaintiff sued the auction-purchaser for sale of one biswa in satisfaction of his mortgage. *Held* that, even if it could be shown (which it could not) that the particular biswa mortgaged to the plaintiff was one of those which had passed into the defendant's possession, the plaintiff was estopped by his previous conduct from suing to bring it to sale under his mortgage. JHINKA *v.* BALDEO SAHAI

[I. L. R., 14 All., 509

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

was no mutation of names, but *O* managed the property as *A*'s am-muktar under a general power-of-attorney executed by her in his favour. On the death of *O*, *A* mortgaged the property. At a sale in execution of a decree obtained by the mortgagee ... the mortgaged property was purchased by ... the ... pro- ... r *O*, ... ainst the defendants for a declaration of his right to the shares of *H* and *R* and for partition,—*Held* that the acts of *O* were not such as to constitute an estoppel as against his heirs, and therefore the plaintiff was entitle...

Geer...

explai...

Chun...

... death of the grantee, whose heir he was. The mort- ...

Radhey Lal *v.* Mahesh Prasad [I. L. R., 7 All., 864

215. ——— *Evidence Act (I of 1872), s. 115.*—A decree-holder at a sale in exe- ... not been already sold. This application was disallowed, and the whole interest of the judgment-debtors put up for sale, and the prior decree-holder, who was present, made a bid. Ultimately, however, a portion of the property was withdrawn, and the remainder only was sold, including part of the property sold in execution of the prior decree. The prior ...

in execution of the subsequent decree. *Held* that the plaintiff was not estopped from claiming such a declaration by his conduct in bidding at the sale at which the defendant had purchased, inasmuch as it could not be said that by bidding he meant to show that he ...

216. ——— Sale of mortgaged property in execution of decree—*Effect of sale—Pur-* ... Where mortgaged property is sold ...

Jusrup *v.* Lingaya . . I. L. R., 5 Bom., 2

217. ——— *Effect of sale—Purchaser, Right of.*—Where a decree is obtained upon his mortgage by a mortgagee and the mortgaged property is sold under the decree for the purpose of ... of the mortg... mofussil, to require the mortgagee to convey to the purchaser. The transfer takes place by estoppel. Sheshgiri Shanbhog *v.* Salvador Vas [I. L. R., 5 Bom., 5

See Maganlal *v.* Shakra Girdhar [I. L. R., 22 Bom., 945

218. ——— *Prior incumbrancer bidding at auction-sale in execution of decree and not announcing his incumbrance—Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser at such sale—Sale of portions of mortgaged property—Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession.*—At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree-holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incumbrance which he did not personally announce. In a suit brought by him subsequently to enforce this incumbrance, it was contended on behalf of the auction-purchaser that he was estopped by his conduct from setting it up as against her. *Held* that there was no estoppel; that under s. 114 of the Evidence Act the ...

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

Evidence Act. A man may be estopped not only from giving particular evidence, but from doing any act or relying upon any particular argument or contention which the rules of equity and good conscience prevent him from using as against his opponent. GANGES MANUFACTURING CO. v. SOURUJMULL [I. L. R., 5 Calc., 669: 5 C. L. R., 533

230. ———— **Acquiescence of mortgagee** —*Waiver of priority.*—When a prior encumbrancer with a full knowledge of his title stands by and through his agency allows the mortgagor to deal with the property as if it was unencumbered,—*Held* that by such conduct he loses that priority to which the prior date of his encumbrance would, had he acted otherwise, have entitled him. RAI SEETA RAM v. KISHUN DASS *alias* KISHNARAM . **3 Agra, 402**

231. ———— **Right of appeal by defendant disclaiming all interest on his own account**—*Suit for redemption.*—*S* sued to redeem land mortgaged to *N*, and made *P* a defendant in the suit on the ground that he was in possession on account of *N*, his brother. *P* disclaimed all interest on his own account, and alleged that he was in possession on behalf of *N*, and that the mortgage was a forgery. *N* did not appear. The Munsif decreed for the plaintiff. *P* appealed. The Subordinate Judge dismissed the suit on the ground that the mortgage was not proved. *Held*, on second appeal, that *P* had no *locus standi*, and could not appeal from the Munsif's decree. SESHAYYAR v. PAPPUVARADAYYANGAR . . . **I. L. R., 6 Mad., 185**

232. ———— **Acquiescence**—*Mortgage executed during plaintiff's minority.*—The plaintiff sued the defendant on mortgages executed to the plaintiff by the adoptive mothers of the defendant (who were also defendants) subsequently to his adoption. The plaintiff contended that the mortgages had become effectual as against the defendant by reason of his subsequent conduct. Evidence was given that he had promised his adoptive mothers to redeem the mortgages, and that he had stood by and allowed the plaintiff to carry out the provisions of the mortgage deeds to his own detriment by paying maintenance to the defendant's adoptive mothers and by paying off certain mortgages which had been created by them previously to the adoption of the defendant. *Held* that knowledge on the part of the defendant that the plaintiff was carrying out the provisions of the mortgage-deeds, and his allowing the plaintiff to do so, did not estop him from disputing them afterwards, for it was no part of his duty to step in and protect the plaintiff against the consequences of his own unauthorized dealings with his property. SHIDDHESHVAR v. RAMCHANDRARAV [I. L. R., 6 Bom., 463

233. ———— **Intervenor made party by plaintiff**—*Appeal by plaintiff against order making him party.*—When an intervenor in a suit to recover rent is made a party at the request of the plaintiff, the latter cannot afterwards, by special appeal, get rid of the effect of his own act. SHAM CHUND GHOSE MUNDUL v. DOYAMOYEE MUNDULNEE . . . . **9 W. R., 338**

234. ———— **Representation as to transfer of property**—*Suit for rent—Intervenor—Evidence Act, s. 115.*—In a suit for rent brought against an ijaradar by a person claiming to be the dar-patnidar of certain [illegible] the claim upon the ground that another person was the real owner of the dar-patni, and this person was made a co-defendant, and intervened for [illegible] of supporting his title to the rent. It [illegible] in the year 1259 *A* purchased the dar-pa[illegible] sold it in 1256 to his wife *B* and son *C*. Afterwards *A* successfully resisted a suit for rent brought against him by the present plaintiff as superior landlord on the ground that he had parted with his interest in the estate to *B* and *C*. The plaintiff then sued *B* and *C* for the rent and obtained a decree, under which the dar-patni was sold to him. He now sued the ijaradar. The interventing defendant contended that *A* had mortgaged the property to him, and that such proceedings had been taken on the mortgage that he was entitled in the *A*'s right to the ren[illegible] owner of it. *Held* that the [illegible] could take no better title than [illegible] as *A* had directly induced the plaintiff to believe that he had sold the property absolutely to *B* and *C* and had led him to bring a suit against them for the rent and under the decree obtained in that suit to purchase their interest in the property, the intervening defendant could not set up a claim to the rent in the present suit as against the plaintiff. AUNATH NATH DEB v. BISTU CHUNDER ROY . **I. L. R., 4 Calc., 783**

235. ———— **Joint decree**—*Amount of shares in joint property.*—The mere fact of two parties having jointly sued and obtained a decree by right of pre-emption against a third party does not preclude either from contending that by agreement they were not to take equal shares in the purchase. BERUNJA KOEREE v. HURPERSHAD LALL [**3 Agra, 235**

236. ———— **Acceptance by landlord of lower than decretal rate of rent.**—Where a decree has declared a certain rate of rent payable, the landlord is not prevented, by the mere fact that he has not insisted on the rent being paid at that rate, but has accepted a lower one, from recovering at the rate given by the decree. MAZZUM ALLY KHAN v. PIRTHEE SINGH . . . **3 Agra, 263**

237. ———— **Effect of condition in wajib-ul-urz**—*Suit to set aside condition.*—Where a wajib-ul-urz contained a condition restricting the landlord's right to enhance,—*Held* [illegible] it, he must be held to be bound by [illegible]lishes his right by a civil suit to have the condition in the wajib-ul urz set aside. KYALEE RAM v. MAHOMED ALI KHAN . . **1 Agra, Rev., 62**

NUTTHA RAM v. SOOKH RAM . . **3 Agra, 90**

238. ———— **Assertion of proprietary right**—*Subsequent claim to maintenance.*—Under special circumstances, a widow who had asserted a

ESTOPPEL—*continued*

5 ESTOPPEL BY CONDUCT—*continued*

223 ———— Yeomiah lands—*Madras Rent Recovery Act, ss 8, 9, 79, 80—Unregistered holder rendering service and granting pottahs—Estoppel by acquiescence of person entitled to the yeomiah holding* —A yeomiahdar died leaving a brother who was then out of India Shortly before

the late yeomiahdar returned after three years and obtained registration of his title He now filed this suit to enforce acceptance of pottahs tendered by him to the raiyats who had already accepted pottahs from and executed muchalkas to the assignee *Held* that the suit was not maintainable, as under the circumstances the plaintiff's conduct justified tenant's belief that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff and notice of his title given them KHADAR v SUBRAMANYA . . I. L. R., 11 Mad., 12

224 ———— Mortgaged land subsequently sold by mortgagee in execution of money-decree—*Purchaser at such sale without notice of mortgage—Mortgagee stopped from subsequently enforcing his mortgage as against purchaser* —Where a judgment-creditor in execution of a money-decree sells property as belonging to his judgment-debtor, he is afterwards estopped from enforcing as against the purchaser a previous mortgage of the property which has been created in his own fav ... ot ce at the time ... hich the purchas ... l the full price ... the mortgage-deed has been registered AGARCHAND GUMAN CHAND v RAKHMA HANMANT

I. L. R., 12 Bom., 678

RAMCHANDRA VITHURAM v JAIRAM

I. L. R., 22 Bom., 686

225 ———— Assignee of mortgagor—*Evidence Act (I of 1872), s 115—Right to sue for redemption* —Where the plaintiff in a suit for redemption of a usufructuary mortgage was the ori-

party to the suit, but put forward or consented to have put forward the original mortgagor as the person entitled to redeem,—*Held* that, as there was nothing in that litigation to show that the defendant-mortgagee was in any way induced to alter his position or to do any act which he would not otherwise have done in consequence of the assignee's conduct the latter was not estopped by s 115 of the Evidence Act (I of 1872) or by any principle of equitable estoppel from afterwards suing on his own account for redemption MUHAMMAD SAMI-UD-DIN KHAN v MANNU LAL I. L. R., 11 All., 386

226 ———— Sale of mortgaged property under a decree other than a decree on the mortgage—*Mortgage not disclosed—Effect of such non-disclosure on mortgagee's rights under his mortgage* —*Held* that a mortgagee who causes the mortgaged property to be sold in execu-

227. ———— Acts of agent—*Authority of agent—Member of Hindu joint family* —A person's agent for the purchase of an estate is not necessarily his agent to re-convey the same Thus where

the brothers were not estopped from suing the parties in possession of the whole property to set aside what the single brother had done, and to obtain possession of the share in question BHUJONAUTH MYTEE v RADHA CHURN MYTEE 7 W. R., 335

228 ———— Purchase by agent—*Setting up character as principal* —Where a man steps in during an auction sale and assumes the character of a principal agent and, deposing another who is really acting as agent purchases the property, he cannot afterwards be allowed, in equity to turn round and claim to have purchased not for the principal, but for himself, and to obtain a profit out of his purchase. LOKHEE NARAIN ROY CHOWDHRY v. KALLY PUDDO BANDOPADHYA

23 W. R., 358 : L. R., 2 I. A., 154

229 ———— Estoppel by assent to delivery order—*Evidence Act, Ch. VIII—Vendor and purchaser.*—*A* contracted to buy from *B* & *Co*

certain of the delivery orders over to *C* On these orders the agents of *B* & *Co*, at the request of *A*, wrote the following words: "The bearer of this will personally take delivery of each lot as required." *C* took delivery of 50,000 bags but *B* & *Co*. refused to deliver to him the remainder on the ground that *A* had not paid them according to the terms of his contract *Held* that, although there had been no actual

they had, through their agent, been the means of confirming Estoppels in the sense in which that term is used in English legal phraseology are matters of infinite variety, and are by no means confined to the subjects which are dealt with in Ch. VIII of the

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued.*

did adopt it, and by his industry secured a wide popularity for it in the Indian market,—*Held* that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. LAVERGNE *v.* HOOPER

[I. L. R., 8 Mad., 149

247. ——— Refusal of registered letter —*Presumption of knowledge.*—A person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents. LOOTF ALI MEAH *v.* PEAREE MOHUN ROY . . 16 W. R., 223

248. ——— Alienation of service vatan land by the holder of it—*Impeachment of such alienation by the alienor—Hereditary Offices Act (Bombay Act III of 1874, s. 5)—Vatandars.*—The plaintiff, who was a vatandar kulkarni, sued to recover from the defendant possession of certain land with mesne profits, alleging that it was his service vatan land wrongfully taken possession of by the defendant in 1880. The defendant set up a mortgage of the land alleged to have been executed to the defendant by the plaintiff's mother in the plaintiff's name during his minority. Both the lower Courts found that the land was the plaintiff's kulkarni vatan land; that it had been mortgaged by the plaintiff's mother to the defendant for good consideration; and that the mortgage was binding on the plaintiff. On appeal by the plaintiff to the High Court,—*Held*, confirming the decree of the lower Court, that the plaintiff was estopped from denying his title to mortgage the field. The general rule being that the grantor cannot dispute with his grantee his right to alienate the land to him, the circumstances of the case did not justify a departure from the rule. The plaintiff, although an hereditary public officer, was not a trustee for the purposes of the Vatan Act, and it could not be presumed that the grantee knew that the plaintiff's guardian had not obtained the previous sanction of Government to the mortgage. The plaintiff was, therefore, estopped from saying that the grant was forbidden by the Act. NARAYAN KHANDU KULKARNI *v.* KALGAUNDA BIRDAR PATEL

[I. L. R., 14 Bom., 404

249. ——— Payment of a tax for one year without protest—*Payment of the tax in a subsequent year under protest—Suit to recover money so paid—Cause of action.*—The plaintiff paid a house tax at the rate of R6 for the year 1890 without any protest. When the tax was sought to be levied from the plaintiff at the same rate for the year 1891, he objected to the levy as illegal and excessive, and paid the tax under the protest. He then sued to recover what he alleged was an excess charge of R5 in respect of the tax for 1891. His claim was rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 without protest. *Held* that the suit was not barred. The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year. PITAMBER DAS *v.* JAMBUSAR TOWN MUNICIPALITY . I. L. R., 17 Bom., 510

250. ——— Order of Court made without jurisdiction—*Order of same Court for refund under execution.*—Where a Court on the application of a decree-holder made an order for execution, and such order was set aside (on appeal) on the ground that such Court had no jurisdiction to entertain the application,—*Held* that the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently passed by it, directing him to refund a sum realized under the order for execution. GOVIND VAMAN *v.* SAKHARAM RAMCHANDRA

[I. L. R., 3 Bom., 42

251. ——— Party not bound by proceedings not allowed to take advantage of them.—Where a person who was called as a witness and set up a claim in execution-proceedings was not made a party, and was therefore not bound by those proceedings, it was held that in a subsequent suit against him for possession (he having obstructed execution of the former decree), in which suit he contended that the suit was barred as not having been brought within due time after the plaintiff's application in the execution-proceedings was dismissed, he could not take advantage of the execution-proceedings to resist a claim otherwise admissible against him. BALVANT SANTARAM *v.* BABAJI BIN SANTHOPA . . . I. L. R., 8 Bom., 602

252. ——— Acting on order containing reservation—*Disputing validity of reservation.*—Where an application for leave to institute a suit was granted under cl. 12 of the Charter, leave being reserved in the order to the defendant to move to have it set aside, and the plaintiff had acted on the order,—*Held* he could not afterwards object to the validity of the reservation it contained. RADHA BIBI *v.* MUCKSOODUN DASS . 21 W. R., 204

253. ——— Fictitious sale—*Relief—Promoting public policy.*—*Held* that, though the law under the ordinary rule would not assist parties who have colluded in order to evade its provisions by restoring them to their original status, yet relief may be granted if public policy is promoted by so doing. RAM PERSHAD *v.* SHEVA PERSHAD

[1 Agra, 71

254. ——— Repudiation of authority of guardian—*Adoption of beneficial acts.*—A person who disputes the authority of another to act as his guardian, and repudiates the acts done by such guardian in that capacity, cannot take advantage of those acts so far only as they are beneficial to him. SOOBAH PRITHEE LALL JHA *v.* SOOBAH DOORGAH LALL JHA. SOOBAH DOORGAH LALL JHA *v.* NEELANUND SINGH . . . . . 7 W. R., 73

255. ——— Recognition of tenure by Government—*Purchaser, Right of.*—The Government having once recognized the plaintiff's talukh by

ESTOPPEL—*continued.*

5. ESTOPPEL BY CONDUCT—*continued*

proprietary right in certain property, without putting forward any claim for maintenance, not allowed afterwards to enforce her claim for maintenance against such property in the hands of a purchaser GOOLABEE *v.* RAMTAHAL RAI

[1 N. W., 101: Ed 1873, 275

239. ———— *Grant of mokurari pottah* **by parties who afterwards acquire permanent settlement.**—Parties holding a permanent settlement from Government cannot question the validity of a mokurari pottah previously granted by themselves when they held the property under a temporary settlement. ABDOOL MANNAH *v.* BARODA KANT BANERJEE . . 15 W R, 394

240 ———— **Recognition of talukhdari right**—*Purchaser at sale for arrears of revenue* —At a sale for arrears of revenue Government purchased a pergunnah, containing a certain talukh belonging to *A* The talukh was not cancelled, and the Government made successive temporary settlements with *A*, in which his talukhdari right was recognized The right and interest of Government in the pergunnah were afterwards sold to *B*, who ousted *A* *A* afterwards joined with *C* in taking a putni lease of the same land which he had in the talukh. *Held*, in a suit by *A* against *B* and *C*, that this conduct estopped him from recovering possession of the dependent talukh from which he was ousted by *B. Assanoollah* v *Obhoy Churun Roy, 13 Moore's I A, 317 : 13 W R, 21*, cited and distinguished. GOOROO PERSHAD CHUCKERBUTTY *v* BANI NATH CHUCKERBUTTY . . 2 C. L. R., 216

[illegible]

whereas the defendants were eighth in degree, from a common ancestor, and were entitled to no part of the property, it appeared that immediately after the opening out of the succession, the plaintiffs had treated the defendants as having equal rights with themselves and as being in an equal relationship to the common ancestor, and had permitted their names to be registered as such in the Collector's books *Held* (*affirming the decree of the High Court at Allahabad*) that the course of conduct of the [illegible] estoppel in [illegible] proving [illegible] claim

[illegible] L. R., 348

242. ———— **Deposit of money**—*Rate of interest.*—The plaintiff deposited money with defendants, bankers, on 30th August 1863 On 2nd January 1867, an account was stated and a balance found to be due to the plaintiff consisting of the original deposit and interest at six per cent. per annum On 11th February 1876, the defendants proposed to pay the plaintiff such balance, together with interest on the original deposit from January 1867 to February 1876, at only 4 per cent. per annum The plaintiff now claimed the difference between interest at 4 and interest at 6 per cent. *Held* the defendants were estopped from disputing the plaintiff's demand for interest at the latter rate MAKUNDI KUAR *v* BALKISHEN DAS . I. L. R., 3 All., 328

243. ———— **Construction of document making suit premature**—*Subsequent contention that suit is barred* —In a suit brought to recover money lent upon a mortgage which the defendant refused to register, the defendant put a construction upon the arrangement which was accepted by the Court, and the claim dismissed as premature *Held* that, when the plaintiff sued again in due (*i.e.*, mature) time, it was not open to the parties or to the Court to say that the first construction was wrong. FUTOONNISSA *v.* KHONDKAR KHODA NEWAZ

[21 W. R., 374

244. ———— **Giving notice of action under s. 53, Act XXIV of 1859**—*Contention of non-applicability of section* —The plaintiff, a constable of police, sued the defendant, an inspector of police, for money had and received to [illegible]

having given such notice from contending that s. 53 was not applicable to the case GUNDAM VENKATASAMI *v* CHUNNIAM PURUSHOTTAMA 5 Mad., 466

[illegible]

obtained by the plaintiff, and the judgment-creditor at the same time agreed to release the judgment-debtor from arrest and to take payment of the sum decreed to him by instalments An order was passed [illegible]

arrest, was estopped from acting contrary to his deliberate representation and undertaking PROTAP CHUNDER DASS *v* ARATHOON ARATHOON *v* PROTAP CHUNDER DASS

[I. L. R., 8 Calc., 455 : 10 C. L. R., 443

See AMIR ALI *v* INDURJIT KOER

[9 B. L. R., 460

RAJMOHUN GOSSAIN *v.* GOURMOHUN GOSSAIN

[4 W. R., P. C., 47 : 8 Moore's I. A., 91

246. ———— **Acquiescence in use of trade mark**—*Subsequently denying right to use it.*—Where the plaintiffs by their conduct let the defendant to believe that they claimed no right to a certain trade mark, and that it was open to the defendant to adopt it as his own, and the defendant

EVIDENCE—CIVIL CASES—*continued.*

See CASES UNDER EVIDENCE ACT.

See CASES UNDER JUDGMENT IN REM.

See CASES UNDER WITNESS—CIVIL CASES.

——— **Admissibility of—**

See CASES UNDER ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS.

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW.

EVIDENCE—CIVIL CASES—*continued.*

See COMMISSION—CIVIL CASES.

[2 B. L. R., A. C., 73
8 B. L. R., Ap., 102
10 W. R., 236
22 W. R., 331
6 C. L. R., 109

See CASES UNDER REGISTRATION ACT, 1877, SS. 17, 18, AND 49.

See CASES UNDER STAMP ACTS, 1862, 1869, 1879.

——— **Discovery of fresh evidence.**

See CASES UNDER APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

See CASES UNDER REVIEW—GROUNDS FOR REVIEW.

——— **Mode of dealing with—**

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

1. MODE OF DEALING WITH EVIDENCE.

1. ——— **Discussion of mode of dealing with.**—The mode in which evidence is to be dealt with discussed. MATHURA PANDEY *v.* RAM RUCHA TEWARI . 3 B. L. R., A. C., 108 : 11 W. R., 482

BHAJU SING *v.* KAIFNATH TEWARI [3 B. L. R., A. C., 332

2. ——— **Conflicting evidence, Investigation of cases of.**—There is no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts according to the ordinary course of human affairs and the usual habits of life. USUDOOLLAH *v.* IMAMAN [5 W. R., P. C., 26 : 1 Moore's I. A., 19

3. ——— **Native testimony**—*Suspicion of perjury.*—Evidence should receive its due weight, and not be rejected from a general distrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. RAMAMANI AMMAL *v.* KULANTHAI NAUCHEAR [17 W. R., 1 : 14 Moore's I. A., 346

4. ——— *Probability—Ground for decision on evidence.*—The general fallibility of native evidence in India is no ground for concluding against a transaction when the probabilities are in favour of it. BUNWAREE LALL *v.* HETNARAIN SINGH [4 W. R., P. C., 128 : 7 Moore's I. A., 148

5. ——— **Native cases**—*Presumption—Case supported by false evidence.*—A native case is not necessarily false and dishonest because it rests on

ESTOPPEL—*concluded*

6 ESTOPPEL BY CONDUCT—*concluded*

selling it for arrears of rent to the parties through whom the plaintiff claimed, and no disclaimer of his talukhdari right having ever been made by the plaintiff,—*Held* that it was not competent to the Government to deny the title of a tenure which it had by selling once guaranteed to the purchaser JEEBUN SINGH BURMONO *v* COLLECTOR OF BACKERGUNGE . . . 2 W R., 77

GOLUCK CHUNDER SEIN *v* COLLECTOR OF BACKERGUNGE . 2 W. R , 139

256. ———— When the zamindari rights in a property have been purchased by Government at a sale for arrears of revenue, and Government guarantees the rights and position of certain talukhdars therein, and then sells its zamindari rights, the second purchaser is bound by the acts of the Government and the talukhdars, if dispossessed, may recover possession under cl 6 s 23, Act X of 1859 BURNEE KHANUM *v* MODHOOSOODUN DOSS [3 W. R., Act X, 127

JOOGUL KISHORE ROY *v*. AHSANOOLLAH [4 W. R., Act X, 6

EUROPEAN BRITISH SUBJECT.

See EXTRADITION ACT, 1879 [I. L. R., 9 Bom., 333

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL 8 Bom , Cr., 92 [I. L. R., 9 Bom., 283, 333

See CASES UNDER JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R., 9 All., 420

See MAJORITY, AGE OF . 8 B. L. R , 372 [3 N. W., 338 1 B. L. R , O C , 10 I. L. R., 7 All , 490

See OFFENCE COMMITTED ON THE HIGH SEAS . 1 B. L. R., O. Cr , 1 [7 Bom., Cr., 30 I. L. R., 21 Calc., 782

See POLICE ACT, 1861, s 29 [3 N. W., 128

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 18 Calc., 247

———— in Bangalore.

See HIGH COURT JURISDICTION OF—MADRAS—CRIMINAL [I. L. R., 12 Mad., 30

———— Person tried jointly with—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [I. L. R., 14 Bom., 160

EUROPEAN BRITISH SUBJECT—*concluded*

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATE [I. L. R., 16 Mad., 308

1. ———— Opportunity to plead being European British subject—*Plea not taken till too late—Waiver*—A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is a European British subject The mere statement of a prisoner that he is a European British subject, made before the Deputy Magistrate after the trial was completed, cannot be acted on. CLARK *v* BEANE [5 W. R., Cr., 53

2 ———— Mode of procedure — *Charge against European British subject* —Mode of procedure by a Magistrate with regard to European British subject accused of an offence QUEEN *v* SHERIFF . . . 6 W. R., Cr., 13

"EUROPEANS"

See CRIMINAL PROCEDURE CODES, s 451 [I. L. R., 16 All., 88

EVIDENCE—CIVIL CASES.

EVIDENCE—CIVIL CASES—*continued.*

1. MODE OF DEALING WITH EVIDENCE —*concluded.*

therefore not reliable, the High Court, in remanding the case, held that this was a most improper mode of treating the evidence. If the Court disbelieved particular witnesses or refused to receive certain documents, it should give its reasons for the refusal with reference to these documents in particular, or for its disbelief of the particular witnesses, and not with reference to documents or witnesses in general. CHANDRA MADHAB ROY *v.* KHEMAMANI DASI [1 B. L. R., S. N., 19

OMAN *v.* KUMAR PRAMATHANATH ROY [1 B. L. R., S. N., 25 : 10 W. R., 256

17. ——— Unopposed evidence—*Suit for damages—Non-appearance of defendants.*—In a suit to recover damages caused by the defendants plundering the house of the plaintiff, the Court of first instance passed, upon the evidence of two witnesses, a decree in favour of the plaintiff. On appeal by some of the defendants, the Judges of the Sudder Dewauny Adalut of Agra held that the fact of plunder was not proved, and dismissed the suit as against all the defendants. *Held* by the Privy Council that, as the defendants did not come forward to exculpate themselves by their own evidence, and as the evidence in support of the charge was unopposed, the decree of the Court of first instance could not be set aside. GANESH SINGH *v.* RAM RAJA [3 B. L. R., P. C., 44 : 12 W. R., P. C., 38

2. ACCOUNTS AND ACCOUNT BOOKS.

18. ——— Books kept in course of business.—Books proved to have been regularly kept in course of business are admissible as corroborative but not independent proof of the facts stated. DWARKA DASS *v.* DWARKA DASS . 2 Agra, 308

19. ——— Account books—*Act II of 1855, s. 43.*—The books of a creditor are not admissible as evidence against his debtor to prove the debt, unless there is other evidence of the debt, in which case entries in such books may be admitted as corroborative evidence under Act II of 1855, s. 43. RAMKISTO PAUL CHOWDHRY *v.* HURRY DASS KOONDOO . . Marsh., 219 : 1 Hay, 569

20. ——— *Evidence Act, s. 34.*—It is only such books as are entered up as transactions take place that can be considered as books regularly kept in the course of business within s. 34 of the Evidence Act. MUNCHERSHAW BEZONJI *v.* NEW DHURUMSEY SPINNING AND WEAVING COMPANY . . . . I. L. R., 4 Bom., 576

21. ——— *Effect of account books.*—One party, by merely producing his own books of account, cannot bind the other. SORABJEE VACHA GANDA *v.* KOONWARJEE MANICKJEE [5 W. R., P. C., 29 : 1 Moore's I. A., 47

22. ——— Entries in account books—*Evidence Act, s. 32, cl. 2, and s. 34—Account books kept on behalf of firm by servant or agent—Admission.*—Account books containing entries not made by nor at the dictation of a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under s. 34 of the Evidence Act I of 1872 and *semble* under s. 32, cl. 2. Account books, though not proved to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm. QUEEN *v.* HANMANTA [I. L. R., 1 Bom., 610

EVIDENCE—CIVIL CASES—*continued.*

2. ACCOUNTS AND ACCOUNT BOOKS —*continued.*

23. ——— *Evidence Act, s. 145—Statement.*—*A* was employed by *B* at intervals of a week or fortnight to write up *B*'s account books, *B* furnishing him with the necessary information either orally or from loose memoranda. *Held* that the entries so made could not be given in evidence to contradict *A*, under s. 145 of the Evidence Act, as to previous statements made by him in writing. The statements were really made, not by *A*, but by *B*, under whose instructions *A* had written them. MUNCHERSHAW BEZONJI *v.* NEW DHURMSEY SPINNING AND WEAVING COMPANY [I. L. R., 4 Bom., 576

24. ——— *Absence of entry in a book irrelevant—Evidence Act I of 1872, s. 34.*—Though under s. 34 of the Evidence Act the actual entries in books of account regularly kept in the course of business are relevant to the extent provided by the section, such a book is not by itself relevant to raise an inference from the absence of any entry relating to a particular matter. QUEEN-EMPRESS *v.* GRISH CHUNDER BANERJEE [I. L. R., 10 Calc., 1024

25. ——— Where a Judge considered it inequitable to reject plaintiff's books when they made for him, *viz.*, as to amounts lent to defendant, and to accept them when they were against his interest, *viz.*, in the amount of repayments credited to defendant, and therefore disregarded both descriptions of entries equally, but gave a decree in plaintiff's favour for such entries as were proved, without deducting the items credited to defendant,—*Held* that entries in an account book, whether on the credit or debit side of the account, are not conclusive evidence either of amounts paid or of sums actually due which the Judge is bound to believe. The Judge was bound to look at the whole of the entries in the plaintiff's book, to give credit to such of them as he believed to be true, and to discredit those, if any, which he believed to be false. ISAN CHANDRA SINGH *v.* HARAN SIRDAR [3 B. L. R., A. C., 135 : 11 W. R., 525

26. ——— *Entry against interest of witness.*—In a suit for account by the representatives of *A*, deceased, a document was offered as evidence purporting to be a copy made by deceased of an account furnished him by the defendant containing an entry of a payment of R5,000 by the deceased to the defendant, and the purchase therewith by the defendant of Company's paper for the deceased.

EVIDENCE—CIVIL CASES—*continued*

1. MODE OF DEALING WITH EVIDENCE —*continued*

TEELUCKO KOOER *v.* NIRBAN SINGH [9 W. R., 439

RAMAMANI AMMAL *v* KULANTHAI NAUCHEAR [17 W. R., 1: 14 Moore's I. A, 346

6. ———— **Judgment on facts**—*Probabilities of the case—Rule of Privy Council*—Where

ties of the case EDUN *v* BECHUN [11 W. R., 345

7. ———— **Sufficiency of evidence**—*Evidence which might have been, but was not, adduced, as being unnecessary*—Where there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced. RAMALINGA PILLAI *v.* SADASIVA PILLAI [1 W R., P. C., 25: 9 Moore's I A., 506

8. ———— **Consent to decision on such evidence as there is**—Even if the evidence upon the record is in itself insufficient, a Judge may properly decide the case upon that evidence, if the defendant consents to its being taken as sufficient SHEETUL PERSHAD MITTER *v* JUNMEJOY MULLICK [12 W. R, 244

CHOOLIE LALL *v* KOKIL SINGH 19 W. R., 248

9 ———— **Conflict between Judge's memoranda and recorded evidence.**—Where there is a conflict between a Judge's memoranda of evidence and the recorded depositions of witnesses, the Court must be guided by the latter HEERANATH KOOERRE *v* BURM NARAIN SINGH [15 W. R, 375. 9 B. L. R, 274

10. ———— **Questions of evidence.**—Questions as to the admissibility of evidence should be decided as they arise, and should not be reserved until judgment in the case is given JADU RAI *v* BHUBOTARAN NUNDY I. L. R., 17 Calc, 173

RAMJIBUN SEROWJY *v.* OGHORE NATH CHATTERJEE . . . I. L. R, 25 Calc, 401 [2 C. W. N, 188

11. ———— **Documentary evidence, Dealing with**—*General rules*—When a document is tendered, it is the first business of a Court to satisfy itself whether the document is admissible at all If not evidence between the parties it should be rejected at once. If an admissible document comes under the class which requires proof, it should be distinctly noted that it is admitted on the record subject to proof, in order that, if no proof be offered the opposite party may ask the Court to take it off the record MANSON *v* GOLAM KABBIA MOONSHEE [15 W R, 490

12 ———— **Evidence not adduced in former suit**—*Ground for rejecting evidence.*—Documentary evidence tendered by a plaintiff cannot be rejected merely because it has not been adduced in a former suit to which plaintiff was a party PUREEJAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY [9 W R., 380

13 ———— **Production of false document**—*Duty of Court*—The production in evidence of a forged document by a party to a suit does not relieve the Court from the duty of examining the whole evidence adduced on both sides, and of deciding the case according to the truth of the matters in issue SURNOMOYEE *v* SUITEESCHUNDER ROY [2 W. R, P. C, 13

CHOWDHRY CHUTTARSAL SINGH *v* GOVERNMENT [3 W. R., 57

KULTOO MAHOMED *v.* HURDEE DOSS [19 W R., 107

GOBISOOLLA GAZEE *v* GOOROODOSS ROY [2 W R, Act X, 99

BENGAL INDIGO Co *v* TARINEE PERSHAD GHOSE [3 W. R, Act X, 149

14. ———— **Alteration in document**—

15. ———— **Possession of title-deeds**—*Absence of proof of acquisition of possession*—The mere fact of possession of title deeds without any very satisfactory proof of the mode by which possession of them was acquired was held by the Privy Council to be outweighed by the other adverse circumstances of the case KRIPAMOYEE DEBIA *v* ROMANATH CHOWDHRY . 2 W. R., P. C., 1

KRIPAMOYEE DEBIA *v* GIRISH CHUNDER LAHOREE [8 Moore's I A., 467

16. ———— **Reasons for disbelief**—*Omission to give reasons for not believing evidence*—Where the lower Appellate Court was directed by the High Court to try a particular point, *viz*, whether the plaintiff had proved actual possession within twelve years of suit, and the Court, in dealing with the evidence, observed that it would not rely on private documents and on the witnesses as 'they were not of much importance and were easily procured," and rejected survey papers coming from proper custody, as being papers easy to alter and

EVIDENCE—CIVIL CASES—*continued.*

2. ACCOUNTS AND ACCOUNT BOOKS —*continued.*

32. ———— Account books of factory—*Payment of rent.*—The account books of a factory, regularly sworn to by the manager, are legal evidence of payment of rent. KALEE KANT MOJOOMDAR *v.* WATSON . . . . 2 W. R., Act X, 75

33. ———— *Evidence Act, 1872, s. 34.*—Factory books cannot be used as independent primary evidence of the payment to which the entries refer ; –Act I of 1872, s. 34. QUEEN *v.* HURDEEP SAHOY . . 23 W. R., Cr., 27

34. ———— Pymaish accounts—*Evidence of right to property.*—An entry in the pymaish account is not *per se* sufficient evidence to establish a right to property which is denied. KESHAVAN *v.* VASUDEVAN . . I. L. R., 7 Mad., 297

35. ———— Accounts—*Evidence of reputation as to ownership of property—Suit to recover forest tracts from Government.*—In a suit by a zamindar to recover certain forest tracts from Government, the plaintiff relied on certain accounts called Ayakut accounts as furnishing proof of the inclusion of the said tracts within the limits of his zamindari. The District Judge refused to accept these accounts as evidence of reputation, because no evidence was produced to show for what purpose, by whom, and in what circumstances, these accounts were prepared, and what guarantee existed to ensure their accuracy. *Held* that, inasmuch as they were from time to time prepared for administrative purposes by village officers and were produced from proper custody and otherwise sufficiently proved to be genuine, they were admissible as evidence of reputation. No distinction can be drawn between evidence of reputation to establish and to disparage a public right. SIVA SUBRAMANIYA *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 9 Mad., 285

36. ———— Partnership books—*Act II of 1855, s. 53.*—*A & Co.* and *B & Co.* entered into a joint adventure in opium. *A & Co.* were to send money to various places to be handed to the agents, who were to buy and sell. They now claimed against *B & Co.* for money alleged to have been so sent after giving credit for sums received. The proof was the arrival of the money at *A & Co.*'s places of business supported by entries in *A & Co.*'s books at each place, but there was no proof of payment to the agents save such entries. As to remittances to the other places, the only evidence was the books of *A & Co.* at the place of despatch. *Held* that there was no evidence as to the latter claims; and as to the former, although the evidence appeared insufficient, the case would not be remanded, as the appellant, independent of these claims, had a balance against them. SETH LAKHMI CHAND *v.* SETH INDRA MULL [4 B. L. R., P. C., 31 : 13 W. R., P. C., 36 13 Moore's I. A., 365

37. ———— Account books of banking firm—*Suit for money unaccounted for—Proof of payment.*—Where the fact of payments by a banking firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the banker to the effect that his books were correctly kept is not sufficient to discharge the burden of proof that lies upon him ; particularly if he has the means of producing much better evidence. In a suit to recover moneys unaccounted for, where defendants plead payments endorsed on documents, and the endorsements purport to have been signed by the plaintiffs, the formal and regular method of proof is to call on the plaintiffs to admit or deny their signatures, and then to call upon witnesses to state whether they saw the plaintiffs sign or could speak to the handwriting or generally what took place. GUNGA PERSHAD *v.* INDERJIT SINGH . . 23 W. R., P. C., 390

38. ———— Bankers' account books—*Suit against representatives of customer for balance of account.*—In an action by bankers against the representatives of a deceased customer to recover a balance of an account alleged to be due to the plaintiff by the deceased at the time of his death, the production of the bankers' books, with the entries of the items constituting the demand, kept according to the established custom of mahajuns in India, is not of itself sufficient evidence to establish such a claim, strict proof of the debt being required. RAI SRI KISHEN *v.* RAI HURI KISHEN [5 Moore's I. A., 432

39. ———— Suit for balance of unadjusted account.—In a suit for a sum of money on an unadjusted account, plaintiff filed a memorandum (A) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court the plaintiff put in another memorandum (C) to explain memorandum (A). Defendant admitted that memorandum (C) was signed by him. It had reference to a period immediately preceding that for which the suit was brought. *Held* that memorandum (C) was rather evidence to support the originally stated cause of action, than an amendment of the claim or the substitution of one claim or cause of action for another. The case was one which should have been decided not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence. The mere omission of an accountable party, framing his own account, to carry forward into a new account a balance against himself existing in a former one can constitute no evidence in his own favour. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the cause. MULKA MUKHDRA *v.* TEKAETH ROY [14 W. R., P. C., 24

40. ———— Suit for balance of account—*Dekkan Agriculturists' Relief Act (XVII of 1879), s. 56—Signed balance of account—Attestation of account.*—A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot therefore be admitted in evidence, unless written by,

EVIDENCE—CIVIL CASES—*continued*

2 ACCOUNTS AND ACCOUNT BOOKS—*continued*.

Held that by itself the document was inadmissible But when further evidence was given by a witness

circumstance that the entry only indicated a conversion of the money into a new shape did not take away the character of its being an entry against interest ZAYNUB *v* HADJEE BABA CAZRANEE [2 Ind. Jur., N. S , 54

27. ———— *Hat chitta book —Evidence against vendors* —A hat chitta book is a document kept especially as a security for the vendor, and in the absence of fraud, it must be considered binding upon him GOPEEMOHUN ROY *v* ABDOOL RAJAH SURJUN NACODA 1 Ind Jur., N. S., 358

28. ———— *Disputed items of account, Proof of.*—In an action by a banking firm against another firm to recover a balance upon an account between them, the plaintiff put in evidence the account books of his firm, and the Inspector of the Court certified that the books were regularly kept, consistently with the rules of banking, and that they agreed with the account rendered by the plaintiff to the defendant The plaintiff, however, exam-

29. ———— *Evidence Act (I of 1872), s 34—Evidence as to whether hundis are genuine or not—Comparison of handwriting—Entries in account books regularly kept—Tests of correctness of such books—Interest on decree* —The High Court had reversed the finding of the first Court on an issue which, in effect, was whether

reference to entries corresponding with other independent evidence The Judicial Committee, on the whole evidence, affirmed the decision of the High

EVIDENCE—CIVIL CASES—*continued*

2 ACCOUNTS AND ACCOUNT BOOKS—*continued*

Court that the hundis were genuine In the decree, which gave interest to its date, they extended the period until payment JASWANT SINGH *v* SHEO NARAIN LAL . . I L R., 16 All, 157

S C TEWARI JASWANT SINGH *v* LALA SHEO NARAIN LAL . . L R, 21 I A, 6

30 ———— *Corroborative*

not clear whether he spoke from his personal

SANT BAKHSH . I L R., 18 All, 92

1872, the admissibility of books of account regularly kept in the course of business is not restricted to

Spinning and Weaving Co, I L. R, 4 Bom, 576, against the reception of an account book containing

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

52. ———— **Proceedings in former suit**—*Reversed decree.*—Where a plaintiff had been successful in both the lower Courts, and the decree which he had obtained was only reversed by the High Court on the ground that he was not entitled to the particular relief asked for, without the finding of the lower Appellate Cout and the pleadings of the parties being displaced,—*Held* that it was open to the plaintiff, in a subsequent suit against the same defendant, framed in a different way, to adduce the proceedings in the former suit as evidence for what they were worth. MOHESH CHUNDER BROHMOCHAREE *v.* DINO BUNDHOO BOSE [24 W. R., 265

53. ———— **Decision between co-defendants**—*Admissibility of decree in former suit—Evidence Act, s. 13.*—A finding in a former suit, in which the question was tried between all the parties to the present suit, was held to be admissible as evidence in this suit under the Evidence Act, s. 13, although the plaintiffs and defendants in the present suit were in form co-defendants in the former. GUTTEE KOIBURTO *v.* BHUKUT KOIBURTO [22 W. R., 457

54. ———— **Decision of Appellate Court where there is a decision of High Court in different proceedings on same point**—*Decrees declaring decree a simple money-decree, and one creating a lien.*—The decision of the High Court that a certain decree was only a money-decree and carried no lien has not any binding effect on a previous decision of a lower Appellate Court in another suit between different parties relating to other lands sold under the same decree, in which it was held that the decree gave a lien on the property sold, and the Appellate Court's decree was entitled to be treated as one in full force, notwithstanding the subsequent High Court decision. MAHOMED DANISH *v.* MAHOMED KAEM . . 25 W. R., 111

55. ———— **Former suit for partition**—*Partition of property as evidenced by deed without possession under it.*—A partition of property between members of a family, though evidence that the property is probably theirs, is no evidence against a third party unless it is shown that there has been some possession in accordance with the partition. DOORGA PERSHAD SINGH *v.* OPENDRONATH CHOWDHRY . . 12 W. R., 145

56. ———— **Depositions of witnesses in former suit in Collector's Court**—*Evidence of relationship of landlord and tenant.*—In a suit for arrears of rent of land for which no rent has ever been paid, where the plaintiff asks also for assessment of the rate of rent, and where the tenure had commenced thirty years previously and had been in the possession of defendant's grandfather, father, and himself without any rent having been paid,—*Held* that, in deciding whether the relation of landlord and tenant existed between the parties, the Civil Court was entitled to look at evidence taken in the Collector's Court, being that of witnesses who had been examined and cross-examined by the present defendant when the suit was originally tried there. KEDAR NATH CHUCKERBUTTY *v.* GOPEE NATH GHOSE [23 W. R., 426

57. ———— **Depositions of witnesses in former suit**—*Different parties.*—Copies of depositions given in suits in which defendant was not a party cannot be treated as evidence in a case in which he is a party. SHUMBO GEER GOSSAIN *v.* RAM JEWAN LALL . . . 8 W. R., 509

58. ———— **Copy of hustabood**—*Different parties.*—An authenticated copy of a hustabood of 1209 B.S., of which the original was put into the Collectorate by the zamindar according to Regulation VIII of 1800, was held to be no evidence against third parties, defendants in a rent suit. RAM NURSING MITTER *v.* TRIPOORA SOONDERY DASSIA [9 W. R., 105

59. ———— **Evidence of conduct**—*Statements made by parties managing properties in suit.*—The appellants filed an application for the admission in evidence of certified copies of certain judgments and decrees rejected by the lower Court. The appellants sought to make use of these documents, not as constituting matters in dispute *res judicata*, but as containing summaries of statements made by parties concerned in the management of the plaint properties and as evidence of conduct. *Held* that the documents were inadmissible in evidence. SUBRAMANYAN *v.* PARAMASWARAN [I. L. R., 11 Mad., 116

60. ———— **Decree for possession under s. 9, Specific Relief Act (I of 1877)**—*Subsequent suit "inter partes" for mesne profits—Admissibility in evidence of former decree.*—A decree for possession made by a Court under s. 9 of the Specific Relief Act (I of 1877) in a suit beyond the pecuniary limits of that Court's jurisdiction, although not *res judicata*, is some evidence of dispossession by the defendants in a subsequent suit against the same defendants to recover mesne profits. *Gujju Lall* v. *Fatteh Lal, I. L. R., 6 Calc., 171; Brojo Behari Mitter* v. *Kedar Nath Mozumdar, I. L. R., 12 Calc., 580; Surendra Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry, I. L. R., 13 Calc., 352;* and *Radha Churn Ghuttack* v. *Zumuroonissa Khatoon, 11 W. R., 83,* distinguished. *Run Bahadur Singh* v. *Lucho Koer, I. L. R., 1 Calc., 301,* referred to. JIAULLAH SHEIKH *v.* INU KHAN [I. L. R., 23 Calc., 693

(*b*) UNEXECUTED, BARRED, AND EX-PARTE DECREES.

61. ———— **Decree for kabuliat**—*Unexecuted decree—Evidence of amount of rent.*—A decree for a kabuliat for arrears of rent is evidence of the rent which the judgment-debtor is liable to pay only when he is called upon to execute such kabuliat, not where the decree has never been

EVIDENCE—CIVIL CASES—*continued*

2 ACCOUNTS AND ACCOUNT BOOKS —*concluded*

or under the superintendence of and attested by, a village registrar as required by s 56 of Act XVII of 1879 KANJI LADHA v DHONDE KONDAJI [I. L R , 6 Bom , 729

See DINGHA KAVARJI v HARGOVANDAS GOVARDHANDAS I. L. R , 13 Bom , 215

3 ACCOUNT SALES

falsify the account the onus lay upon him. DOOMUN v STEVENS 2 Ind Jur , N S , 5

42. ———— ———— *Consignment of goods to foreign market—Implied contract*—Where goods are consigned to be disposed of in a foreign market it is an implied term of the agreement by the consignor that the account-sales furnished by

him HODGSON v RUPCHAND HAZARIMUL [6 Bom , O C , 39

43 ———————— In an action brought by the plaintiffs for the balance due to them from the defendant in respect of shipments which

ING b B L R., 518

4 DECREES JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS

(*a*) GENERALLY

44. ———— Decree of competent Court —*Presumption.*—The decree of a competent Court must be presumed to be valid and binding on the

45 ———— Proceedings and decree in former suit—*Decision as to execution of will*—Where plaintiff and defendant respectively put in as evidence different portions of the proceedings in a

EVIDENCE—CIVIL CASES—*continued*

4 DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued*

the C urt

46 ———— Decree in previous suit— ct of a previous nt suit stated

I. L. R., 10 Calc, 89

47 ———— Decree as to authenticity of deeds —A Judge may lawfully employ a former decision for the purpose of showing that documents which bear such a distant date that their attestation or proof in the usual form is impossible had been used publicly on a former occasion in the same Court when they had been found to be authentic though such decision is not evidence in the case NAGUR SINGH v MUSHUNUND KHAN SIRDAR [11 W R. 309

48 ———— Decree as to situation of chur for a portion of which suit is brought. —A former decision as to the situation of a chur when an eight anna share was in dispute is not binding as an estoppel although it is strong evidence in a suit in which the other moiety is disputed NAZIMOODEEN AHMED CHOWDHRY v WISE [5 W R , 282

49 ———— Decree for possession—*Suit*

Reversing on appeal under Letters Patent ZAMURDOONISSA v RADHA CHURN GHUTTUCK [9 W R , 590

50 ———— Decree in summary suit— *Suit for arrears of rent*—In a suit for arrears of rent decrees in summary suits against the defendant for rent for years subsequent to those in respect of which the rent is claimed are no evidence of such rent being due but such a decree is *prima facie* evidence in support of a claim for rent for the next ensuing year AFSUROODEEN v SHOROOSHEE BULA DABEE Marsh , 558 2 Hay, 664

51 ———— Decree declaring amount of rent payable—*Suit for rent*—A decree in a former suit declaring the rent payable by a raiyat is evidence of the rent still payable by him unless rebutted by him by proof of change in the rent CHUNDER COOMAR ROY v ZEEMUNTOOLLAH SIRDAR [W R., 1864, Act X, 95

MONMOHENEE DEBEE v BINODE BEHAREE SHAHA [25 W. R., 10

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

such decree. Neither a recital in the decree of the rate of rent alleged by the plaintiff nor a declaration in it as to the rate of rent which the Court considers to have been proved would operate in such a case so as to make that matter a *res judicata*, assuming that no such declaration were asked for in the plaint as part of the substantive relief claimed, the defendant having a proper opportunity of meeting the case. MODHUSUDUN SHAHA MUNDUL v. BRAE . . I. L. R., 16 Calc., 300

74. ———— *Evidence of amount of rent.*—An *ex-parte* decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex-parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decree. *Held* that the decree was not conclusive evidence of the amount of rent due from the defendant or of the questions with which it dealt. *Birchunder Manickya v. Hurrish Chunder Dass, I. L. R., 3 Calc., 383*, distinguished. NILMONEY SING v. HEERA LALL DASS [I. L. R., 7 Calc., 23: 8 C. L. R., 257

75. ———— *Ex-parte decree for arrears of rent—Evidence of rate of rent.*—An *ex-parte* decree for arrears of rent which has been duly executed is some evidence as to the rate of rent. *Bukshi v. Nizamuddi, I. L. R., 20 Calc., 505, per* NORRIS, *J.*, followed. MADHU MANJARI CHOWDHURANI v. JHUMAR BABI [1 C. W. N., 120

MATI LAL PODDAR v. NRIPENDRA NATH ROY CHOWDHRY . . . 2 C. W. N., 172

76. ———— Decree against registered co-tenant—*Acquiescence of others in the name being registered—Evidence of rate of rent.*—When the joint tenants of a homestead holding allow one of them to have his name registered in the landlord's books, a decree obtained by the landlord against such registered tenant is admissible in evidence against the other tenants as to the rate of rent. MATI LAL PODDAR v. NRIPENDRA NATH ROY CHOWDHURY . . . 2 C. W. N., 172

(c) DECREES AND PROCEEDINGS NOT INTER PARTES.

77. ———— Former decrees and proceedings—*Different parties.*—Decrees and proceedings to which the defendants were not parties are not admissible as evidence against them. SUTTO SURN GHOSAL v. DHONE KRISTNO SIRCAR [1 W. R., 88

MAHOMED ALI v. SHURUM ALI . 8 W. R., 422

LALL SINGH v. MODHOOSUDUN ROY [8 W. R., 426

JOY PROKASH SINGH v. AMEER ALLY [9 W. R., 91

SURUT SOONDUREE DEBIA v. RAJENDUR KISHORE ROY CHOWDHRY . . 9 W. R., 125

MOHA MOYEE DOSSEE v. JOODHISTER DEB [10 W. R., 112

SHEO DYAL POOREE v. MOHADEE PERSHAD [10 W. R., 477

AMEEROONNISSA KHATOON v. JUGGERNATH ROY [11 W. R., 113

KASHEE CHUNDER MOJOOMDAR v. SEETUL CHUNDER TULLAPATTUR . . . 17 W. R., 151

MAHOMED BUX v. ABDOOL KUREEM alias ABOO [20 W. R., 458

ANUND MOHIM GHUTTUCK v. SOORJI KANTO ACHARJEE CHOWDHRY . . 22 W. R., 538

LALLA MOHADEO DYAL SINGH v. CHUNDEE PERSHAD . . . . . . 25 W. R., 57

78. ———— Judgment in former case—*Different parties—Similar interest.*—A judgment in another case is of itself insufficient evidence against a party who had no part in it, even though his interests may be of a similar nature to those of the parties then suing. DOST MAHOMED KHAN CHOWDHRY v. SOOLOCHANA DABIA . 1 W. R., 270

79. ———— *Different parties—Inapplicability of English rule.*—Remarks on the admissibility in evidence of judgments in previous suits, and on the applicability in all its strictness to the Courts of this country of the English rule that, except in matters of general interest or public rights, a verdict in a previous suit, to be admissible, must be between the same parties, or parties through whom the parties actually in litigation claim. DOORGA DOSS ROY CHOWDHRY v. NURENDRO COOMAR DUTT CHOWDHRY . . . . 6 W. R., 232

80. ———— *Subsequent suit brought by strangers to former suit.*—The judgment in a former suit against the same defendants in respect of the same subject-matter is admissible, though not conclusive, evidence against the defendants in a subsequent suit brought against them by other parties. LALA RANGLAL v. DEONARAYAN TEWARY . . 6 B. L. R., 69: 14 W. R., 201

81. ———— *Judgment admissible against third party.*—A judgment *inter partes* may be received in favour of a stranger as against a party thereto, not as concluding such party, but as evidence for what it is worth. BHYRUB NATH TYE v. KALLY CHUNDER CHOWDRY . 16 W. R., 112

EVIDENCE—CIVIL CASES—*continued.*

4 DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued*

executed and no kabuliat has ever been given HEERA LALL SEAL v. JOHEER MOLLAH [20 W. R., 273

BANEE MADHUB BANERJEE v. BHAGUT PAL [20 W. R., 466

MAHOMED AKBAR v. REILY 24 W. R., 447

MISSER v. NASEER ALI 21 W. R., 33

62 ———— **Decree assessing rent**—*Evidence on question of title*—A decree of the High Court declaring plaintiff's right to assess rent upon land held by defendant as lakhiraj is a binding decision between the parties on the question of title, even though incapable of execution by reason of lapse of time, and should not be excluded from consideration by the Deputy Collector RAMSOONDRY DABEE CHOWDRAIN v. RAM PERSHAD SADHOO [8 W. R., 288

63. ———— **Decree barred by limitation**—*Decree for rent—Evidence of rate of rent*—A decree for rent is admissible in evidence against a defendant to prove the rate of rent he was liable to pay, although the decree has not been executed for three years, and has therefore become barred under the law of limitation BEERCHUNDER MANIK v. RAMKISHEN SHAW [14 B. L. R., P. C., 370 : 23 W. R., 128

64. ———— *Decree for rent—Evidence of receipt of rent*—A decree for rent in a suit under Act X of 1859 against the defendant, an intervenor, which has remained unexecuted for more than three years, is not in a subsequent suit, admissible in evidence to show that the defendant had not, during a period subsequent to the decree, been in *bond fide* receipt of the rent RAM SUNDER TEWARI v. SRIMUNT DEWASI [14 B. L. R., 371 note : 10 W. R., 215

65 ———— **Ex parte decree unexecuted and barred by limitation**—*Evidence of title*—A decree *ex parte* becomes inoperative if not executed within the time allowed by law, and a party who obtains such a decree, having accepted his status at variance with that assigned to him under the decree for a term beyond limitation, cannot, at any subsequent period, rely upon that decree as proof of his title, nor can it be accepted as such by the Courts RAMJEEAWAN RAI v. DEEP NARAIN RAI [Agra, F. B., 78 : Ed. 1874, 60

66. ———— *Evidence of rent being due*—A decree obtained *ex parte* is in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit Such a decree is admissible as evidence, even though the period for executing it has expired Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, as evidence of the rent due to him from the defendant,—*Held* that the decree was properly admissible as evidence, though the plaintiff had not taken out execution upon that decree, and his right to take out execution was barred by limitation BIRCHUNDER MANICKYA v. HURRISH CHUNDER DASS . I. L. R., 3 Calc., 383 : 1 C. L. R., 585

67. ———— **Ex-parte decree.**—A judgment adduced as evidence is not to be rejected merely on the ground of its having been *ex parte* OJOOY SHAHOO v. ANUND SINGH 10 W. R., 257

CHUNDER COOMAR DUTT v. JOY CHUNDER DUTT MOJOOMDAR 19 W. R., 213

68. ———— *Different parties*—An *ex-parte* decree is admissible in evidence *quantum valeat*, even against a person who was no party to it A decree obtained by one party against another cannot be considered as conclusive evidence against the title of a third party HUNSA KOOER v. SHEO GOBIND RAOOT 24 W. R., 431

69. ———— *Evidence in suit for rent*—The fact of a decree in a rent-suit having been given *ex parte* does not detract from its value as evidence of the relationship of landlord and tenant between plaintiff and defendant, provided due notice has been served on the latter, and such a decree may be filed as evidence without the judgment on which it was founded TOOMY v. DURRUP SINGH . . 12 W. R., 473

70. ———— *Admissibility and effect of*—Where a suit is tried *ex-parte* and no issues of fact are raised beyond the general issue involved in the claim, the decree considered as evidence is, only evidence that the amount decreed was at the time due from the defendant to the plaintiff. GOYA PERSHAD AUBUSTEE v. TARINEE KANT LAHOREE CHOWDHRY 23 W. R., 149

71. ———— *Decree under which nothing has been recovered*—A decree is evidence, [illegible]
under it
even an *ex*
is tendered [illegible]
RUN MAHOMED 24 W. R., 254

72. ———— *Summary decree—Evidence of rate of rent* *Ex-parte* summary decrees are no evidence of the rate of rent leviable. ANNA PURNA DASI v. JOYKISTO MOOKERJEE [W. R., 1864, Act X, 107

MUFEEZOODDEEN *alias* BHALOO MEAN v. WOOLFUTOONISSA BIBEE 7 W. R., 194

73 ———— *Estoppel—Ex-*
[illegible]

parties, so that the defendant is concluded upon it by

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

85. ———————— *Evidence to explain inconsistency.*—*Held* that the Subordinate Judge was quite justified in using a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Munsif had rejected that evidence. RADHANATH DASS *v.* KHELLUT CHUNDER GHOSE . . . . . . 17 W. R., 558

86. ———————— *Ownership of property.*—In a suit to have it declared that a certain howla was the property of *W*, plaintiff's judgment-debtor, defendants contended that it had been the property of another person, and that they had purchased it in execution of a decree against that person. The lower Appellate Court found for the defendants on the basis of a decree dismissing a suit by *W*'s representatives to have the property declared to be *W*'s. *Held* that the decree could not bind the plaintiffs who were not parties to it. GOLUCKMONEE DEBIA *v.* RAMMONEE BOSE . . 12 W. R., 21

87. ———————— *Evidence of possession—Admissibility in evidence of decree in former suit.*—The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent. *Held* (MITTER, J., dissenting) that the decree in the former suit was not admissible as evidence in the present suit. SURENDER NATH PAL CHOWDHRY *v.* BROJO NATH PAL CHOWDHRY

[I. L. R., 13 Calc., 352

88. ———————— *Decree in former suit showing lands were mal—Suit by auction-purchaser for rent—Evidence Act, s. 11.*—Where the plaintiff, who was an auction-purchaser of a share in certain lands, sued for arrears of rent against the owners of another share in the same, it was admitted that certain plots of the estate were held in exclusive possession. The defendants claimed these plots as lakhiraj. The plaintiff put in evidence certain decrees in respect of such plots in which it was held, against the persons in possession at the time, that the lands were mal. *Held* that, having regard to the circumstances and the particular defence set up, that the decrees were admissible in evidence, not as showing that the lands were mal or lakhiraj, but as showing that rent had been successfully claimed in respect of the lands. HIRA LAL PAL *v.* HILLS

[11 C. L. R., 528

89. ———————— *Decrees as to rate of rent in former suits.*—Decisions as to rates of rent in previous suits are admissible in a subsequent suit as evidence of local usage, though the parties in the subsequent suit were not parties to the previous suits. EASWARA DOSS *v.* PUNGAVANACHARI . . . I. L. R., 13 Mad., 361

90. ———————— *Rent suit—Decree obtained ex-parte against registered tenant.*—In a suit for rent the plaintiff claimed that he was entitled to payment both in cash and kind, and, in order to show that he was entitled to recover rent in kind, tendered two *ex-parte* decrees obtained by his predecessor against the persons registered as tenants of the tenure at the time the decrees were obtained, such decrees being for rent both in cash and kind. It appeared that the defendant was the owner of the tenure at the time the two decrees were passed, having acquired the tenure by foreclosure, although he had not registered the transfer in the plaintiff's books, and that he was not made a party to the suits in which the decree was passed. *Held* that, as the defendant was not a party to the suits in which the decrees were obtained, and did not claim through the parties against whom they were passed, they were not admissible in the suit as evidence against him. The decision in *Sham Chand Koondoo* v. *Brojonath Pal Chowdhry, 12 B. L. R., 484: 21 W. R., 94*, does not lay down that a decree against a registered tenant is to be evidence for ever in future proceedings against an unregistered transferee not a party to it; but all that case decides is, that for the purpose of satisfying that particular decree an unregistered transferee is bound by it, whether he was a party to the suit or not, the tenure being liable for the rent. RAM NARAIN RAI *v.* RAM COOMAR CHUNDER PODDAR

[I. L. R., 11 Calc., 562

91. ———————— *Evidence of adoption.*—In a former *bonâ fide* litigation to which the defendant was not party, the status of the plaintiff as an adopted son was in issue and disposed of in his favour. *Held* that that was good evidence of the adoption in this case, in the absence of better evidence for the defendant. SEETARAM *v.* JUGGOBUNDHOO BOSE . . . . 2 W. R., 167

92. ———————— *Evidence of adoption.*—A decree to which the defendant was not a party is admissible as evidence of great weight, though not as an estoppel against him, on the question of the plaintiff's adoption, which was established by it in the presence of certain members of the plaintiff's family who were interested in contesting its validity. ANNUNDNATH ROY *v.* THAKOOR DOSS MOZOOMDAR

[2 Hay, 472

93. ———————— *Evidence Act (I of 1872), s. 35—Judgments and private documents.*—In a suit for partition of family property, it became necessary for the plaintiff to prove that his grandfather had been adopted by *A*, and he tendered in evidence judgments from which it appeared that *A*'s brother, who was the grandfather of defendant No. 1, had sued to recover moneys due to *A*, alleging that the adopted son was an infant living under his protection. An adoption of the father of the defendant No. 1 by *D* was also put in issue; and to prove

EVIDENCE—CIVIL CASES—*continued*

4 DECREES JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued*

82 ———— *Suit by the purchaser at execution sale to recover the purchase money*—The plaintiff purchased land sold in execution of a decree in favour of the defendant but was subsequently evicted by the son of the judgment debtor he now sued in 1889 to recover the purchase money paid by him on the ground that the judgment debtor possessed no saleable interest in the property in question It appeared that the son of the judgment debtor had obtained a decree in 1888 against the plaintiff and others declaring t
saleable in
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support of
judgment
against the defendant *Held* that the judgment in the former suit was not evidence against the

the plaintiff possessed no legal interest there n NILAKANTA v IMAMSAHIB I L R, 16 Mad 361

83 ———— *Evidence Act (I of 1872) ss 8 9 13 40 43—Admissibility in evidence of judgments not inter partes—Judgment in criminal case*—*P* brought a suit against *K* a Hindu widow to establish his right of inheritance in certain villages which had belonged to *K*'s husband and to have it declared that her husband died childless and that *K* had falsely put forward a child of unknown parentage as her husband's son *K* was the only defendant and she maintained that the child in question was her son by her deceased husband. The suit was dismissed on the merits by the Court of first instance and by the High Court on appeal After *K*'s death *P* brought a suit against *D* whom the Collector as manager of the Court of Wards had accepted as the minor son of *K* and against the Collector as such manager for possession of the same villages upon the same grounds as those put forward in the former suit *Held* by the Full Bench that the judgments of the Court of first instance and the High Court in the former suit did not operate as *res judicata*

either of them a transaction or a fact within the meaning of s 13 But the record and not the

time claimed and disputed the word right in both cls (*a*) and (*b*) of s 13 including a right of ownership and not being confined as held by the majority in *Gujju Lall* v *Futteh Lall* I L R 6 Calc 171 to incorporeal rights But the reasons given in the judgments in the former suit for the decree could not be considered in the present suit *Per* STRAIGHT J—Under s 43 of the Evidence Act the question was whether the existence of the former judgments was a fact in issue or relevant under some other provision of the Act Here the question was not as to the existence of the former judgments and decrees as a fact in issue or relevant fact but though s 43 declared judgments orders and decrees other than those mentioned in ss 40 41 and

in which the defendant's right as the living son of *K*'s husband to obtain proprietary possession of his father's estate was claimed and recognized and to establish that such a transaction or instance took place they were the best evidence *Per* BRODHURST J—That for
JACKSON and
Fatteh Lall
in the former suit were not admissible in evidence
Per
diss
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been alleged that the defendant was in reality one *R* the defence attempted to use as evidence a judgment in a criminal case in which the defendant was

on the principle that in cases of doubt a Judge should decide in favour of admissibility rather than of non

GORAKHPUR v PALAKDHARI SINGH [I L R, 12 All, 1

84 ———— Decree not inter partes—*Proceedings of Revenue Court*—Decrees obtained by either party to which the other was not a party or
s though
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LEE DASS
HAZARAH I. L. R., 194

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

85. ———— *Evidence to explain inconsistency.*—*Held* that the Subordinate Judge was quite justified in using a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Munsif had rejected that evidence. RADHANATH DASS *v.* KHELLUT CHUNDER GHOSE . . . . . 17 W. R., 558

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[I. L. R., 13 Calc., 352

88. ———— *Decree in former suit showing lands were mal—Suit by auction-purchaser for rent—Evidence Act, s. 11.*—Where the plaintiff, who was an auction-purchaser of a share in certain lands, sued for arrears of rent against the owners of another share in the same, it was admitted that certain plots of the estate were held in exclusive possession. The defendants claimed these plots as lakhiraj. The plaintiff put in evidence certain decrees in respect of such plots in which it was held, against the persons in possession at the time, that the lands were mal. *Held* that, having regard to the circumstances and the particular defence set up, that the decrees were admissible in evidence, not as showing that the lands were mal or lakhiraj, but as showing that rent had been successfully claimed in respect of the lands. HIRA LAL PAL *v.* HILLS

[11 C. L. R., 528

89. ———— *Decrees as to rate of rent in former suits.*—Decisions as to rates of rent in previous suits are admissible in a subsequent suit as evidence of local usage, though the parties in the subsequent suit were not parties to the previous suits. EASWARA DOSS *v.* PUNGAVANACHARI . . . . I. L. R., 13 Mad., 361

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[I. L. R., 11 Calc., 562

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92. ———— *Evidence of adoption.*—A decree to which the defendant was not a party is admissible as evidence of great weight, though not as an estoppel against him, on the question of the plaintiff's adoption, which was established by it in the presence of certain members of the plaintiff's family who were interested in contesting its validity. ANNUNDNATH ROY *v.* THAKOOR DOSS MOZOOMDAR

[2 Hay, 472

93. ———— *Evidence Act (I of 1872), s. 35—Judgments and private documents.*—In a suit for partition of family property, it became necessary for the plaintiff to prove that his grandfather had been adopted by *A*, and he tendered in evidence judgments from which it appeared that *A*'s brother, who was the grandfather of defendant No. 1, had sued to recover moneys due to *A*, alleging that the adopted son was an infant living under his protection. An adoption of the father of the defendant No. 1 by *D* was also put in issue, and to prove

EVIDENCE—CIVIL CASES—*continued*

4 DECREES JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued*

it defendant No 1 tendered in evidence decrees in which the alleged adopted son was so described and also other documents (to which neither defendant No 5 who denied the adoption nor his father was a party) where the same description was used *Held* that the documents tendered in evidence of the two adoptions above mentioned respectively were admissible in evidence KRISHNASAMI AYYANGAR *v* RAJA GOPALA AYYANGAR I L R, 18 Mad, 73

94 ——— *Former suit on same matter between different parties—Decision on public right* —In a suit by the trustees of certain pagodas for the recovery of six villages on behalf of the pagodas from the defendant the manager of the

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95 ——— *Evidence Act ss 13 43* —In a suit to establish an itmamee right to certain lands the plaintiff produced certain tran

that the defendant was not a party to the suits *Held* that the proceedings in such suits came within the meaning of "any transactions" in the Evidence Act

OMER DUTT JHA *v* BURN 24 W. R, 470

96 ——— *Evidence Act ss 13 42—Relevancy of judgments in suits in which right was asserted to collect dues for a temple*—

temple were relevant under s 13 of the Evidence Act as being evidence of instances in which the right claimed had been asserted *Held* also that the said judgments were relevant under s 42 of the said Act as relating to matters of a public nature RAMASAMI *v* APPAVU I L R, 12 Mad, 9

97 ——— *Record of transaction by which rights of parties were recognized—Evidence Act s 13* —Where a suit was disposed of

EVIDENCE—CIVIL CASES—*continued*

4 DECREES JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued*

according to a compromise of which the judgment set out the terms in the form of a recital —*Held* that the

s 13 ROOP CHAND BHUKUT *v* HUR KISHEN DASS [23 W R, 162

98 ——— *Evidence Act (I of 1872), s 35—Title deeds—Petition of plaintiff s*

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dants nor their predecessors were parties to any of these instruments or proceedings *Held* that all these documents were relevant and admissible in evidence VENKATASAMI *v* VENKATREDDI [I L R., 15 Mad, 12

99 ——— *Evidence Act (I of 1872) s 13—Document executed by other tenants —Suit for ejectment* —In a suit for possession of land the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated The defendants who had obstructed the plaintiffs from taking possession of part of the land claimed to have permanent occupancy rights and asserted that the shrotriemdars were entitled not to the land itself but to melvaram only To meet this allegation the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely The defendants had received no notice to quit before suit *Held* that the documents above referred to were admissible under Evidence Act s 13 VYTHILINGA *v* VENKATACHALA I L R., 16 Mad., 194

100 ——— *Decision as to*

though the present holders of the land may not be the legal representatives of the persons who were bound by the former decision yet the decision is entitled under s 13 Evidence Act to consideration as evidence in support of the plaint ANUND CHUNDER CHUND *v* GUNEE GAZEE 25 W R., 180

101 ——— *Road cess papers —Deed of sale—Evidence Act s 13* —Under the

BUNDHOO MOHANTI 23 W R., 293

102 ——— *Decrees in former suits as to custom—Evidence Act, s 13* —In

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

determining the right to the office of audhikari of the Diflu Sastur at Nowgong, where defendant claimed to be audhikari and alleged the headship was elsewhere, previous judgments or decrees involving instances in which the right and custom in question had been successfully asserted were held admissible in evidence under the provisions of Act I of 1872, s. 13. KOONDO NATH SURMA GOSSAMEE *v.* DHEER CHUNDER SURMA ODHIKAR GOSSAMEE . . **20 W. R., 345**

103. ——— *Evidence Act (I of 1872), s. 13—Custom—Admissibility in evidence of judgments not "inter partes."*—In a suit for rent the amount of the land held by the defendant was questioned, and it was contended that the land must be measured with a hath of 21⅜ inches and not one of 18 inches, as claimed by the plaintiff zamindar. Certain decrees obtained by the zamindar against other tenants in the same pergunnah in suits in which 18 inches had been taken as the hath were tendered in evidence in support of the plaintiff's contention that the customary hath in the pergunnah was one of 18 inches. *Held* that such decrees were admissible in evidence under the provisions of s. 13 of the Evidence Act, as they furnished evidence of particular instances in which a custom was claimed. JIANUTULLAH SIRDAR *v.* ROMONI KANT ROY. PIR BUKSH MUNDUL *v.* ROMONI KANT ROY **I. L. R., 15 Calc., 233**

104. ——— *Decrees of competent Courts—Evidence of custom—Matter of public interest.*—The decrees of competent Courts are good evidence in matters of public interest, such as the existence of customs of succession in particular communities. Such decisions form an exception to the general rule, which excludes *res inter alios actæ.* BAI BAIJI *v.* BAI SANTOK . **I. L. R., 20 Bom., 53**

105. ——— **Decision not inter partes** —*Suit for confirmation of title and for sale.*—Plaintiff, as representing decree-holder, sued for confirmation of title and for sale of the property in execution. Defendant's case was that he was purchaser for valuable consideration from the original judgment-debtor. The lower Appellate Court set aside this plea on the ground that the High Court had declared in special appeal, in a previous litigation between defendant and another party, that the purchase in question was spurious, null, and void. *Held* that the decision of the High Court, though not binding and final evidence against the defendant in this suit, was sufficient to give plaintiff a *primâ facie* case which, by the rules of pleading, it was for defendant to rebut. ABDOOL KAREEM *v.* SUFFER ALLY . . **11 W. R., 118**

106. ——— **Judgments not inter partes**—*Suit for possession—Evidence of character of possession.*—In a suit for possession of land, the defendant, in order to show the character of his possession, offered in evidence a judgment obtained by him in a suit to which the plaintiff or his predecessors in title were not parties. *Held* that the judgment was admissible in evidence. PEARI MOHUN MUKERJI *v.* DROBOMOYI DABIA . **I. L. R., 11 Calc., 745**

EVIDENCE—CIVIL CASES—*continued.*

4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued.*

107. ——— *Liability of land for rent.*—In a suit for khas possession of land upon the allegation that the defendant refused to give up possession or to pay rent for it, a decree declaring that the land in suit was liable for rent was tendered in evidence. The decree had been obtained by an auction-purchaser against the defendants, but the plaintiff did not claim title through the auction-purchaser who had in fact been treated as a trespasser and ejected. *Held* that the ruling in the case of *Gujju Lall* v. *Fatteh Lall, I. L. R., 6 Calc., 171,* governed the case, and that the decree was inadmissible in evidence. Although the case of *Hira Lall Pal* v. *Hills, 11 C. L. R., 528, inter partes* may be received in evidence, it does not lay down that such judgments can be treated as conclusive evidence of the facts with which they deal. MOHENDRA LAL KHAN *v.* ROSOMOYI DASI . **I. L. R., 12 Calc., 207**

108. ——— *Evidence Act, ss. 11, 13, and 40—Admissibility of such judgment.* —The plaintiff sued to recover arrears of rent for a certain shop, alleging the annual rent to be R250. The defendant contended that it was only R60. The defendant and the plaintiff's brother were partners in business, and the plaintiff relied upon the evidence of his brother and on two entries in the firm's books in the writing of his brother. To prove the *bonâ fides* of the entries, the plaintiff tendered in evidence a judgment passed against the defendant in a suit brought by the defendant against the plaintiff's brother, charging him with having improperly debited their firm with R250 as the rent of the shop. *Held* that the judgment was not admissible as evidence against the defendant in the present suit. *Naranji Bhikabhai* v. *Dipa Umed, I. L. R., 3 Bom., 3,* distinguished. RANCHHODDAS KRISHNADAS *v.* BAPU NARHAR . . . **I. L. R., 10 Bom., 439**

109. ——— *Subjects of public nature—Proof of custom of pre-emption.*—*Held* that in subjects of a public nature, such as to prove custom of pre-emption, etc., previous judgments between other parties are admissible as evidence, but must not be regarded as conclusive evidence. TOTA RAM *v.* MOHUN LALL . . . **2 Agra, 120**

110. ——— *Suit for pre-emption—Evidence of custom—Decrees enforcing right.*—In suit for pre-emption based on custom, evidence of decrees passed in favour of such a custom, in suits in which it was alleged and denied, is admissible evidence to prove its existence. The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom. *Gujju Lal* v. *Fatteh Lal, I. L. R., 6 Calc., 171,* distinguished. *Koodoottoollah* v. *Mohinee Mohun Shaha, 5 Rev. Civ. and Cr. Rep., 290, Sheo Churn* v. *Goodur, 3 Agra, 138,* and *Luchman Rai* v. *Akbar Khan, I. L. R., 1 All., 440,* referred to. GURDAYAL MAL *v.* JHANDU MAL . . **I. L. R., 10 All., 585**

111. ——— *Evidence of custom.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a

EVIDENCE—CIVIL CASES—*continued*

4 DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*continued*

it, defendant No 1 tendered in evidence decrees in which the alleged adopted son was so described and also other documents (to which neither defendant No 5, who denied the adoption, nor his father was a party) where the same description was used. *Held* that the documents tendered in evidence of the two adoptions above mentioned, respectively, were admissible in evidence KRISHNASAMI AYYANGAR v RAJAGOPALA AYYANGAR . I L. R., 18 Mad, 73

94. ——— *Former suit on same matter between different parties—Decision on public right.*—In a suit by the trustees of certain pagodas for the recovery of six villages on behalf of the pagodas from the defendant, the manager of the

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95. ——— *Evidence Act, ss 13, 43*—In a suit to establish an itmamee right to certain lands, the plaintiff produced certain tran-

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OMER DUTT JHA v BURN 24 W. R., 470

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[illegible]

temple were relevant under s 13 of the Evidence Act, as being evidence of instances in which the right claimed had been asserted. *Held* also that the said judgments were relevant under s 42 of the said Act as relating to matters of a public nature RAMASAMI v APPAVU . . I L. R., 12 Mad., 9

97. ——— *Record of transaction by which rights of parties were recognized—Evidence Act, s 13*—Where a suit was disposed of according to a compromise, of which the judgment set out the terms in the form of a recital,—*Held* that the

[illegible]

s 13 ROOP CHAND BHUKUT v. HUR KISHEN DASS [23 W. R, 162

98. ——— *Evidence Act (I of 1872), s 35—Title-deeds—Petition of plaintiff's*

[illegible]

instruments or proceedings *Held* that all these documents were relevant and admissible in evidence VENKATASAMI v. VENKATREDDI [I L R, 15 Mad, 12

99. ——— *Evidence Act (I of 1872), s 13—Document executed by other tenants—Suit for ejectment*—In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated The defendants, who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy rights, and asserted that the shrotriemdars were entitled not to the land itself, but to melvaram only To meet this allegation, the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely The defendants had received no notice to quit before suit *Held* that the documents above referred to were admissible under Evidence Act, s 13 VYTHILINGA v VENKATACHALA . I. L. R., 16 Mad., 194

100. ——— *Decision as to*

[illegible]

101 ——— *Road-cess papers—Deed of sale—Evidence Act, s 13.*—Under the Evidence Act, s 13, road cess papers and a deed of sale are evidence *quantum valeant* So is a decree, although the party against whom it is treated as evidence was no party to it. DAITARI MOHANTI v JUGO BUNDHOO MOHANTI . . . 23 W.R., 203

102. ——— *Decrees in former suits as to custom—Evidence Act, s. 13*—In

EVIDENCE—CIVIL CASES—*continued.*

7. MAPS—*continued.*

146. ———— Map made by ameen—*Suit to establish title.*—*Held* in a suit to establish title to land, where an ameen's map which professed to show the daghs of a hustabad chittah was not questioned by either party, it was not open to the Court to question its correctness, and to try whether it was possible to construct any map from the chittah. BRIJANATH CHOWDRY *v.* LALL MEEAH MUNNEE POOREE . . . . . . 14 W. R., 391

147. ———— Collectorate map—*Map not made by authority of Government.*—Where a civil ameen makes a local enquiry as to the situation of certain disputed lands with reference to the Collectorate map put in by the plaintiffs, and not objected to by the defendants who are present and recognize the boundary indicated as that whereon the enquiry is to be based, the map must be taken to be one which the parties recognize as correct and trustworthy, irrespective of the question whether it was prepared with the authority of Government. GUNGA NARAIN CHOWDHRY *v.* RADHIKA MOHUN ROY. RADHIKA MOHUN ROY *v.* GUNGA NARAIN CHOWDHRY . . . . . . 21 W. R., 115

148. ———— Schedule map, Copy of—*Measurement and demarcation of land.*—Where a copy (the original having been filed in another suit) of a schedule map showing the different plots of land belonging to each of several shareholders and defining their boundaries had, as appeared from various petitions on the record, been filed on more than one previous occasion, and relied upon by the parties to this suit, including the plaintiffs when it suited their purpose to do so, and where it appeared, moreover, that plaintiffs had on many previous occasions admitted the correctness of the map, and that their shares had been demarcated therein,—*Held* that the plaintiffs could not now sue for a fresh measurement and demarcation, and that the Judge, in not considering the copy of the map as binding on the plaintiffs, was wrong in his estimate of the weight to be given to it. ROMANATH ROY CHOWDRY *v.* KALLY PROSHAD ROY CHOWDHRY . 18 W. R., 346

149. ———— Survey and thak maps.—A survey map as well as a thak map is admissible as evidence. JUGDISH CHUNDER BISWAS *v.* CHOWDHRY ZUHOORUL HUQ . . . 24 W. R., 317

150. ———— Maps, Certified copies of.—Certified copies of maps are admissible in evidence. GOPEENATH SINGH *v.* ANUND MOYEE DEBIA [8 W. R., 167

151. ———— Survey map—*Ameen's report.*—A survey map sought to be set aside may be used for the purpose of testing the correctness of an ameen's report. PUDDO MONEE DOSSEE *v.* BISSESHUR DUTT CHOWDHRY . . 5 W. R., 34

152. ———— *Evidence of area and boundary.*—A survey map may be resorted to for assistance in considering the evidence of a thak map as to area and boundary. BURN *v.* ACHUMBIT LALL . . . . . . 20 W. R., 14

EVIDENCE—CIVIL CASES—*continued.*

7. MAPS—*continued.*

153. ———— But it is a piece of evidence only like other evidence in a case, and of no effect in determining the onus of proof. NARAIN SINGH ROY *v.* NURENDRO NARAIN ROY. NURENDRO NARAIN ROY *v.* NARAIN SINGH ROY [22 W. R., 296

154. ———— *Memo. on survey map—Evidence of title and possession.*—Pencil memoranda on a Government survey map held to be admissible as evidence. Survey maps prepared under the authority of Government are evidence of possession and therefore also of title. SHASEE MOOKHEE DOSSEE *v.* BISSESSUREE DEBEE . 10 W. R., 343

155. ———— *Evidence Act, 1855, s. 13—Evidence of rights.*—Under s. 13, Act II of 1855, Government survey maps are evidence, not only with regard to the physical features of the country depicted, but also with regard to the other circumstances which the officers deputed to make the maps are specially commissioned to note down. Further than this, they are not evidence as to rights to ownership. KOOMODINI DEBIA *v.* POORNOO CHUNDER MOOKERJEE . 10 W. R., 301

156. ———— *Suit for right of fishery—Evidence of title.*—Survey maps are not evidence of title in a dispute regarding a right of fishery. BROMA *v.* LALLITNARAIN DAO [W. R., 1864, 120

157. ———— *Suit for possession—Evidence of title.*—A survey map is not sufficient, in the absence of other satisfactory proof of title or of long antecedent possession, to establish a plaintiff's right to the land and to disturb the defendant's present possession. COLLECTOR OF RAJSHAHYE *v.* DOORGA SOONDERY DEBIA . 2 W. R., 210

158. ———— *Proof of title.*—A survey map and proceedings may in certain cases form evidence sufficient to prove title; and it is beyond the province of the High Court in special appeal to lay down any rule as to what weight is to be attached to that evidence. OOMMUT FATIMA *v.* BHUJO GOPAL DASS . . 13 W. R., 50

159. ———— *Evidence of title—Boundary dispute.*—Maps made on the occasion of a boundary dispute are evidence of title in a subsequent suit where the question of boundaries arises. RADHA CHURN GANGOOLY *v.* ANUND SEIN [15 W. R., 444

160. ———— *Evidence of title—Evidence of possession.*—Survey officers having no jurisdiction to enquire into questions of title, a survey map is not direct evidence of title in the same way that a decree in a disputed cause is evidence of title, but it is direct evidence of possession at the time of the survey being made. NOBO COOMAR DOSS *v.* GOBIND CHUNDER ROY . 9 C. L. R., 305

161. ———— *Boundary dispute.*—In a case involving a boundary dispute, a survey map, if not conclusive evidence, is evidence of an important character, which ought to be looked into

EVIDENCE—CIVIL CASES—*continued*

4 DECREES JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued*

custom that at the expiration of every twelve years the lands should be re distributed by lot among the co owners and to have two of the shares delivered to him as one of the co owners In 1851 another co-owner had in a suit to which only some of the pre

cogent evidence of the existence and validity of the custom VENKATASVAMI NAYAKHAN v SUBBA RAU SANKARA SUBBAIYAN v SUBBA RAU 2 Mad, 1

112. ———— *Evidence Act (I of 1872), ss 11 and 13—Admissibility in evidence of judgment in former case the subject matter of the former suit not being identical with that of the latter suit* —The rule laid down in the cases of *Giriju Lall v Fatteh Lall, I L R 6 Calc 171* and of *Surender Nath Pal Chowdhry v Brojo Nath Pal Chowdhry I L R 13 Calc 352* has been materially qualified by the decisions of the Privy Council in the cases of *Ram Ranjan Chakerbutty v Ram Narain Singh I L R, 22 Calc, 533 L R 22 I A 60* and *Bitto Kunwar v Kasho Pershad, L R 24 I A 10* Under certain circumstances in certain cases the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit In a case where the previous suit was to recover a two-thirds share of the property in question, and the subsequent suit was by a different plaintiff to recover the remaining one third share of the same property,—*Held* in the subsequent suit the judgment in the previous suit was not admissible in evidence the subject matter in the two suits not being identical TEPU KHAN v RAJANI MOHUN DAS

I L R, 25 Calc, 522
2 C W N, 501

113 ———— *Evidence Act (I of 1872), ss 13 and 43—Judgments not inter partes—Admissibility of such judgments* —Judg

how it has been previously dealt with *A B* and *C* were members of a joint Hindu family each having a third share in the family estate *A* assigned his interest in the joint estate to the plaintiffs who in 1897 filed this suit to recover by partition their one third share in the property *B* and *C* pleaded (*inter alia*) that *A* had already relinquished his share in their favour by a release dated 7th August 1885 The plaintiffs relied upon the judgments in a former suit brought by certain creditors of *A* to establish *A*'s title to a third share in the property In that suit it had been decided that the release relied upon by *B* and *C* was a fraudulent and colourable transaction *Held* that the judgments in the former litigation though not *inter partes* were admissible under s 13 of the Evidence Act LAKSHMAN GOVIND v AMRIT GOPAL I L R, 24 Bom, 591

114 ———— Proceedings not inter partes—*Evidence of possession* —In a suit for possession where plaintiff put in a copy of a solehnamah to which defendant was not a party —*Held* that although no question of right or title could be decided adversely to the defendant on the basis of that agreement yet it would be evidence that by an order of Court passed on that solehnamah the plaintiff was put in possession SREEMUTTY DASSEE v PELARAM DASSEE 15 W R, 261

for arrears of Government revenue does not derive his title from the defaulting proprietor and proceedings between the defaulting proprietor and third parties with respect to the title to the land are not admissible in evidence in a subsequent suit brought by the auction purchaser as against him RADHA GOBINDO KOER v RAKHAL DASS MOOKERJEE

I L R, 12 Calc, 82

116 ———— Roobookari—*Evidence Act s 13* —A roobookari Court proceeding) in a case in which certain decree holders sought to attach the mokurrari rights of an ancestor of the defendants in this jaghir was held to be relevant evidence under the Evidence Act (I of 1872) s 13 LUCHMEEDHUR PATTUCK v RUGHOOBUR SINGH 24 W R, 284

5 HEARSAY EVIDENCE

117 ———— Evidence in cases of pedi-

quainted with its members and state is admissible in evidence after the death of the declarant in the same manner and to the same extent as those of the deceased members of the family GHURREESH HOSSAIN CHOWDHRY v USEEMONNISSA KHATOON

1 Hay, 528

118 ———— Declarations of deceased

Such declarations after the death of the declarant

EVIDENCE—CIVIL CASES—*continued.*

7. MAPS—*continued.*

there were discrepancies as to the boundary lines. There were also differences between the thak and the state of the locality as existing when, for the purposes of this suit, a local investigation was made by an ameen appointed by the Court of first instance. *Held* that it was not a necessary part of the claimants' cases that there should be a complete agreement between the above maps or that the thak should be shown to accurately represent the former plots. To ascertain the precise boundaries would require more accuracy than could be well expected in a thak map; and the identity of the sites of the reformed plots with those of the plots formerly existing had, in the judgment of their Lordships, been established by evidence reasonably sufficient. MONMOHINI DEBI *v.* WATSON & CO. SARNAMOIYI DEBI *v.* WATSON & CO. HEMANTA KUMARI DEBI *v.* WATSON & CO. . . I. L. R., 27 Calc., 336
[L. R., 27 I. A., 44
4 C. W. N., 113

169. ———— Thakbust map—*Record of tenures—Evidence of extent of interest of shikmi talukhdar.*—A thakbust map is not intended to represent, and is in no sense a record of, tenures subordinate to Government revenue-paying estates, and is of no value as evidence in a suit in which the extent of the interest of a shikmi talukhdar is matter for determination. MOHIMA CHUNDER ROY CHOWDHRY *v.* WISE . . . . . 25 W. R., 277

170. ———— *Admissibility in evidence in future suits.*—In a suit for confirmation of possession by demarcation of boundaries which the plaintiff alleged had been wrongly described in the thakbust map, a decree was refused to him. *Quære*—Whether or not the map would be admissible in evidence in a future proceeding upon a question of boundary to which the plaintiff may be a party. MOTEE LALL *v.* BHOOP SINGH
[2 Ind. Jur., N. S., 245 : 8 W. R., 64

171. ———— *Evidence of possession—Possession.*—Value of thak maps as evidence of possession discussed. JOYTARA DASSEE *v.* MAHOMED MOBARUCK
[I. L. R., 8 Calc., 975 : 11 C. L. R., 399

172. ———— *Suit for possession—Ejectment.*—In a suit for possession, the only evidence for the plaintiff was a thakbust map which had been signed as correct by predecessors in title of both the plaintiff and defendant, and on which the lands in dispute were laid down as the lands of the plaintiff's predecessor. *Held* that the evidence was not sufficient to justify a decree for the plaintiff. MOHESH CHUNDER SEN *v.* JUGGUT CHUNDER SEN
[I. L. R., 5 Calc., 212

173. ———— Thakbust maps where they are evidence of possession are also some evidence of title, though not conclusive. POGOSE *v.* MOKOOND CHUNDER SURMA . . 25 W. R., 36

CHAROO *v.* ZOBEIDA KHATOON . 25 W. R., 54

EVIDENCE—CIVIL CASES—*continued.*

7. MAPS—*concluded.*

174. ———— *Boundary—Title, Question of.*—The sole question for determination being a question of the boundary of two talukhs, the Judge hearing the case refused to give effect to a certain thak map which had been prepared in 1859, and upon the face of which appeared what were admitted by the parties then owning the talukhs to be the boundary lines of the talukhs at the time; no evidence was given showing that these boundary lines had ever been altered. *Held* that the map was clearly evidence of what the boundaries of the properties were at the time of the Permanent Settlement, and also as to what they admittedly were in 1859. SYAMA SUNDERI DASSYA *v.* JOGOBUNDHU SOOTAR
[I. L. R., 16 Calc., 186

175. ———— *Thak or survey map as evidence.*—Unless it can be proved that the person against whom a thak or survey is attempted to be used expressly consented to the delineation or admitted the correctness of such maps, they have no binding effect. KRISTOMONI GUPTA *v.* SECRETARY OF STATE FOR INDIA . . . 3 C. W. N., 99

8. RECITALS IN DOCUMENTS.

176. ———— Recital in deed—*Evidence against third persons.*—A recital in a deed or other instrument is in some cases conclusive and in all cases evidence as against the parties who make it, and it is of more or less weight or more or less conclusive against them according to circumstances. It is a statement deliberately made by those parties, which, like any other statement, is always evidence against the persons who make it. But it is no more evidence as against third persons than any other statement would be. BRAJESHWARE PESHAKAR *v.* BUDHANUDDI . I. L. R., 6 Calc., 268 : 7 C. L. R., 6

See FULLI BIBI *v.* BUSSIRUDDI MIDHA
[4 B. L. R., F. B., 54

and MANIKLAL BABOO *v.* RAMDAS MOZUMDAR
[1 B. L. R., A. C., 92

177. ———— *Effect on evidence of recitals in instrument of mortgage.*—Recitals in an instrument may be conclusive and are always evidence against the parties who make them, but they are not evidence against third parties. *Brajeshware Peshakar* v. *Budhanuddi, I. L. R., 6 Calc., 268,* referred to. MANOHAR SINGH *v.* SUMIRTA KUAR . . . . I. L. R., 17 All., 428

178. ———— *Evidence of legal necessity for alienation.*—A recital in a deed that it is necessary to contract a debt binding on a minor, or a member of a joint family, is some evidence that the fact recited was present to the minds of the parties to the transaction, and the absence of any such recital will make it more difficult for the party on whom the burden of proof lies to establish the existence of a legal necessity. But such a recital is not evidence sufficient to establish the fact so recited. SIKHER CHUND *v.* DULPUTTY SINGH
[I. L. R., 5 Calc., 363 : 5 C. L. R., 374

EVIDENCE—CIVIL CASES—*continued*

7. MAPS—*continued.*

and considered. GUDDADHUR BANERJEE *v.* TARA CHUND BANERJEE 15 W. R., 3

162. ———————— *Boundary dispute—Conduct of parties.*—In a boundary dispute, where the question relates to the situation of the pillars which formed the line, and the sketch map left by the officer who laid down the pillars affords room for ambiguity as to the direction of the line, it is of importance to see what has been the conduct of the parties since the line of pillars was decreed to be the boundary. If there has been a Government survey, the survey map must be taken as evidence, and if one of the parties has made a settlement according to the survey boundary, the fact must be taken into account unless explained away. RADHA CHOWDHRAIN *v.* GIREEDHAREE SAHOO 20 W. R., 243

163. ———————— *Boundary disputes.*—Where a plaintiff claimed to be holding certain lands under two puttees, and the defendants

the same boundaries which had been specially reserved by the talukhdar,—*Held* that, though the testimony of a survey map was not conclusive, it should be not disregarded unless there was clear and direct evidence to the contrary. PROSONNO CHUNDER ROY *v.* LAND MORTGAGE BANK OF INDIA [25 W. R., 453

164. ———————— *Suit for possession—Ejectment—Evidence of possession and title.*—In a suit for possession of certain land as

question to be decided in each particular case. *Held* further that, as the two maps showed that the portion of the land decreed to the plaintiff was in his predecessor's possession at the date of both surveys—that is to say, at two periods with an interval of nearly twenty years between them—they might be sufficient evidence of title, and the decree of the lower Court was correct

dra Sen, I

LAL SAHU

I. L. R., 16 Calc., 8

165. ———————— *Thakbust map*

EVIDENCE—CIVIL CASES—*continued.*

7. MAPS—*continued.*

I. L. R., *15 Calc.*, *353*, and *Syama Sunderi Dassya v. Jogobundhu Sootar, I. L. R.*, *16 Calc.*, *186*, referred to. SATCOWRI GHOSH MONDAL *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 22 Calc., 252

166. ———————— *Evidence Act (I of 1872), ss. 36 and 83—Map made by Deputy Collector for particular purpose—Proof of accu-*

SHAD HAZARI *v.* JAGAT CHANDRA DUTTA [I. L. R., 23 Calc., 335

167. ———————— *Evidence Act (I of 1872), s. 83—Thakbust survey map—Statements recorded in such map.*—Debutter land within

gage, the deed specifying the number of bighas making the area of the debutter, and this statement in the deed was held to be an admission. Among other evidence, adduced to counteract the effect of this admission, was a thakbust map made at a revenue survey. The ameen who made it had no authority to determine what lands were debutter, but only to lay down and to map boundaries. *Held* that this map could not be treated as raising a presumption of correctness within s. 83 of the Indian Evidence Act, 1872, on the question as to the amount of debutter land in one of the villages mapped. Statements also as to what lands were debutter appeared on the face of the map to have been made according to the pointing out of the agents of the

[I. L. R., 18 Calc., 234
L. R., 17 I. A., 145

168. ———————— *Ownership of alluvial land, again formed after diluvion—Evi-*

been carried away by diluvion some years before. The claimants in these three separate suits, each claiming possession, had title as zamindars to the formerly existing plots. The new formations now

in a thakbust map, made before the diluvion, and showing what had been mapped as the boundary lines. On the re-appearance of the land a survey map was made. Between this and the thak map

EVIDENCE—CIVIL CASES—*continued.*

9. RENT RECEIPTS.

191. ——— Receipts for rent—*Mode of proving.*—Dakhilas should be attested or proved by some oral evidence in the same manner as all other documentary evidence; the tenant should be required to attest them himself as far as he can. It will then remain for the zamindar to deny their genuineness, and he also should be examined regarding them. RAJESSUREE DEBIA *v.* SHIBNATH CHATTERJEA [4 W. R., Act X, 42

192. ——— *Unattested dakhilas.*—Unattested dakhilas, without corroborative evidence, are not in law sufficient evidence of payment of rent. ODIUT ZUMAN *v.* MOHIOODDEEN AHMED *alias* MOGUL JAN . . . . 9 W. R., 241

LUCHMEEPUT SINGH *v.* JUNGULEE KULLYAN DOSS [9 W. R., 147

193. ——— *Unattested dakhilas.*—Dakhilas unattested, or attested only by the evidence of a manager and mooktear, were held to be no legal evidence of uniform payment of rent. REAZOONISSA *v.* BOOKOO CHOWDHRAIN [12 W. R., 267

194. ——— *Proof of handwriting of.*—Receipts for rent purporting to have been given by the former owners of a jote are not admissible in evidence without proof as to the handwriting of the parties who gave them or some satisfactory account of the custody from which they came. WOMESH CHUNDRA MOOKERJEE *v.* BAMA DOSSEE . . . . . . 7 W. R., 15

195. ——— *Proof of receipts.*—To prove receipts, it is not necessary to produce the writer of them. The raiyat can prove his own receipts. GANGA NARAYAN DASS *v.* SARODA MOHUN ROY CHOWDHRY [3 B. L. R., A. C., 230: 12 W. R., 30

196. ——— *Proof of receipts.*—Dakhilas or rent-receipts filed by a raiyat in a suit for arrears of rent or for enhancement must be proved, whether denied by the zamindar or not. KIRTEEBASH MAYETEE *v.* RAMDHUN KHORIA [B. L. R., Sup. Vol., 658

S. C. KIRTEBASH MYTEE *v.* RAMDHUN KHARAL [2 Ind. Jur., N. S., 197: 7 W. R., 526

197. ——— *Proof of receipts.*—Dakhilas relied upon by a defendant in a suit for arrears of rent at enhanced rates, to obtain the benefit of the presumption arising under s. 4, Act X of 1859, must be proved even if not positively denied. RAMJADOO GANGOOLY *v.* LUCKHEE NARAIN MUNDUL . . . . 8 W. R., 488

198. ——— *Proof of uniform payment.*—In a suit for enhancement of rent, where the defendant filed receipts with a written statement duly verified as proving uniform payment of rent, but was not examined as to the genuineness of the receipts filed,—*Held* (by LOCH, *J.*) that the receipts were not proved; (by GLOVER, *J.*) that there was legal evidence of uniform payment; and as the lower Court believed it, however weak, its decision could not be interfered with. LUCHMEEPUT SINGH DOOGUR *v.* WOOMANATH MUNDUL [10 W. R., 490

199. ——— *Proof of dakhilas.*—Where a party filing dakhilas deposed that the amounts of rent he had paid were, according to the sums, entered in the dakhilas, such statement was held not to prove the dakhilas, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of the document filed. KOYLASH NATH HALDAR *v.* OOMANATH ROY CHOWDHRY . . . . . 11 W. R., 170

200. ——— *Rent receipts, Proof of genuineness of—Bengal Tenancy Act (VIII of 1885), s. 50—Suit for enhancement of rent—Appellate Court, Power of.*—In a suit for enhancement of rent the defendant produced certain dakhilas and deposed to having received them on payment of rent. *Held* that this was sufficient evidence to prove them. *Held*, further, that it was perfectly open to the lower Appellate Court, which had to deal with the facts of the case, to say whether, taking the receipts, which extended over a number of years, together, and having regard to the fact that the receipts did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years. SURJA KANTA ACHARJEE *v.* BANESWAR SHAHA . . . I. L. R., 24 Calc., 251

201. ——— *Proof of payment of rent or debt.*—A party is perfectly competent to prove the payment of a debt or rent by the production of the receipt and proof that it is the document which he received on paying the money. He is not bound to summon the parties who gave the receipts to prove their signatures, nor is his own evidence secondary evidence. RAJ MAHOMED *v.* BANOO RASMAH . . . . 12 W. R., 34

202. ——— *Undisputed dakhilas.*—A Civil Court has every right to accept dakhilas tendered by a party as undisputed documents, where the opposite party says that he is not prepared to deny their genuineness. INDRO BHOOSUN DEB *v.* GOLUCK CHUNDER CHUCKERBUTTY [12 W. R., 350

203. ——— *Dakhilas, Proof of.*—The party producing dakhilas is bound to give some evidence of their having been signed by the person by whom they purport to have been granted, although the opposite party does not deny the signature. BHARUT ROY *v.* GANGA NARAIN MOHAPUTTER . . . . 14 W. R., 211

204. ——— *Dakhilas, Proof of.*—The evidence of a tenant deposing to the genuineness of dakhilas produced by him, if not rebutted, is legally sufficient to prove them. MADHUB CHUNDER CHOWDHRY *v.* PROMOTHONATH ROY [20 W. R., 264

EVIDENCE—CIVIL CASES—*continued*

8 RECITALS IN DOCUMENTS—*continued*

OBHOYCHURN DOSS *v* MEER SAHEB ALI [5 W R., 244

ROOPMONJOREE DOSSEE *v* RAMLALL SIRCAR [1 W R, 144

179 ———— *Evidence of legal necessity for alienation* —A recital in a deed of sale by a Hindu widow of her deceased husband's property setting forth that the alienation was necessary for the purpose of paying his debts is not of itself evidence of such necessity RAJLAKHI DEBI *v* GOPAL CHUNDRA CHOWDHRY [3 B L R., P C, 57 12 W R., P C, 47 13 Moore's I. A, 209

See RAJARAM TEWARI *v* LUCHMAN PRASAD [4 B L R, A C, 118 12 W R, 478

180 ———— *Recital in bond for money borrowed by Hindu widow—Evidence of necessity* —A recital in a bond for money borrowed by a Hindu widow to the effect that the bond was given for the performance of her husband's sradh is no evidence of the fact in a suit against the heirs of her husband or in a suit to charge the estate SUNKER LALL *v* JUDDOOBUNS SUHAYE 9 W R, 285

181 ———— *Untrue recital in bond—Contradiction by obligor allowed* —In a suit on a bond containing an agreement by which an

182 ———— *Recital as to possession* —The recital in a deed that a certain party was in possession held not sufficient to prove a case which depended on proof of that party's possession MAHOMED HAMIDOOLLAH *v* MODHOO SOODUN GHOSE [11 W R., 238

183 ———— *Evidence of intention* —The recital of the terms of an old mortgage-deed of 1844 in the wajib ul urz prepared in

usury law RAO KURAM SINGH *v* MEHTAB KOONWER 3 Agra, 150

184 ———— *Evidence of separation* —A recital in a deed of mortgage granted by one of two undivided brothers to a third party that a division had taken place between the mortgagor and his brother is no evidence of separation as against the latter or his representatives GOPAL *v* NARAYAN BIN TUKAJI 1 Bom, 31

185 ———— *Estate of inheritance—Admission by conduct of parties* —The deed of conveyance of land in Calcutta recited that

EVIDENCE—CIVIL CASES—*continued*

8 RECITALS IN DOCUMENTS—*concluded*

the vendor was 'seized of or otherwise well entitled to the property intended to be sold for an estate of inheritance in fee simple and it purported to convey such an estate In a suit for dower by the

chaser bought the property as and for an estate of inheritance and paid for it as such the recital was

against them SARKIES *v* PROSONOMOYEE DOSSEE [I L R, 6 Calc, 794 8 C L R, 76

186 ———— *Statement of payment of consideration* —According to the practice in India the statement in a deed of compromise of the payment of consideration money is not conclusive evidence of payment CHOWDHRY DABEY PERSHAD *v* CHOWDHRY DOWLUT SINGH [6 W R, P C, 55 3 Moore's I A, 347

LOLITTA DOSSIA *v* RUTTUN MOLLEE BHUTTACHARJEE 10 W R, 208

NEYNUM *v* MAZUFFER WAHID 11 W R., 265

187 ———— Recital in lease—*Evidence of existence of mooktearnamah* —The recital in a

NARAIN SINGH *v* NECOT KOER [Marsh, 373 2 Hay, 446

188 ———— Recital in will—*Evidence of power of attorney* —A recital in a will of a power-of-attorney held to be not sufficient evidence of such power there being no evidence of the existence of the power or of any circumstance which would enable the Court to presume the existence of such power BOMANJEE MUNCHERJEE *v* HOSSAIN ABDOOLLAH [5 W R, P C, 61 1 Moore's I A, 484

189 ———— *Age of child* —

190 ———— *Statement in will of value of property—Acceptance of share on*

v RAM CHUNDRA DADA NAIK RAM CHUNDRA DADA NAIK *v* LAKSHMAN DADA NAIK [I L R, 1 Bom, 561

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*continued.*

on the use of books of history to prove local custom. VALLABHA *v.* MADUSUDANAN [I. L. R., 12 Mad., 495

245. ——— *Evidence Act (I of 1872), ss. 57, 87—Books of history.*—In deciding a suit the District Judge referred to a Portuguese work dated 1606, "*India Orientalis Christiana,*" published in 1794, and Hough's "*History of Christianity in India,*" published in 1839. *Held* that the District Judge was justified under ss. 57 and 87 of the Evidence Act in referring to the books above mentioned. AUGUSTINE *v.* MEDLYCOTT [I. L. R., 15 Mad., 241

246. ——— **Bundobust papers**—*Evidence of commencement of tenure and assessment of rent.*—Bundobust papers are nothing more than a contemporaneous record of tenures as they existed in the years specified, and do not in any way import the commencement of a tenure or a fixing of the rent at that particular time. DHUN SINGH ROY *v.* CHUNDER KANT MOOKERJEE . 4 W. R., Act X, 43

247. ——— **Canoongoe papers**—*Proceedings of settlement officers—Evidence of pergunnah rates and measurement.*—Canoongoe papers and proceedings of settlement officers are good evidence in questions of pergunnah rates, standards of measurement, and the like. NUND DUNTPAT *v.* TARA CHAND PRITHEEBAREE . 2 W. R., Act X, 13

248. ——— *Evidence of rate of rent.*—How far and when canoongoe papers are admissible as evidence for the zamindar as to the rate of rent paid by the raiyat. KHEEROMONEE DOSSEE *v.* BEEJOY GOBIND BURAL . . 7 W. R., 533

249. ——— *Evidence of proper custody.*—Old canoongoe papers cannot, in the absence of evidence to show what they are and that they came out of proper custody, be received in evidence; before such papers can be admitted as evidence against a party, it must be shown how they can be used against him. DWARKA NATH CHUCKERBUTTY *v.* TARA SOONDERY BURMONEE [8 W. R., 517

250. ——— **Collection papers**—*Papers to refresh memory.*—Collection papers are no evidence *per se*; they can only be used when they are produced by a person who has collected rent in accordance with them, and who merely uses them for the purpose of refreshing his memory MAHOMED MAHMOOD *v.* SAFAR ALI . I. L. R., 11 Calc., 407

251. ——— **Criminal Court, Proceedings in**—*Suit for damages for assault—Previous conviction of defendant.*—In a suit for damages for an assault, the previous conviction of the defendant in a Criminal Court is no evidence of the assault. The factum of the assault must be tried in the Civil Court. ALI BUKSH *v.* SAMIRUDDIN [2 B. L. R., A. C., 31: 12 W. R., 477

252. ——— *Plea of guilty—Verdict of conviction.*—A plea of guilty in the Criminal Court may, but a verdict of conviction cannot, be considered in evidence in a civil case. SHUMBOO CHUNDER CHOWDRY *v.* MODHOO KYBURT . . . . . . 10 W. R., 56

253. ——— *Finding on facts.*—A proceeding of a Criminal Court is not admissible as evidence; a Civil Court is bound to find the facts for itself. KERAMUTOOLLAH *v.* GHOLAM HOSSEIN . . . . 9 W. R., 77

254. ——— *Malicious prosecution—Suit for damages—Evidence, Admissibility of judgment of acquittal.*—In a suit for damages for malicious prosecution, the order of the Criminal Court acquitting the plaintiff is admissible in evidence. Although the reasonings in the judgment and the conclusions drawn from them are not binding or conclusive, yet the judgment may be looked into for the purpose of seeing what the circumstances were which resulted in the acquittal. RAI JUNG BAHADUR *v.* RAI GUDOR SAHOY [1 C. W. N., 537

255. ——— *Judgment in criminal case.*—In a suit for arrears of rent from a patnidar, where plaintiff stated that he had, on an allegation made by defendant that a dacoity had taken place in her house, allowed her an abatement; but finding from a judgment of the High Court that no such dacoity had taken place, he claimed full rents,—*Held* that the High Court's judgment was admissible, with a view to ascertain the truth of plaintiff's case. ENAYET HOSSEIN *v.* KHOOBUNNISSA . . . . . . 9 W. R., 246

256. ——— *Title to stolen property—Verdict of Criminal Court.*—The verdict of a Criminal Court with respect to the alleged theft of notes is no evidence of the ownership of such notes. PANNA LALL *v.* GOPIRAM BUZURIAH [3 B. L. R., Ap., 2

257. ——— *Proceedings under Act IV of 1840.*—*Held* (by MARKBY, J.) that a Judge was justified in rejecting as evidence a proceeding under Act IV of 1840. ABDOOL ALI *v.* MULLICK SUDDEROODEEN AHMED 14 W. R., 493

258. ——— *Documents filed in case under Criminal Procedure Code, s. 318.*—Documents filed in a case under s. 318, Code of Criminal Procedure, cannot be accepted as evidence in a suit before a Deputy Collector. CHOOBUN SINGH *v.* DHOORUB SINGH . . . 11 W. R., 171

259. ——— **Deceased person, Statement by**—*Statement against his interest or proprietary right.*—The principle upon which the admissibility of a written statement made by a deceased person is determined is whether it has been made under such circumstances as make it reasonable to suppose that it was done *bonâ fide*, and that the allegations it contains are true; and if, as a whole, it is against the interest or the proprietary right of its author, such parts as are in his favour cannot be rejected. LEELANUND SINGH *v.* LAKHPUTTEE THAKOORANI . . . . . . 22 W. R., 231

EVIDENCE—CIVIL CASES—*continued*

9 RENT RECEIPTS—*concluded*

205 ———— *Acknowledgment of receipt of rent—Presumption* —An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent paid for three years may afford some presump

[illegible]

dence AMEER BUKSH v. YUSOOF ALI

[22 W. R., 489

207 ———— *Evidence of rate of rent—Rate admitted in other cases* —In suits

[illegible]

ledge of them) rates which were admitted and had been awarded in other cases BUDHUA ORAWAN MAHTON v JUGESSUR DOYAL SINGH 24 W. R., 4

10. REPORTS OF AMEENS AND OTHER OFFICERS

208. ———— Report of ameen—*Report on local enquiry* —Of the value of a local enquiry

[illegible]

KALEE DOSS ACHARJEE v KHETTRO PAL SINGH ROY . 17 W R., 472

CHUNDER COOMAR DUTT v JOY CHUNDER DUTT MOJOOMDAR . 19 W. R., 213

209. ———— *Reports on local investigations* —Unless there be very good grounds

[illegible]

PROTAB CHUNDER BURROOAH v SURNOMOYEE

[19 W. R., 361

210. ———— *Civil Procedure*

[illegible]

SHEO DOYAL SINGH v HODGKINSON

[24 W. R., 342

EVIDENCE—CIVIL CASES—*continued*

10. REPORTS OF AMEENS AND OTHER OFFICERS—*continued.*

211. ———— *Evidence on*

[illegible]

[14 W. R., 493

See DOORGA CHURN SURMAH CHOWDHRY v NEEM CHAND SURMAH CHOWDHRY 24 W. R., 208

212 ———— *Local investigation not objected to.*—Where an order for a local

[illegible]

213. ———— *Act X of 1859,*

[illegible]

214. ———— *Local investi-*

[illegible]

without further evidence to corroborate it SREERAM MOOKERJEE v RAMNARAIN MOOKERJEE

[6 W. R., 51

215. ———— Further evidence, however, may be taken Whether it should be taken or not is a matter for the discretion of the Court in each case In this case the Court was held to have exercised a proper discretion in refusing to receive further evidence GRISH CHUNDER LAHIRI v. SHOSHI SHIKARESWAR ROY

[I. L R., 27 Calc , 951
L. R., 27 I. A., 110
4 C. W. N., 631

216 ———— An ameen's re-

[illegible]

GOUREE NARAIN MOZOOMDAR v MODHOSOODUN DUTT 2 W. R., Act X, 1

217. ———— *Report as to measurement—Oral evidence* —It is necessary that oral testimony should be taken in order to effect a measurement, or that an ameen's report must have depositions attached to it to make it legal evidence. CHUNDER MONEE DOSSEE v NILAMBUR MUSTOFEE

[7 W. R., 43

[illegible]

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*continued.*

enhance the rent of the ghatwal under Regulation VIII of 1819,—*Held* that issumnuvissi papers for 1811-1813, stating that the amount held by the ghatwal was 100 bighas, did not entitle the plaintiff to enhance the rent of the surplus over that 100 bighas in the face of satisfactory oral evidence of long uninterrupted possession. FARQUHARSON *v.* DWARKANAUTH SINGH . . . . . 8 B. L. R., 504

S. C. FARQUHARSON *v.* GOVERNMENT OF BENGAL [14 Moore's I. A., 259: 16 W. R., P. C., 29

Affirming ERSKINE *v.* GOVERNMENT [8 W. R., 223

and GOVERNMENT *v.* FERGUSSON . 9 W. R., 158

270. ——— Kabuliats—*Evidence against third parties.*—In a suit for declaration of title and confirmation of possession, where plaintiff claimed as having the right, title, and interest of the former zamindar in execution of a decree against him, urging that the lands were part of the khas lands of the estate and defendants claimed the lands as part of their maurasi tenure obtained from the same zamindar,—*Held* that attested kabuliats filed by the plaintiff, though good evidence as between plaintiff and the tenants of the land, could not, in regard to a third party, be held as evidence in the absence of the tenants themselves, who should have been examined. MOHIMA CHUNDER CHUCKERBUTTY *v.* POORNO CHUNDER BANERJEE . . . 11 W. R., 165

271. ——— Letters—*Letter from Judge as to irregularity in return to commission.*—A letter from a Judge cannot be given in evidence to show that a formal return, made by him on a commission to examine witnesses, was wrong. LAND MORTGAGE BANK OF INDIA *v.* MUNSUR ALI [1 C. L. R., 239

272. ——— ——— *Letters between members of a joint family and the kurta of the family.*—In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree against *R*, a member of the family, for his separate debt, letters between *B*, the kurta of the family, and *R*, relative, to the purchase by the latter as his separate property of the estate in dispute, were admitted in evidence as against the defendant. BODH SINGH DOODHOORIA *v.* GUNESH CHUNDER SEN

[12 B. L. R., P. C., 317: 19 W. R., 356

273. ——— Market rate—*Ascertainment of market rate in suit on an agreement of indemnity.*—Where the Court has had the advantage of having in evidence before it a record of the market rate of any particular day made up by a broker of intelligence and experience, such a record should be received as evidence of the particular state of the market on that day. NARAIN CHUNDER DHUR *v.* COHEN . . . I. L. R., 10 Calc., 565

274. ——— Marriage, Registration of —*Registration of Mahomedan marriages*—*Restitution of conjugal rights*—*Beng. Act I of 1876, s. 6, sch. A*—*Copy of entry in register*—*Evidence.*—A husband and wife, Mahomedans, registered their marriage under Bengal Act I of 1876, setting out in the form prescribed in sch. A to the Act as "a special condition" that the wife under certain circumstances therein set out might divorce her husband. These circumstances occurred, and the wife divorced her husband. *Held* in a suit by the husband for restitution of conjugal rights that the "special condition" was a matter which, under the provisions of the Act, it was the duty of the Mahomedan Registrar to enter in the register, and therefore a copy of the entry in the register was legal evidence of the facts therein contained. KHADEM ALI *v.* TAJIMUNISSA . . I. L. R., 10 Calc., 607

275. ——— Mercantile custom—*Usage of carriers*—*Liability of carriers for damage to goods.*—The defendants, carriers between Hongkong and Bombay, by a condition annexed to their bill of lading, stipulated that they should not be responsible for damage to goods arising from insufficiency of packing. The plaintiff shipped certain goods in one of defendant's steamers in packages which, though in fact insufficient, were packages of the kind ordinarily used for the conveyance of such goods from Hongkong to Bombay. In an action brought to recover damages for injury to the packages,—*Held* that evidence of mercantile usage or custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade. PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. *v.* MANICKJI NARAINJI PADSHA . . . . 4 Bom., O. C., 169

276. ——— Mutation proceedings—*Evidence Act, s. 80*—*Statement in mutation proceeding "Documents."*—In a suit for recovery of lands claimed partly in virtue of rights obtained under a kobala and partly in virtue of rights purchased at a sale in execution of a decree in which the lower Appellate Court refused to recognize a statement made before a Collector in a mutation proceeding as a "document" under the Evidence Act, *Held* by the High Court that a statement made before a Collector in a mutation proceeding is a document entitled to be received as evidence under s. 80 of the Evidence Act. BUDREE LALL *v.* BHOOSEE KHAN [25 W. R., 134

277. ——— Notes of depositions—*Evidence irregularly taken.*—Rough notes taken down by an Assistant Collector of what was said by witnesses whose depositions are not recorded are not evidence such as it required by law, and an opinion based on such evidence is without legal validity. BALA THAKOOR *v.* MEGHBURN SINGH [14 W. R., 269

278. ——— Partition papers—*Evidence of rate of rent.*—Butwara papers are only evidence of the proportionate assessment of Government revenue payable by proprietors after partition, not evidence binding raiyats as to what holdings are theirs, or what

EVIDENCE—CIVIL CASES—*continued*

11. MISCELLANEOUS DOCUMENTS—*continued*

260. ———— **Depositions**—*Living witnesses*—Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable HARISH CHUNDER CHUKERBUTTY *v* TARA CHAND SHAHA . . 2 B. L. R., Ap., 4

NIRPAL SINGH *v* GOYADAT . 3 Agra, 311

261. ———— *Depositions irregularly taken on commission*—Where a Commissioner took the evidence of witnesses when the last return day of the commission had expired, it was held that the depositions of the witnesses were not admissible in evidence in the cause. GREGORY *v* DOOLY CHAND . . . 14 W. R., O. C., 17

262. ———— **Document receipt-book**—*Book kept by attorney—Receipt given by defendant for documents of title—Admission*—A witness (an attorney) cannot refer to his documents receipt-book in order to enable him to say whether a document of a particular character and date was in his ... by the de- ... e in a suit ... e nature of ... MADHAB ... Cor., 148

263 ———— **Documents "without pre-** ...

... knowledgment of the debt given by the defendant The alleged acknowledgment was written on a post card sent by the defendant to the plaintiff It was in Gujarati, and was as follows ,"I was bound to ...

... entertain any anxiety whatever in respect thereof. As to whatever debts may be due by my old man, I am bound to pay the same so long as there is life in me This is, indeed, my earnest wish After this, God's will be done Therefore, I will positively pay R30." The post card bore on it also the words "without prejudice" in English The lower Courts held that it was therefore inadmissible in evidence, and consequently that the plaintiff's claim was barred, ... The plaintiff thereupon ...

EVIDENCE—CIVIL CASES—*continued*

11 MISCELLANEOUS DOCUMENTS—*continued.*

264 ———— **Enhancement of rent, Evidence of ground of**—*Increased value of produce, Evidence to prove*—In a suit for enhancement of ...

... could only be proved by traders and merchants with books of accounts, by which their memory could be refreshed and tested *Held* that the evidence adduced was relevant, and entitled to consideration HURO PERSAD ROY *v* WOMATARA DEBEE [I. L. R, 7 Calc, 263 : 8 C. L. R., 449

265 ———— **Entries by officer of Court**—*Evidence Act (II of 1855), s 4—Entries by nazir—Issue of warrant*—Under s 4, Act II of 1855, a Court is entitled to refer to entries made by its own officer, the nazir, and find thereon that a warrant had been issued in accordance with an application admitted to have been made NILKUNT CHUCKERBUTTY *v.* SHEO NARAIN KOONWAR [8 W. R., 276

266 ———— **Government Gazette**— ...

... the Master were admitted in evidence to prove the actual conditions of the deed of sale JOTENDRO MOHUN TAGORE *v* BROJOSOONDERY [W. R., 1864, 50

267. ———— **Handwriting**—*Forgery.*—Where evidence could have been adduced and was ...

268. ———— **Income tax returns**—*Production and admissibility in evidence of income-tax papers—Income Tax Act (II of 1886), s. 38—Rule 16 of rules made by Local Government under Income Tax Act*—Rule 16 of the rules made by the Local Government under s 38 of the Income Tax Act (II of 1886) does not apply to the production of income-tax papers in a Court of law in a suit between two partners *Lee v. Birrel, 3 Camp, 337*, and *Mayne's Commentary on the Criminal law, pp 86, 87*, cited. JADOBRAM DEY *v* BULBORAM DEY [I. L R, 28 Calc, 281

269 ———— **Issumnuvissi papers**—*Enhancement of rent—Possession*—In a suit by a purchaser of a patni at a sale for arrears of rent to

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*continued.*

A bhuinhari register prepared under Bengal Act II of 1869 is not conclusive evidence of the title of the person recorded therein. KIRPAL NARAIN TEWARI *v.* SUKURMONI . . **I. L. R., 19 Calc., 91**

291. ——— *Registers of chakeran lands—Public records.*—The registers of chakeran lands are public records supposed to contain a correct list of the chakeran lands in existence at the time of the Decennial Settlement. COLLECTOR OF EAST BURDWAN *v.* IMDAD ALI **[W. R., 1864, 358**

292. ——— *Register of members—Winding up Company—Proof of person being shareholder—Presumption ofm embership.*—The evidence adduced by the official liquidator to show that the defendant was a member of the company and so liable as a contributory consisted of the register of members, a letter written by the objector, a reply thereto written by a managing director of the company, and the oral testimony of the director himself. The objector adduced no evidence at all. *Held* that the official liquidator might, if he had chosen to do so, have put the register in evidence and waited before giving any further evidence until the objector had given some to displace the *primâ facie* evidence afforded by the register or to impugn the character of the register; but his case must be looked at as a whole, and having taken the line which he did, he must take the consequence of his other evidence contradicting or impugning the *primâ facie* evidence of the register, and, notwithstanding that the objector gave no evidence, the register was not conclusive. RAM DAS CHAKARBATI *v.* OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY **[I. L. R., 9 All., 366**

293. ——— *Proof of registration of document—Suit on bond.*—Before enforcing a duly registered bond without a suit, proof of the signature or handwriting of the Registrar is not necessary. The bond, with the further agreement endorsed thereon when registered, becomes a record, and is of itself *primâ facie* proof of registration, and this with reference to the further agreement, as well as to the instrument itself. HOBEEBO SOBAIR *v.* HOSSEIN ALI . . **5 W. R., S. C. C. Ref., 14**

294. ——— **Rent-roll**—*Suit for arrears of rent.*—In a suit for arrears of rent the rent-roll is not to be accepted as conclusive evidence. SURFRAZ KHAN *v.* TASAWUR ALI . . **2 Agra, 253**

295. ——— **Road-cess papers**—*Evidence Act, s. 13.*—Under the Evidence Act, s. 13, road-cess papers are evidence *quantum valéant.* DAITARI MOHANTI *v.* JUGO BUNDHOO MOHANTI **[23 W. R., 293**

296. ——— *Road-cess return by shareholder—Beng. Act X of 1871, sch.*—A road-cess return made by a shareholder under the schedule of Bengal Act X of 1871 is not admissible as evidence against another shareholder. NUSSEER *v.* GOURI SUNKER SINGH . . **22 W. R., 192**

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*continued.*

297. ——— *Road-cess Act (Bengal Act X of 1880), s. 95—Road-cess return signed by one of the plaintiff's vendors and the defendant, whether admissible in evidence as against plaintiff and in favour of the defendant.*—A road-cess return, signed by one of the plaintiff's vendor and the defendant, was filed by two plaintiffs' vendors. It consisted of two parts, in one of which the joint properties of the plaintiff's vendor and the defendant were set out, and in the other the properties belonging to the defendant alone mentioned. In a suit by the plaintiff for some lands as being the joint property of his vendors and the defendant, the defendant put in the road-cess return in order to disprove plaintiff's allegation, by showing that the lands were included in the second part. The lower Court had relied on this return. It was contended in appeal that it was inadmissible under s. 95 of the Road Cess Act, being evidence in favour of the principal defendant. *Held* that the road-cess return was evidence against the plaintiff claiming through his vendor, and it is none the less evidence merely because, by admitting it as evidence against the plaintiff, it becomes evidence in favour of the defendant. BENI MADHAB DANDAPAT *v.* DINA BUNDHU DUTT . . . **3 C. W. N., 343**

298. ——— **Settlement papers.**—In a suit for arrears of rent it was held that settlement papers were only corroborative evidence and under the circumstances insufficient to prove the yearly rental. BUNWARI LALL *v.* FORLONG . . **9 W. R., 239**

299. ——— *Entry by settlement officer—Evidence of facts recorded.*—An entry made by a settlement officer on the report of a co-sharer, and on the strength of the report of the patwari and canoongoe, is, as a record framed by a public officer, admissible as evidence of the facts recorded. KINBAR DANSHA *v.* GOKURUN . . . **3 Agra, 316**

300. ——— *Entries duly made in settlement proceedings.*—Entries duly made in settlement proceedings with respect to matters therein properly recorded are, as against cultivators, evidence of such matters, although such evidence may be rebutted by other more reliable proof, if it be procurable. DABEE LAL *v.* GOOLZAR RAE **[2 N. W., 394**

301. ——— *Papers on settlement proceedings by Deputy Collector—Evidence of acquiescence of Collector.*—Where a memorandum of an order made, or proposed to be made, by a Collector upon a reference by his subordinate, which was found on a paper taken from the middle of a settlement record, was produced in Court in that form without explanation, and used by the Judge as evidence of acquiescence,—*Held* that it was not susceptible of use in that way, nor could it bind the Collector. RUSSIK LAL SHAHA CHOWDHRY *v.* PREM DHUN BURAL **[24 W. R., 279**

302. ——— **Signature**—*Proof of signature.*—In considering whether a signature is genuine or not, it should not be compared with a document not

EVIDENCE—CIVIL CASES—*continued*

11 MISCELLANEOUS DOCUMENTS—*continued*

are their arrears rates or periods of occupancy DEOBO MOYEE GOSMANEE *v* DHURMO DOSS KOONDOO 10 W R, 197

279 ——— *Butwara chittas—Suit to set aside summary award*—A butwara between zamindars is not binding in any way on the raiyats and butwara chittas are no evidence in a suit for possession of a jote and to set aside a summary award under Act XIV of 1859 s 15 GOPAL CHUNDER SHAHA *v* MADHUB CHUNDER SHAHA [21 W. R, 29

280 ——— *Butwara papers—Lands comprised in estate*—Private butwara papers are good evidence towards showing what lands were in fact comprised in the estate at the time of butwara DWARKANATH ROY CHOWDHRY *v* HURO NATH ROY CHOWDHRY W R, 1864 238

281 ——— Pedigree—*Aliyasantana law*

the written agreement was admissible as evidence of pedigree, and that the plaintiff was entitled to the decree sought for TIMMA *v* DARRAMMA [I L R, 10 Mad, 362

282 ——— Petitions—*Petitions stating fact of conveyance—Suit for possession*—In a suit to recover the possession of land the petitions of alleged owners through whom the plaintiff claimed title presented to the Collector and to the Principal Sudder Ameen which respectively stated the conveyance from the one to the other and from the last supposed owner to the plaintiff, were tendered as evidence of the plaintiff s title without production of the deeds or even evidence that such alleged owners had ever been in possession of the property *Held* that the petitions were not admissible in evidence CLARKE *v* BINDABUN CHUNDER SIRCAR [Marsh, 75 1 Hay, 137 W R, F B, 20 1 Ind Jur, O S, 97

283 ——— *Admissibility of petition signed by a person available, but not called as witness*—*A* the son of a deceased zamindar sued *B* and *C* his widow and brother for possession of the zamindari which was impartible In order to prove that *A* was illegitimate, *C* filed two petitions purporting to have been signed and sent to the Collector of the district by *C* in 1871, referring to *A*'s mother as a concubine *C* was not examined as a witness *Held* that their contents were not evidence, but the petitions were themselves evidence to show that a complaint was made as mentioned therein PARVATHI *v* THIRUMALAI I L R, 10 Mad, 334

284 ——— Pleadings—*Statements in verified written statement*—Statements made in a verified written statement of a party are not admissible in evidence (BAYLEY *J*, *dubitante*) MOOKTA KESHEE DOSSEE *v* KOYLASH CHUNDER MITTER [7 W R, 493

285 ——— *Declaration in pleadings*—Declarations made in pleading, in suits instituted before the Code of Civil Procedure came into operation were inadmissible as evidence of the facts stated therein NARAPPA BINAPPA HEGDI *v.* GAPAYABIN KAPYA [2 Bom, 361: 2nd Ed, 341

286

KHAN *v* RAM CHURN GANGOOLY 12 W R, 39

287 ——— Possession, Fact of—*Admissibility of evidence—Statement by witness*—A statement by a witness that a party was in possession is in point of law admissible evidence of the fact that such party was in possession MANIRAM DEB *v* DEBI CHURN DEB [4 B L R, F B, 97 13 W R, F B, 42

Contra ISHAN CHUNDER BEHARA *v* RAMLOCHUN BEHARA 9 W R, 79

288 ——— Registers—*Registration of tenure—Common registry—Act XI of 1859 s 39*—The fact that a tenure is registered in the Common Registry under Act XI of 1859 s 39 is not of itself *primâ facie* evidence that such a tenure exists LAKHYNARAIN CHUTTOPADHYA *v* GOBACHAND GOSSAMY I L R, 9 Calc, 116 12 C L R, 89

289 ——— *Register pre-*

Act) after it has been confirmed by the Commissioner

stand a decision of the Commissioner, and because the register was not prepared in accordance with such order it is otherwise than conclusive, nor is a Court competent even to discuss the question whether a Special Commissioner in preparing such register rightly appreciated the Commissioner's decision when his own order has been given effect to by the register prepared, and has been confirmed by the Commissioner under s. 25 of the Act PERTAP UDAI NATH SAHI DEO *v* MASI DAS [I L R, 22 Calc, 112

290 ——— *Bhuinhari register prepared under the Chota Nagpur Tenures Act (Bengal Act II of 1869)—Evidence of title*—

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*continued.*

chittas made by them in enquiries relating to revenue, and are equally admissible in evidence; the circumstance that the proceedings relate to a khas estate cannot deprive them of the character of public proceedings upon matters of public interest. TARUCKNATH MOOKERJEE *v.* MOHENDRONATH GHOSE [13 W. R., 56

MOOCHEE RAM MAJHEE *v.* BISSAMBHUR ROY CHOWDHRY . . . . 24 W. R., 410

319. ———— *Suit for abatement of rent—Lands washed away—Measurement papers.*—In a suit for abatement of rent on the ground that part of the talukh has been washed away by a river, measurement papers prepared by the revenue authorities in a case between Government and the talukhdar, in respect of a share belonging to Government in the zamindari of the zamindar, are not admissible as evidence against the latter, they being *res inter alios actæ.* AFZUROODDEEN *v.* SHOROSSHEE BALA DABEA . . Marsh., 558: 2 Hay, 664

320. ———— Thakbust papers—*Loazima and thaka papers.*—Loazima and thaka papers are legal evidence *quantum valeant.* SHUSEE MOOKHEE DOSSEE *v.* BISSESSUREE DABEE . 10 W. R., 343

321. ———— *Evidence against proprietors of estates.*—Thakbust papers are *primâ facie* evidence against the proprietors of estates comprehended in them. KALEE TARA DEBIA *v.* NITTIANUND SHAHA . . . . 12 W. R., 90

322. ———— Translations—*Translation of document by Court interpreter, Authority of.*—*Held* that the translation of a deed by the interpreter of the Court must be accepted *primâ facie* as correct, and as evidence of the contents of the deed. MUZHUR HOSSAIN *v.* DINOBUNDO SEN [Bourke, O. C., 8: Cor., 94

323. ———— Variation of rent, Proof of—*Zamindar's papers.*—Zamindar's papers filed or attested by gomastahs are not conclusive proof of variation, unless it can be shown not merely that the jumma-wasil-baki and similar papers show a varying rate, but that the raiyat has paid at a varying rate. GOPAL MUNDUL *v.* NOBO KISHEN MOOKERJEE [5 W. R., Act X, 83

324. ———— Wajib-ul-urz—*Pre-emption—Custom—Record of rights—Onus probandi.*—A wajib-ul-urz prepared and attested according to law is *primâ facie* evidence of the existence of any custom of pre-emption which it records, such evidence being open to be rebutted by any one disputing such custom. When such a wajib-ul-urz records a right of pre-emption by contract between the shareholders, it is evidence of a contract binding on all the parties to it and their representatives, and there will be a presumption that all the shareholders assented to the making of the record and in consequence were consenting parties to the contract of which it is evidence, and it will be for those shareholders repudiating such contract to rebut such presumption. ISRI SINGH *v.* GANGA [I. L. R., 2 All., 876

EVIDENCE—CIVIL CASES—*continued.*

11. MISCELLANEOUS DOCUMENTS—*concluded.*

325. ———— *Evidence of custom—Improper use of wajib-ul-urz to record wishes of sole proprietor of village—Primogeniture.*—The object of the wajib-ul-urz is to supply a reliable record of existing local custom. It was never intended that the wajib-ul-urz should be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death. SUPURUNDDHWAJA PRASAD *v.* GARURADDHWAJA PRASAD [I. L. R., 15 All., 147

Case reversed on appeal by Privy Council in GARURADHWAJA PRASHAD SINGH *v.* SUPARAUDHWAJA PRASHAD SINGH . L. R., 27 I. A., 238

12. SECONDARY EVIDENCE.

(*a*) GENERALLY.

326. ———— Production of best evidence—*Written documents—Evidence of authority of agent.*—It is a cardinal rule of evidence, not one of technicality, but of substance, which it is dangerous to depart from, that where written documents exist they shall be produced as being the best evidence of their own contents. Special authority of an agent to sign an acknowledgment of debt under s. 20, Act IX of 1871, cannot be proved by secondary evidence of the contents of a letter, the non-production of which is not satisfactorily accounted for. DINOMOYI DEBI *v.* ROY LUCHMIPUT SINGH . . . L. R., 7 I. A., 8

MAN SING MAHTOON *v.* BHAIK NARAIN MAHTOON [19 W. R., 210

327. ———— Condition for admission of secondary evidence—*Accounting for non-production of original of document—Evidence of contents of document.*—By the law of evidence administered in England, which has been in a great measure, with respect to deeds, made the law of India, the first condition of the right to give secondary evidence of the contents of a document not produced in Court is the accounting for the non-production of the original. BHUBANESWARI DEBI *v.* HARISARAN SURMA MOITRA [I. L. R., 6 Calc., 720: 8 C. L. R., 337

328. ———— *Evidence Act, s. 91—Oral evidence where pottah is not produced.*—Where the contents of a lease (pottah) are in any way in question, it is necessary to prove them by the production of the document; where this is not the case, but it is only necessary to prove possession for 12 years, then, although the lease would have shown it, oral evidence of the pottah is admissible. KEDAR NATH JOARDAR *v.* SURFOONNISSA BIBEE [24 W. R., 425

329. ———— *Non-procurability of original document.*—Until a party has exhausted all the means prescribed by law for compelling a witness to produce a document known to be with him, and so long as the original is procurable, or

EVIDENCE—CIVIL CASES—*continued*

11 MISCELLANEOUS DOCUMENTS—*continued*

before the Court or with one of which the authenticity is doubtful GURUMURTTI NAYUDU v PAPPA NAYUDU 1 Mad, 164

303 ——— *Evidence Act s 32 cl (2)—Evidence—Deed—Proof of deed denied by the party by whom it was executed where attesting witnesses were dead*—A deed of conveyance was tendered in evidence which purported to bear the mark of *G* as vendor and which was duly attested by four witnesses *G* however denied that she had ever executed the deed and said that the mark was not hers All the attesting witnesses were dead A witness was called who knew the handwriting of one of the attesting witnesses and who swore that the signature of that witness to the attestation clause of the deed was genuine *Held*, on the authority of *Whitelocke* v *Musgrove 2 Cr & M 511* that the deed was admissible in evidence its execution by *G* being sufficiently proved ABDULLA PARU v GANNIBAI I L R., 11 Bom, 690

304 ——— Small Cause Court, Proceedings ...

from such copy that the original has been duly authenticated by the Judge is sufficient to prove the decree HARONARAYAN v MANIK SINGH [7 B L R, Ap, 61

305 ——— *Record of pro*...

306 ——— *Authentication of record*—The record of proceedings in the Small Cause Court is not admissible in evidence unless authenticated by the signature of the presiding Judge QUEEN v SHIB CHANDRA DOSS [8 B L R, 730 note

307 ——— Survey and measurement papers—*Survey proceedings—Evidence Act 1855*

RAM NARAIN DOSS v MOHESH CHUNDER BANERJEE [19 W R., 202

308 ——— *Unattested*

[12 W R, 39

309 ——— *Government chittas—Act III of 1851, s 58*—Under s 58 Act III of 1851 Government chittas are admissible as evidence in cases in Chittagong MAHOMED FEDYE SIRDAR v OZEEOODEEN 10 W R., 340

310 ——— *Chittas—Boundary disputes*—Chittas are evidence of title in boundary disputes if an account is given of them and they are properly introduced and verified SUDUKHINA CHOWDHRAIN v RAJ MOHUN BOSE [11 W R, 350

311 ——— *Chittas made on boundary disputes*—Chittas made on the occasion of a boundary dispute are evidence of title where the question of boundaries arises in another suit RADHA CHURN GANGOOLY v ANUND SEIN [15 W R, 444

312 ——— *Chittas in resumption proceedings*—Chittas and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties are legal evidence SHAM CHAND GHOSE v RAM KRISTO BEWRAH 19 W R., 309

313 ——— *Copies of measurement papers and maps*—Certificated copies of survey measurement chittas and field books are admissible in evidence GOPEENATH SINGH v ANUND MOYEE DEBIA 8 W R., 167

314 ——— *Chittas—Attestation of chittas*—Where chittas were produced

chittas of the village while he was gomastah and that he had been present when with their assistance a purtal measurement had been carried out in the village DABEE PERSHAD CHATTERJEE v RAM COOMAR GHOSSAL 10 W R., 443

315 ——— *Measurement papers—Evidence of title*—Measurement papers of a zamindari made for the purpose of a partition are

...

316 ——— *Measurement*

317 ——— *Measurement papers*—Measurement papers cannot be treated as inadmissible in evidence because set aside by the decisions of the lower Courts if these decisions have been reversed by the High Court GOBIND MUHTOO v GOOPEE BHUGGUT 16 W R, 4

318 ——— *Chittas made by revenue officers*—Chittas made by the revenue authorities in the course of measurement of a Government mehal stand precisely on the same footing as

EVIDENCE—CIVIL CASES—*continued.*

12. SECONDARY EVIDENCE—*continued.*

351. ———————— *Unstamped balance of account—Stamp Act (I of 1879), s. 34—Acknowledgment or admission of liability—Limitation Act, s. 19.*—Though an unstamped acknowledgment cannot be "acted upon" as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold. FATECHAND HARCHAND *v.* KISAN

stamp; [I. L. R., 18 Bom., 614
cancelled MULJI LALA *v.* LINGU MAKAJI
out any [I. L. R., 21 Bom., 201
the first
of a slip ———————— *Insufficiently*
dered *d document—Suit on hathchitta—Right of*
inadmi *brought upon an insufficiently stamped*
and 34 *nt, where the defendant admitted the loan*
the obj *for money lent—Evidence Act (I of 1872),*
then so *n a suit brought in the Court of Small*
contendin a hathchitta bearing a stamp of one anna,
stitute th ant admitted the loan, but pleaded pay-
parol contr Judge coming to the conclusion that the
tion of the sued upon was promissory note, and
tracts were i been stamped with a two-anna stamp,
the document it in evidence. He also came to the
them—s. 91 of the plaintiff had no cause of action
v. CARAMALLI of the document, and dismissed the
341. ——— at the plaintiff had a cause of action
s. 91—Admissil f the document. *Held* also that
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[I. L. R., 3 Ca has not repaid it, the plaintiff
See KANHAYA LA ion against him for breach of his
contract, entirely independent of
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olap Chand Marwaree v. *Moho-*
342. ——— *L. R., 3 Calc., 314,* followed.
s. 91—Debt—Pro ANDAL *v.* DWARKA NATH DEY
ledgment of debt— [I. L. R., 23 Calc., 851
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being improperly stamped ppeal that the suit must be
was executed in favour of *I* that it was based upon the

hundi, which was inadmissible in evidence, being insufficiently stamped. VALIAPPA RAVUTHANNA *v.* MAHOMMED KHASIM . I. L. R., 5 Mad., 166

354. ———————— *Suit on unstamped hundi—Stamp Act (I of 1879), s. 34—Admission of liability by defendant.*—In a suit brought upon two hundis, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admissions in their written statement rendered it unnecessary to put the hundis in evidence. *Held,* reversing the decree, that a hundi is "acted upon" within the meaning of s. 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case. CHENBASAPA *v.* LAKSHMAN RAMCHANDRA

[I. L. R., 18 Bom., 369

355. ———————— *Evidence Act, s. 91—Bill of exchange insufficiently stamped, Admissibility of—Amendment of plaint—Stamp Act, 1869, ss. 20, 28—Evidence independent of the bill.*—Where a bill of exchange for the sum of R1,000, drawn, accepted, and endorsed, is insufficiently stamped, it is not receivable in evidence in a suit on the note, even on payment of a penalty. Where such a suit is brought by the endorsee against his immediate endorser, the Court may not, if the application be not made in proper time, allow the plaint to be amended so as to recover on a count for money paid to the defendants, even though the plaintiff may be allowed to bring a fresh suit Ss. 5, 8, 19, 20, 26, 28 of the General Stamp Act, XVIII of 1869, discussed. *Golab Chand Marwari* v. *Mohokoom Kooaree, I. L. R., 3 Calc., 314 : 2 C. L. R., 412 note,* not followed. MOTHOORA MOHUN ROY *v.* PEARY MOHUN SHAW . . . . 2 C. L. R., 409

See AUKUR CHUNDER ROY CHOWDHRY *v.* MADHUB CHUNDER GHOSE . . . . 21 W. R., 1

356. ———— Unregistered document—*Sodi razinama—Deed of relinquishment to landlord.*—The document called a sodi razinama (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in s. 91 of the Evidence Act, and therefore does not exclude the Courts from basing their findings upon other evidence, should any such exist. VENKATESA *v.* SENGODA . . I. L. R., 2 Mad., 117

357. ———————— *Evidence Act, s. 91—Deed of partition.*—A deed of partition was executed among three brothers, *C, N,* and *B,* on the 19th March 1867, but was not registered. It recited that, some years previously to its date, a division of the family property, with the exception of three houses, had been effected, and it purported to divide those houses among the brothers. In a suit brought by *C*'s widow for the recovery of the house which fell to *C*'s share,—*Held* that, although the deed did not exclude secondary evidence of the partition of the family property previously divided, yet it

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued.*

its loss not satisfactorily accounted for, secondary evidence cannot be admitted GREESH CHUNDER LAHOOREE *v* RAMLOLL SIRCAR ROOPMONJOREE CHOWDHRAIN *v* RAMLALL SIRCAR 1 W. R, 145

MUHAMMAD VALAD ABDUL MULUA *v* IBRAHIM VALAD HASAN 3 Bom, A. C, 160

WUZEER ALI *v* KALEE COOMAR CHUCKERBUTTY [11 W. R., 228

330 ——— *Evidence Act (I of 1872), ss 65 and 74—Secondary evidence of contents of document—Public document* —Secondary evidence of the contents of a document cannot be admitted without the non-production of the original [illegible]

L R., 14 I. A., 71

331. ——— *Evidence Act (I of 1872), ss 65, 66—Admission of secondary* [illegible]

making of the document or not, it formed good ground for holding that there was a document capable of being proved by secondary evidence, admissible with reference to the Indian Evidence Act (I of 1872), ss 65, 66 LUCHMAN SINGH *v* PUNA [I. L R, 16 Calc, 753 L R, 16 I A, 125

332. ——— *Evidence Act (I of 1872), ss 65, 66 and ss 74 and 86—Judicial proceedings in Foreign State Record not certified as specified in s 86—Public document* —The record of proceedings in a Court of justice is presumed to be genuine and accurate if it is [illegible]

the jurisdiction HARANUND CHEBLANGIA *v* RAM GOPAL CHEBLANGIA I. L R, 27 Calc, 639 [L R, 27 I A., 1 4 C W. N., 429

333. ——— *Secondary evi-* [illegible]

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued.*

[illegible] WAR PERSHAD *v* AMANUTULLA [I. L R, 26 Calc., 53 2 C W. N, 649

[illegible]

SHAHA 12 W, R, 90

335. ——— Proper custody—*Identity of* [illegible]

(*b*) UNSTAMPED OR UNREGISTERED DOCUMENTS

336 ——— Unstamped document—*Lost unstamped document requiring stamp* —Secondary evidence cannot be given of a lost instrument requiring a stamp which was not stamped ARUNCHELLUM CHETTY *v* OLAGAPPAH CHETTY [4 Mad., 312

337. ——— *Notice to produce—Evidence Act, s 91* —Secondary evidence [illegible]

338 ——— *Evidence Act,* [illegible]

[illegible]

ROY I. L. R., 8 Calc, 282

340 ——— *Evidence Act (I of 1872), s 91—Bought and sold notes—Contract reduced to writing and unstamped.*—The plaintiffs

EVIDENCE—CIVIL CASES—*continued.*

12. SECONDARY EVIDENCE—*continued.*

351. ———— *Unstamped balance of account—Stamp Act (I of 1879), s. 34—Acknowledgment or admission of liability—Limitation Act, s. 19.*—Though an unstamped acknowledgment cannot be "acted upon" as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold. FATECHAND HARCHAND *v.* KISAN

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12. SECONDARY EVIDENCE—*continued.*

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EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued*

every hundred rupees every month, and then take back this parwana from you" This was written upon plain unstamped paper Subsequently, the amount due not having been paid the decree-holder sued the executant of the document for its recovery It was objected that the suit was not maintainable without the document being put in evidence, but that being a promissory note and not stamped as

347. ———— *Evidence Act, s 65, cl. (b), and s 91—Stamp Act (I of 1879), s 34,*

ordinate Judge was of opinion that the note in

ment did not amount to an admission of the claim as for money lent The case was one in which no se

EVIDENCE—CIVIL CASES—*continued.*

12 SECONDARY EVIDENCE—*continued*

should be rejected DAMODAR JAGANNATH *v.* ATMARAM BABAJI . **I. L. R., 12 Bom, 443**

348 ———— *Evidence Act, s 91—Bill of exchange—Original consideration—Evidence—Stamp—Account stated* —When a cause

d

repay it with interest at six months date, h*onent-bond*

other reason the note is not admissible in a year for two creditor must lose his money AKBAR ... KHAN . **I. L. R., 7 Calc, 256**

349. ———— *s 91—Accounts stated—Bond given ... Bond impounded as insufficiently s... accounts stated* —Where accounts and his debtor were stated, and

... tah and kabu ... Gus suit brought ... had been there... was admitted to ... kabuliat The de... ainst the amount ... sting of a contract ... The Judge re... to receive oral ... ve a decree in ... opinion of the ... at having benefited in ... no oral evidence had ... ts of the pottah and ... ary to rule and in... now in support of MOOKERJEE *v.* DEB ... **I. 13 W. R., 307**

CHANDRAWATI . I.

350. ———— *s 91—Hypothecation-bond given ... account stated—Unregistered b... count stated* —The plaintiff sued ... tion of a hypothecation bond defendant, (ii) in the alterna... of the amount of the bond upon

... *Act,* ... a ... nce ... for ... by ... hat

novation of the contract ... of accounts, and the plaintiff ... ld not be given under ... VARADA AYYANGAR ... **Mad, 117**

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UD DIN *v.* RAJJO

EVIDENCE—CIVIL CASES—*continued.*

12. SECONDARY EVIDENCE—*continued.*

sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May 1889, by two contracts, agreed to purchase. At the hearing, in order to prove the terms of the contracts, the plaintiffs tendered two notes or memoranda of the contracts which purported to be signed by the broker and also by the defendant. These notes were in fact the sold notes which the broker had given to the plaintiffs. Each of those notes had been stamped with an anna stamp, but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defendant's signature, consisting of a slightly curved line. On these notes being tendered in evidence, it was objected that they were inadmissible, being unstamped, having regard to ss. 11 and 34 of the Stamp Act, I of 1879. The Court allowed the objection and rejected the notes. The plaintiffs then sought to prove the contracts by oral evidence, contending that the sold notes did not themselves constitute the contracts, but were only memoranda of parol contracts prepared by the broker for the information of the parties. *Held* that the terms of the contracts were reduced to writing, and no evidence, except the documents themselves, could be given in proof of them—s. 91 of the Evidence Act, I of 1872. RALLI *v.* CARAMALLI FAZAL . **I. L. R., 14 Bom., 102**

341. ——— *Evidence Act, s. 91—Admissibility of evidence—Proof of consideration.*—The plaintiff, in a suit on a promissory note written on unstamped paper, is not debarred from giving independent evidence of consideration. GOLAP CHAND MARWAREE *v.* MOHOKOOM KOOAREE

[I. L. R., 3 Calc., 314 : 2 C. L. R., 412 note

See KANHAYA LAL *v.* STOWELL

[I. L. R., 3 All., 581

and BENARSI DAS *v.* BHIKHARI DAS

[I. L. R., 3 All., 717

342. ——— *Evidence Act, s. 91—Debt—Promissory note—Written acknowledgment of debt—Oral acknowledgment—Evidence of debt.*—*H* lent R85 to *D* on a pledge of moveable property. *D* repaid *H* R40, and at the time of the repayment acknowledged orally that the balance of the debt, R45, was still due by him. It was agreed between the parties at the same time that *D* should give *H* a promissory note for such balance, and that such property should be returned to him. Accordingly *D* gave *H* a promissory note for R45, and the property was returned to him. *H* subsequently sued *D* on such oral acknowledgment for R45, ignoring the promissory note, which, being insufficiently stamped, was not admissible in evidence. *Held* that the existence of the promissory note did not debar *H* from resorting to his original consideration, nor exclude evidence of the oral acknowledgment of the debt. HIRA LAL *v.* DATADIN . . **I. L. R., 4 All., 135**

343. ——— *Suit for money lent, secured by unstamped promissory note—Decree against Hindu family.*—A promissory note, which being improperly stamped was inadmissible in evidence, was executed in favour of *R* by *K* and *N*, members of an undivided Hindu family, in consideration of a loan made to them. The money was used for the purpose of the family trade. *R* sued *K* and *N* and their father *P* and other members of the family to recover the money lent. *Held* that the existence of the promissory note was no bar to the suit, and that *R* was entitled to a decree against *K* and *N* and against *P* to the extent of the family property in his hands. KRISHNASAMI PILLAI *v.* RANGASAMI CHETTY

[I. L. R., 7 Mad., 112

344. ——— *Promissory note—Note of agreement in account book—Evidence of terms of agreement.*—In 1876 accounts were stated between *B* and *D*, and a balance of R800 was found to be due from *D* to *B*. *D* gave *B* an instrument whereby he agreed to pay the amount of such balance in four annual instalments of R200. *B* at the same time noted in his account book that "such balance was payable in four instalments of R200 yearly." In July 1879 *B* sued on the instrument for the balance of the first instalment, but the Court held it was a promissory note, and, as it was unstamped, refused to receive it in evidence. *B* thereupon withdrew his suit with liberty to bring a fresh one. In the subsequent suit *B* based his claim on the note in his account book. *Held* by the Court that the agreement by *D* to pay the balance found due from him to *B* on account stated between them in instalments of R200 annually could not be proved by the note made by *B* in his account book, but could only be proved by the promissory note. BENARSI DAS *v.* BHIKHARI DAS

[I. L. R., 3 All., 717

See GOLAP CHAND MARWAREE *v.* MOHOKOOM KOOAREE . . . **I. L. R., 3 Calc., 314**

and KANHAYA LALL *v.* STOWELL

[I. L. R., 3 All., 581

345. ——— *Evidence Act, s. 91—Suit for money lent—Unstamped promissory note—Cause of action.*—The terms of a contract to repay a loan of money with interest having been settled and the money paid, a promissory note specifying these terms was executed later in the day by defendant and given to plaintiff. This promissory note was not stamped. In a suit brought to recover the unpaid balance of the loan on an oral contract to pay,—*Held* that plaintiff could not recover. POTHI REDDI *v.* VELAYUDASIVAN . **I. L. R., 10 Mad., 94**

346. ——— *Evidence Act, s. 91—Contract—Promissory note executed by way of collateral security—Admissibility of evidence of consideration aliunde.*—A decree-holder agreed with the employer of his judgment-debtor who had been arrested in execution of the decree to discharge the latter from arrest upon the condition that his master would pay the amount of the debt. Accordingly, the master executed a document, the material portion of which was as follows:—"Be it known that I have borrowed R986-15 from you in order to pay a decree which was due to you by *D P*, so I write this in your favour to say that I will pay the said amount to you in six months with interest at 12 annas on

EVIDENCE—CIVIL CASES—*continued.*

12 SECONDARY EVIDENCE—*continued*

affected to dispose of the three houses by way of partition made on the day of its execution, and therefore secondary evidence of its contents was inadmissible under s 91 of the Evidence Act KACHUBHAI BIN GULABCHAND v KRISHNABAI [I. L R, 2 Bom, 635

358. ——— *Hundi inadmissible in evidence for want of stamp—Independent admission of loan—Suit on the original consideration—Admission by pleader erroneous in law—Binding effect—Dishonour—Notice* —Where there is an independent admission of a loan, the holder of a hundi, bill, or note, which is defective and inadmissible in evidence for want of a stamp may still sue on the consideration the person to whom he gave it though he cannot use the bill in support of his suit In a suit based on the consideration independently of a hundi, it is not necessary to prove notice of dishonour KRISHNAJI NARAYAN PARKHI v RAJMAL MANICKCHAND MARWADI I. L. R, 24 Bom., 360

359. ——— *Evidence Act (I of 1872), s 91—Terms of tenancy proved orally,*

entitled to the land in perpetuity, subject only to payment of the yearly rent In the event of

etual tenants, be ordered to uldings on the *ma facie* case that there was any agreement or lease Before the case had con-

wer not precluded from obtaining a decree, even

document was not referred to in the plaint, written statement, or issues and was not before the Court, the evidence should be looked at to ascertain the terms of the tenancy by which the plaintiffs and their predecessors in title held the property YESHWADABAI v RAMCHANDRA TUKARAM . I L R., 18 Bom, 66

360. ——— *Proof of lease not necessary to prove tenancy* —Even if he has a lease, a tenant can prove his tenancy right without proving his lease, though it is unregistered LALA SURABH NARAIN LAL v CATHERINE SOPHIA [1 C. W. N., 248

EVIDENCE—CIVIL CASES *continued*

12 SECONDARY EVIDENCE—*continued*

361 ——— *Endorsement—Deed of sale* The plaintiff executed a deed of sale of a moiety, and a lease of the other moiety, of certain land to *B* *B* instituted a suit under Act XIV of 1859, which was dismissed *B* then returned the deed of sale and lease to *A*, with the following endorsement under his signature, *viz*, "Returned, no claim" *A* instituted the present suit for recovery

veyed to *B*, and that the endorsement of the deed of sale, "Returned, no claim," was not admissible in evidence, as the same had not been registered *Held* that the entry was only evidence that the transaction was inchoate, and not final, so as to require a re conveyance GIRISH CHANDRA ROY CHOWDRY v AMINA KHATUN 3 B L. R, Ap, 125

362 ——— *Instalment bond—Unregistered pottah and kabuliat—Set-off*—Plaintiff sued in a Small Cause Court on an instalment bond for R81 The bond had been executed for nuzur or salami contemporaneously with the exe

evidence of their contents and gave a decree in favour of the plaintiff, subject to the opinion of the

his claim of set-off DINANATH MOOKERJEE v DEBNATH MULLICK [5 B L. R, Ap, 1. 13 W. R, 307

363 ——— *Evidence Act, s 65—Mortgage—Suit for ejectment* —Where a mortgage-deed had not been registered in accordance with s 13 of Act XVI of 1864,—*Held* in a suit for ejectment where the mortgage-deed was set up by the defendant, who claimed possession under it, that secondary evidence of it could not be given under s 65, Evidence Act DIVETHI VARADA AYYANGAR v KRISHNASAMI AYYANGAR I. L R, 6 Mad., 117

364. ——— *Document inadmissible from want of registration—Admission as to contents* —A written contract can only be proved by the production of the writing itself, and

EVIDENCE—CIVIL CASES—*continued.*

12. SECONDARY EVIDENCE—*continued.*

place of the document itself. IBRAHIM VALAD LADLI MIYA v. PARVATA VALAD HARI [8 Bom., A. C., 163

365. ——— *Destruction of deed, Proof of—Admission of registered copy.*—In a suit on a bond, the defendant by his answer denied execution of the bond. The plaintiff in his reply stated the accidental destruction of the bond, and prayed leave to put in evidence a registered copy thereof, which the Court allowed, and at the same time ordered the fragments of the original to be produced. At the trial the plaintiff produced the fragments, and under s. 11, Madras Regulation XVII of 1802, put in as evidence a registered copy of the bond. He called no witnesses to prove that the fragments produced formed part of the original bond. The Court admitted the registered copy as evidence and found for the plaintiff. The Judicial Committee on appeal reversed this finding on the ground that the registered copy, in the absence of satisfactory evidence of the destruction of the original bond, was improperly admitted as secondary evidence. ABBAS ALI KHAN v. YADEEM RAMY REDDY [3 Moore's I. A., 156

366. ——— *Proof of reason for its non-registration.*—It is not enough for a party desirous of adducing secondary evidence of the contents of a document which ought to have been registered to show that he cannot produce it because it is not registered; he must show that its non-registration was not due to any fault or want of diligence on his part, or he must show that the party against whom he desires to use it was guilty of such fraud in the matter of non-registration that he cannot be allowed to object on that ground to the production of the secondary evidence. KUMEEZOODDEEN HALDAR v. RUJUB ALI SHAHA [9 W. R., 528

367. ——— *Document not produced because unregistered.*—The fact that a pottah on which a plaintiff's title is based has not been registered, and consequently cannot be used by reason of the registration law, and is therefore not produced, is not a good ground on which a Court would be justified in admitting secondary evidence on the ground that the absence of the original is satisfactorily accounted for. CROWDIE v. KULLAR CHOWDHRY . . . . 21 W. R., 307

(c) LOST OR DESTROYED DOCUMENTS.

368. ——— Lost deed—*Attesting witnesses.*—Where a Court is satisfied that a deed was executed, and has been lost or destroyed, it should receive secondary evidence of the contents, documentary or oral; and it is not necessary that the witnesses called in to give oral testimony should be attesting witnesses. LOTFOOLLAH v. NUSSEEBUN [10 W. R., 24

369. ——— *Evidence Act (I of 1872), s. 65—Necessity of accounting for non-production of original document—Discretion of Court.*—Whether or not sufficient proof of search for, or loss of, an original document, to lay a ground for the admission of secondary evidence, has been given, is a point proper to be decided by the Judge of first instance, and is treated as depending very much on his discretion. His conclusion should not be overruled, except in a clear case of miscarriage. In a suit alleging want of authority to adopt, the defence rested on the case that an anumati patro had been given by the defendant's deceased husband, but failed to show that there had been a sufficient search for, and to establish the loss of, the original document, so as to render secondary evidence of its contents admissible. HARRIPRIA DEBI v. RUKMINI DEBI [I. L. R., 19 Calc., 438 L. R., 19 I. A., 79

370. ——— Destroyed document—*Claim for zamindari dues.*—A claim for zamindari dues in respect of the sale of garden trees ought not to be allowed on mere usage alone, but it should also be enquired into whether such dues were recognized and recorded in the settlement papers as required by Regulations VII of 1822, s. 9, and IX of 1825, s. 9. Where the settlement papers are destroyed and not forthcoming, the contents in respect of the dues claimed may be ascertained by the other best evidence procurable. PAUL RAI v. RAM HIT PANDAY [1 Agra, 139

371. ——— Lost record—*Additional evidence.*—Where a party obtained a decree which was appealed from, and in transit from the first to the second Court the record was irrecoverably lost, the High Court directed the lower Appellate Court to receive secondary evidence from both parties of the papers which made up the entire record, or, failing this, additional evidence under s. 355, Act VIII of 1859. GOOROO DOYAL SINGH v. DURBAREE LALL TEWAREE . . . . . 7 W. R., 18

372. ——— Loss or destruction of document—*Evidence Act (I of 1872), s. 65, cl. (c)—Bond.*—In a suit by the purchaser of a debt, the plaintiff stated that in 1873 *A* executed a bond in favour of *B* to secure the repayment of R1,000, and that he had purchased the interest of *B* at a sale in execution of a decree against him. The plaintiff now sued *A* upon the bond, making *B* a party. At the trial *A* denied the execution of the bond, and it was not produced by the plaintiff, who, having served *B* with notice to produce, tendered secondary evidence of its contents. *B* was not examined as a witness, and no evidence was given of the loss or destruction of the bond. *Held* by PONTIFEX and MORRIS, *JJ.* (PRINSEP, *J.*, dissenting), that secondary evidence was not admissible. WOMESH CHUNDER GHOSE v. SHAMA SUNDARI BAI [I. L. R., 7 Calc., 98: 8 C. L. R., 489

373. ——— *Evidence Act (I of 1872), ss. 63 (c), 114, ill. (g)—Copy of a copy—Suit for redemption of mortgage—Withholding evidence.*—A deed executed in 1812 became the subject of litigation, resulting, on the 17th May 1813, in a decree, the effect of which was to create a

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued*

every hundred rupees every month, and then take back this parwana from you" This was written upon plain unstamped paper Subsequently, the amount due not having been paid, the decree-holder sued the executant of the document for its recovery It was objected that the suit was not maintainable without the document being put in evidence, but that being a promissory note and not stamped as

BHADAR PRASAD v MAHARAJA OF B[illegible]TTIA [I. L. R, 9 All., 351

347. ——— *Evidence Act, s 65, cl. (b), and s 91—Stamp Act (I of 1879), s 34, pror I—Suit on an unstamped promissory note*—The plaintiff sued to recover from the defendant the balance of a debt due on an unstamped note passed to him by the defendant for consideration of R38 The note recited that the defendant had received the amount, and would repay it after three months from the date of its execution The defendant admitted, by his written statement, execution of the note and the receipt of R37 in the shape of paddy, but alleged that he had paid off the debt He also contended that the note, being unstamped, could not be admitted in evidence The plaintiff contended that the note was a bond, and could be admitted on payment of the stamp duty and the penalty, under s 34 of the Stamp Act I of 1879, which he offered to pay The Subordinate Judge was of opinion that the note in

itself being inadmissible for want of a stamp *Held per* BIRDWOOD, *J*, that the plaintiff could not recover irrespectively of the promissory note, as he did not seek to prove the consideration otherwise than by the note which was inadmissible in evidence The admission contained in the defendant's written state-

EVIDENCE—CIVIL CASES—*continued.*

12 SECONDARY EVIDENCE—*continued.*

should be rejected DAMODAR JAGANNATH v ATMA RAM BABAJI . I. L. R, 12 Bom, 443

348. ——— *Evidence Act,*

parted with the bill or note, under such circum *Held*

repay it with interest at six months' date, h[illegible]*ment bond*
is no cause of act on for money lent, or other—*Set-off*—
upon the note itself, because the deposit is [illegible] an instal
the terms contained in the note, and no executed for
such a case the note is the only contract [illegible]th the exe
parties, and if for want of a proper st[illegible]ch the defen
other reason the note is not admissible in a year for two
creditor must lose his money AKBA[illegible]tah and kabu
KHAN . I. L. R., 7 Calc, 256: 8 [illegible]ous suit brought
349. ——— had been there-
s 91—*Accounts stated—Bond giv*[illegible] was admitted to
Bond impounded as insufficiently s[illegible] kabuliat The de-
accounts stated—Where accounts [illegible]ainst the amount
and his debtor were stated, and t[illegible]oting of a contract
former a bond for the balance fo[illegible]hat The Judge re-
creditor,—*Held that* the creditor [illegible]nce, or to receive oral
subsequently suing on the accoun[illegible]d gave a decree in
ance which had been found due to the opinion of the
CHANDRAWATI . . I. [illegible]nt having benefited in
350. ——— [illegible] no oral evidence had
s 91—*Hypothecation-bond* [illegible] [illegible]ts of the pottah and
account stated—Unregistered b[illegible] [illegible]rary to rule and in-
count stated—The plaintiff sued now in support of
MOOKERJEE v DEB-

second on the ground that the [illegible] was set up by
novation of the contract impl[illegible]ssession under it, that
of accounts, and the plaintiff [illegible]ld not be given under
[illegible] VARADA AYYANGAR

Held that this decision [illegible]ten contract can only be
plaintiff was entitled to suc[illegible]f the writing itself; and
Sirdar Kuar v. *Chandrav*[illegible]issible from want of regis-
distinguished. Where t[illegible]ence of the contract can be
contract of which regist[illegible]ss on as to the contents of
essential that each shou[illegible]he pleadings, but in a depo-
that is requisite towards [illegible]nce, and cannot supply the
UD-DIN v. RAJJO

EVIDENCE—CIVIL CASES—*continued.*

12. SECONDARY EVIDENCE—*continued.*

that the right to this indemnity related to a future revenue settlement, nor had it been decided that the agreement was to run with the land so as to bind others, under whatever title they might be in possession. In the suit in which that judgment was given, the ikrarnama not having been produced, the Court of first instance would not admit secondary evidence of its contents. On appeal, inspection of the document having been offered to, and declined by, the Appellate Court, secondary evidence was admitted. On this appeal, the error was pointed out of allowing the plaintiff to give secondary evidence of the contents of a document, the original of which was in his custody, without the Court's looking at the document. HIRA LAL *v.* GANESH PERSHAD

[I. L. R., 4 All., 403 : 11 C. L. R., 109 L. R., 9 I. A., 64

382. ——— **Failure to produce**—*Hibanama—Evidence Act, s. 65.*—Where a person's claim to some property rested on a hiba which had been executed in her favour by the brother of the parties who contested her claim to that property; and the hiba had not been made over to her because it related to various properties of which the property claimed by her formed only a portion; and one of the defendants, whom she had called on to produce the hiba, had failed to do so,—*Held* that plaintiff was entitled, under s. 65 of the Evidence Act, to procure secondary evidence of its contents; and having done so, to get the decree which the first Court had given her and which the High Court now refused to set aside. SADEERONNISSA BIBI *v.* SHOURUBBY DEBEA

[25 W. R., 459

383. ——— **Notice to produce not complied with**—*Evidence Act, s. 66.*—Where a defendant out of the jurisdiction of the Court was summoned to produce a letter and did not comply with the summons, but appeared by pleader at the last moment at the hearing of the suit, and service of notice on the pleader to produce the letter would have been nugatory, secondary evidence of the contents of the letter was admitted under s. 66, proviso 6, of the Evidence Act. MELLUS *v.* VICAR APOSTOLIC OF MALABAR . . . I. L. R., 2 Mad., 295

384. ——— **Refusal to produce**—*Evidence taken on commission—Documentary evidence, Objection to admissibility of—Evidence taken by commissioner beyond jurisdiction—Notice to produce original document—Evidence Act (I of 1872), s. 63, sub-ss. 3, 65, 66.*—If, when evidence is taken before commissioners, a document is tendered and objected to on any ground, the opposite party is not precluded from objecting to the document at the trial on any other ground. It is not necessary to state all the objections to the admissibility of a document when it is first tendered, but the party objecting is at liberty to take any fresh objection whenever the party producing the document tenders it in evidence. Where a commission to take evidence is issued to any place beyond the jurisdiction of the Court issuing the commission, it is not necessary, in order to admit secondary evidence of the contents of a document, that the party tendering it should have given notice to produce the original, nor is it necessary for him to prove a refusal to produce the original. RALLI *v.* GAU KIM SWEE . . I. L. R., 9 Calc., 939

385. ——— **Power-of-attorney to register referring to power to execute**—*Admission of original deed.*—A power-of-attorney authorizing the registration of a deed of mortgage, and recognizing a previous power to execute the deed of mortgage, is admissible as original evidence by way of admission of the previous deed. HOSSEINEE JAN *v.* MUKHDOOMUN . . . . 2 W. R., 44

386. ——— **Counterpart of lease**—*Non-production of original lease.*—*Held* that the counterpart of a lease, being a registered document, was admissible in evidence, and could not be rejected solely on the ground that the original registered lease was not before the Court. MAJID HOSSEIN *v.* JEEAWON KHEWAT . . . . 3 Agra, 233

387. ——— **Production of kabuliat**—*Absence of pottah.*—*A* let lands to *B*, who sublet to *C*, a raiyat. *C* sued for possession of part, after an alleged dispossession, making *A* party defendant to the suit. At the hearing *C*, in order to prove that the lands in dispute were part of those let to him by *B*, tendered in evidence the kabuliat given by him to *B*. *Held* that *C* should have produced the pottah given by him to *B*, and the grant from *A* to *B*, or sufficiently account for their absence; and that, as he did not do either, the kabuliat (which was merely secondary evidence of *C*'s pottah) was inadmissible, even though it was produced from the possession of the landlord *A*. SURJO NARAIN GHOSE *v.* HURRI NARAIN MOLLO . . . . 1 C. L. R., 547

388. ——— **Non-production of account books**—*Beng. Reg. VI of 1793.*—In a suit for a sum alleged to be due on the balance of partnership accounts, the Sudder Court ought, under s. 16, Regulation VI of 1793, to have used the evidence to be supplied by the original account books, or to have ascertained that the sum mentioned as the balance due, subject to the objections, was a balance due without objection. SEETUL BOHOO *v.* HURKISHEN DOSS . . 5 W. R., P. C., 76

389. ——— **Written contract, Effect of failing to prove when alleged**—*Mahomedan Law—Dower.*—A suit was brought by a Mahomedan wife for dower alleged to be due to her under a kabinnamah executed by her husband at the time of the marriage. She alleged the amount of dower to be R10,000, of which R5,000 was prompt and R5,000 deferred, and she claimed to be entitled to the whole on the ground that she had lawfully divorced her husband in pursuance of power reserved to her in that behalf by the kabinnamah. At the hearing she failed to prove the kabinnamah, but the Court gave her a decree, holding that there was evidence to show that a dower of R10,000 was usually payable in that plaintiff's family, and that, in the absence of evidence to the contrary, the whole amount must be considered

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued*

usufructuary mortgage of rights and interests in two villages In 1871 the purchaser of a portion of the mortgagor's rights alleging that the mortgage-debt had been liquidated from the usufruct sued to recover possession of the property The mortgagees resisted the claim for possession on the grounds that prior to the execution of the deed in 1812 the mortgagor's ancestor had granted to their own ancestor a gawanda dari right under which a fixed jumma of R121 was payable by them in respect of the lands

to oust them from possession It appeared that the alleged gawanda pattar the original mortgage deed and the decree of the 17th May 1813 were at one

decree of the 17th May 1813 *Held* that the destruction or loss of the three documents alleged by the defendants to have been destroyed not being proved their non production placed them under the recognized prohibitions of the law of evidence and subjected them to the presumption recognized by ill (*g*) s. 114 of the Evidence Act that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it *Held* also that inasmuch as the plaintiff was no party to the alleged gawanda pattar nor to the mortgage of 1812 nor to the litigation which resulted in the decree of the 17th May 1813 and could not therefore be taken to be in a position to produce

whilst admitting such possession up to the year 1872 had failed to prove either their destruction or their contents by secondary evidence such as could be relied on *Rajah Kishen Dutt Ram Panday* v *Narendar Bahadoor Singh L R 3 I A 85* referred to RAM PRASAD *v* RAGHUNANDAN PRASAD

[I L R, 7 All, 738

374 ———— Deed lost in Mutiny—*No copy made* —

deed alleged

—*Held* that

deed was destroyed and that there was no copy of it in existence the Court could receive oral evidence

375 ———— Destroyed document—*Suit to redeem mortgage—Destruction of mortgage deed* —In a suit to redeem a mortgage it was proved that the mortgagees and their assignee had fraudulently destroyed the deed by which the property was mortgaged *Held* that the mortgagees could not be permitted to prove the contents of the deed or the amount of mortgage debt by secondary evidence and that the representative of the mortgagor should be allowed to recover the lands without any payment ABDULLA *v* MUHAMMAD 1 Bom, 177

376 ———— Loss or destruction of document—*Evidence Act s 65* In a case falling under cl (*f*) s 65 of the Evidence Act and also under cl (*a*) or (*c*) of the same section any secondary evidence is admissible IN THE MATTER OF A COLLISION BETWEEN THE AVA AND THE BRENHILDA I L R, 5 Calc, 568 5 C L R, 331

377 ———— *Civil Procedure Code s 525—Loss of award Procedure on* When an award has been lost a Court acting under s 525 of the Code of Civil Procedure cannot take secondary evidence of its provisions and pass a decree accordingly GOPI REDDI *v* MAHANANDI REDDI

[I L R, 12 Mad, 331

378 ———— *Suit on award —Civil Procedure Code s 525* Secondary evidence of the contents of an award is admissible on proof of its being lost GOPI REDDI *v* MAHANANDI REDDI I L R, 15 Mad, 99

379 ———— *Evidence Act (I of 1872) ss 65 91—Limitation Act (XV of 1877) s 19—Acknowledgment in writing* —Limitation Act s 19 must be read with Evidence Act ss 65 and 91 and does not exclude secondary evidence in cases where such would be admissible under s 65 as in cases of lost or destroyed documents CHATHU *v* VIRARAYAN I L R, 15 Mad, 491

(*d*) NON PRODUCTION FOR OTHER CAUSES

380 ———— Lotbundi—*Evidence of certificate of sale* —A lotbundi cannot be accepted as secondary evidence in lieu of the certificate of sale unless the absence of the certificate is sufficiently accounted for and no better evidence than the lotbundi can be produced USTOORUN *v* MOHUN LAL

[21 W R, 333

381 ———— Document in party's custody, but not produced—*Ikrarnamah—Proof of document* —The proprietary right in a talukh was sold with the reservation of part of the land belonging to it subject to the agreement that the vendor should be indemnified by the vendee in respect of

EVIDENCE—CIVIL CASES—*concluded.*

12. SECONDARY EVIDENCE—*concluded.*

be in the possession of the defendant. In a previous suit the defendant's mother had filed the document, and on removing it had, according to the rules of practice, placed a copy there instead. The defendant, on being summoned, failed to produce the same. *Held* that a copy of such copy, so filed in Court, was admissible as evidence. MAKBUL ALI *v.* MASNAD BIBI . 3 B. L. R., A. C., 54 : 11 W. R., 398

420. ———————— *Public document—Lost original.*—The copy of a copy of a document may be admitted as evidence when it comes from a public office, and the original is shown to have been lost, but not otherwise. COURT OF WARDS *v.* BUNWAREE LALL THAKOOR . 15 W. R., 102

421. ———————— *Absence of original explained.*—A certified copy of a document deposited in a public office, which document is itself a copy, is admissible as secondary evidence where the absence of the original is duly accounted for. BHULABHAI GULLABHAI *v.* MODJI DESALJI [5 Bom., A. C., 48

422. ———————— *Sanad.*—A copy of a copy of a sanad is not admissible in evidence. NEELANUND SINGH *v.* NUSSEEB SINGH [6 W. R., 80

EVIDENCE—CRIMINAL CASES.

EVIDENCE—CRIMINAL CASES—*continued.*

See CASES UNDER ACCOMPLICE.

See CASES UNDER APPROVERS.

See COMMISSION—CRIMINAL CASES. [I. L. R., 19 Calc., 113

See CASES UNDER CONFESSION.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS. [23 W. R., Cr., 27 I. L. R., 1 Bom., 610 I. L. R., 10 Calc., 1024

See PRACTICE—CRIMINAL CASES—AFFIDAVIT . I. L. R., 19 Mad., 209

———— Mode of recording—

See CRIMINAL PROCEEDINGS. [I. L. R., 19 Mad., 269

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING . 11 B. L. R., Ap., 5

———— Notes of—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . [15 B. L. R., Ap., 14 I. L. R., 1 Calc., 254

1. CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.

1. ———— **Evidence of robbery considered in trial for murder**—*Trial for robbery and murder—Offences constituting parts of the same transaction—Verdict of jury.*—Persons convicted of robbery by a Sessions Judge and a jury, and of murder by the Sessions Judge with assessors, appealed to the High Court against the conviction on the charge of murder. *Held* that, in coming to a conclusion as to whether the evidence justified the conviction appealed against, the verdict of the jury should not be taken into consideration. But on its appearing that the two offences constituted parts of the same transaction,—*Held* that recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery was similarly evidence against them on the charge of murder. QUEEN-EMPRESS *v.* SAMI I. L. R., 13 Mad., 426

2. ———— **Evidence showing commission of another offence by accused other than that for which they are being tried**—*Evidence, Admissibility of.*—In a criminal trial evidence otherwise admissible is not rendered inadmissible by the fact that it discloses the commission of an offence other than that in respect of which the trial is being held. *Reg.* v. *Briggs, 2 M. & R., 199,* referred to. QUEEN-EMPRESS *v.* MULUA [I. L. R., 14 All., 502

3. ———— **Duty of Judge in trial by jury**—*Admission of inadmissible evidence.*—In cases tried by jury it is the duty of the Judge

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued*

prompt, but as the plaintiff only claimed R5 000 as prompt, the decree was limited to that amount *Held* that the Court was wrong in decreeing the case upon an oral contract not alleged in the plaint nor admitted by the defendant the suit being based upon a written agreement which the plaintiff failed to prove KHAJA MAHOMED ASGHUR *v* MANIJA KHANUM *alias* BAKKA KHANUM I. L. R, 14 Calc, 420

(*e*) COPIES OF DOCUMENTS AND COPIES OF COPIES

390 ———— Copies of documents—*Cause of non production of original* —Although the admissibility in India of copies in evidence must not be dealt with by the strict rules prevailing at a *n si prius* trial in England yet their Lordships were of opinion that when a copy has been in any way received and it becomes the function of the Judge to consider what weight and value should be given to it, it is the duty of the Judge in order to test its authenticity, to satisfy himself that there is some reason for

he will attach to it There is a considerable difference between cases where documents come in as mere links or as part only of the evidence in the case and those in which the suit is actually brought

Lordships amply sufficient to support the finding of the Court RAMGOPAL ROY *v* GORDON, STUART & Co 17 W R., 285 14 Moore's I. A, 453

391. ———— *Permission to file original* —Documents tendered as evidence are properly rejected on the ground that they are copies inadmissible under the Law of Evidence and it is

in reject

original

R., 355

392 ———— *Accounting for*

of a certain party such party's denial in pleading that he has ever had the document is not sufficient to justify the omission of the processes the law provides

EVIDENCE—CIVIL CASES—*continued*

12 SECONDARY EVIDENCE—*continued*

tah SHOOKRAM SOOKUL *v* RAM LALL SOOKUL [9 W R, 248

393 ———— *Accounting for absence of original* —A copy of a document cannot be admitted as evidence unless the absence of the original is properly accounted for the mere fact of the latter being in another Court is not a sufficient reason GOURMONEE *v* HUREE KISHORE ROY [10 W R, 338

RAKHAL DASS BUNDOPADHYA *v* INDURMONEE DABEE 1 C L R., 155

394. ———— *Attested copy*

395 ———— *Copy of deed—Admissibility in evidence—Explaining absence of original* —Copy of a deed refused in evidence as the absence of the original was not sufficiently accounted for ANUNDA MOYEE DASSEE *v* MACKENZIE [W R, 1864, 5

WATSON & Co *v* SHAM LALL PANDAH [10 W R, 73

ISHAN CHUNDER CHOWDHRY *v* BHYRUB CHUNDER CHOWDHRY 5 W R, 21

396 ———— ———— *Explaining absence of original* —A plaintiff filing copies of documents is bound to explain why the originals have not been filed RAM JOY SURMA *v* PRANKISHEN SINGH BURODA DEBIA *v* RAM KISHEN SINGH PROMODA DEBIA *v* PRANKISHEN SINGH [2 W R, 80

397 ———— *Admission of existence of original* —A copy of a disputed deed cannot be taken as evidence without proof that the original is out of the power of the party producing the copy The admission of the existence of the original is not tantamount to an admission of the correctness of the copy KURUM *v* RUTTUN BHUGGUT [W R, 1864, 186

398 ———— *Proof of cor-*

LUKHIMONI DOSSEE *v* KORUNA KANT MOITRO [3 C L R., 509

EVIDENCE—CRIMINAL CASES
—*continued.*

3. CHEMICAL EXAMINER—*concluded.*

Examiner" upon a matter or thing submitted to him for analysis and report cannot be received in evidence under s. 510 of Act X of 1882. QUEEN-EMPRESS v. AUTAL MUCHI . I. L. R., 10 Calc., 1026

14. ——— Inquest report—*Bom. Reg. XII of 1827, s. 52—Bombay Act VIII of 1867.*—Regulation XII of 1827, s. 52, having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. REG. v. BHASHANKUR NARBHERAM . . . . 6 Bom., Cr., 75

4. DEPOSITIONS.

See CASES UNDER EVIDENCE ACT, 1872, s. 33.

15. ——— Mode of recording depositions—*Criminal Procedure Code, 1882, s. 355—Criminal Procedure Code, 1861, s. 195—Memo. of depositions of witnesses.*—A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of s. 195, Code of Criminal Procedure. QUEEN v. MUTTEE NUSHYO
[W. R., 1864, Cr., 18

16. ——— Mode of recording deposition, Evidence of.—The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed. QUEEN v. MATI KHAWA
[3 B. L. R., A. Cr., 36 : 12 W. R., Cr., 31

17. ——— Depositions of witnesses taken by Magistrate—*Evidence on appeal.*—Before depositions of witnesses taken before a Magistrate can be used on appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses. QUEEN v. PARBUTTY CHURN CHUCKERBUTTY
[14 W. R., Cr., 13

18. ——— Depositions in previous case.—Previous statements of witnesses on oath are not available as evidence in a subsequent trial. QUEEN v. KISTO MUNDUL . . 7 W. R., Cr., 8

19. ——— The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him. QUEEN v. NOBOKISTO GHOSE . . . . . 8 W. R., Cr., 87

20. ——— Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. QUEEN v. ZULFUKUR KHAN . . . . 8 B. L. R., Ap., 21
[16 W. R., Cr., 36

21. ——— The prisoners were convicted, under s. 154 of the Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. IN THE MATTER OF THE PETITION OF BETTS . . . . . 6 B. L. R., Ap., 83
[15 W. R., Cr., 6

22. ——— *Absence of accused.*—The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken, and therefore could not sustain a charge. QUEEN v. RAJKISHNA MITTER
[1 B. L. R., O. Cr., 36

23. ——— In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence. QUEEN v. DINA BUNDHOO ROY . . . . . . 24 W. R., Cr., 4

24. ——— *Absence of accused.*—Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts,—*Held* that the proceeding was irregular and prejudicial to the prisoner; and such witnesses should have been subjected to a fresh oral examination; and that then the former depositions might have been put in, not to add to their testimony, but to corroborate it. A new trial was ordered. QUEEN v. BISHONATH PAL 3 B. L. R., A. Cr., 20
[12 W. R., Cr., 3

25. ——— Depositions not read over to accused—*Oral evidence—Statement of mooktear as to faulty record—Criminal Procedure Code (Act X of 1882), s. 360—Evidence Act (I of 1872), s. 91.*—A Sessions Judge, after hearing a general statement made by a mooktear engaged in the case, considered that the depositions of certain witnesses taken in the Magistrate's Court did not conform with the requirements of s. 360 of the Code of Criminal Procedure, and refused to admit the depositions as evidence, and also refused to allow oral evidence to be given as to the statements made by these witnesses. No objection was taken to the admission of these depositions on behalf of the Crown; the accused were eventually convicted and sentenced to rigorous imprisonment. *Held* on appeal that the conviction and sentence must be set aside. ADYAN SING v. QUEEN-EMPRESS . . I. L. R., 13 Calc., 121

26. ——— Depositions taken by Collector.—The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate. QUEEN v. SOOKMOY GHOSE
[10 W. R., Cr., 23

27. ——— Depositions before Magistrate—*Criminal Procedure Code, 1861, s. 369—Depositions of gosha ladies.*—The depositions of gosha

EVIDENCE—CRIMINAL CASES
—*continued*

1 CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE—*concluded*

to prevent the product on of inadmissible evidence whether it is or is not objected to by the parties Evidence relating to proposals of compromise ought not in the exercise of a proper d scret on, to be *allowed to go in as evidence of guilty knowledge* against the accused ABBAS PEADA v QUEEN EMPRESS . I L R, 25 Calc, 736 [2 C W N, 484

2 CHARACTER

4. ———— **Bad character, Evidence of** — Evidence of bad character should not be put before the jury but is only for cons derat on of the Judge in determining the sentence to be awarded. QUEEN v MAHIMA CHANDRA DASS [6 B L R, Ap, 108 5 W R., Cr, 37

QUEEN v PHOOLCHAND *alias* PHOLEEL AHIR [8 W R, Cr, 11

QUEEN v GOPAL THAKOOR 6 W R, Cr, 72

QUEEN v BEHARY DOSADH 7 W R., Cr, 7

5 ———— It is improper to allow witnesses for the prosecution to state that the accused is not of good character REG v TIMMI [2 Bom, 131 2nd Ed., 125

6 ———— **Previous conduct and character** —Evidence of character and previous conduct of a prisoner being matters of prejudice and not
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[10 W R, Cr, 17

7 ———— In charging a jury a Sess ons Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into cons deration by a Sess ons Judge in passing sentence when the prisoners are convicted QUEEN v KULUM SHEIKH [10 W R, Cr, 39

8 ———— *Evidence Act, s 54*—In charging the jury upon the trial of a prisoner for being dishonestly in the possess on of

fact that he has a bad character is irrelevant' and that the evidence was irrelevant and inadmissible ROSHUN DOSADH v EMPRESS [I. L. R, 5 Calc, 768 6 C L. R, 219

9 ———— *Criminal Procedure Code (1882) s 117—Evidence of general repute—Rumours—Security for good behaviour*— Evidence that there are rumours in a particular place that a man has committed acts of extortion on various

EVIDENCE—CRIMINAL CASES
—*continued*

2 CHARACTER—*concluded*

occasions that he has badmashes in his employ to assist him and generally that he is a man of bad character is not evidence of general repute under s 117 of the Criminal Procedure Code Evidence of rumour is mere hearsay evidence of a parti cular fact Evidence of repute is a different th ng A man s general reputat on is the reputa t on wh ch he bears in the place in which he lives amongst all the townsmen and if it is proved that a man who lives in a particular place is looked upon by his fellow townsmen whether they happen to know him or not as a man of good repute that is strong evidence that he is a man of good character On the other hand if the state of things is that the body of h s fellow townsmen who know him look upon him as a dangerous man and a man of bad habits that is strong evidence that he is a man of bad character It cannot be said that because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind these rumours are in themselves evidence under s 117 of the Code RAI ISRI PERSHAD v QUEEN EMPRESS [I L R, 23 Calc, 621

10 ———— *Evidence of bad character—Evidence Act (I of 1872) ss 14 and 54 as amended by Act III of 1891—Gang of persons associated for purpose of habitually committing theft*—The character of the accused not being

proving the commiss on of that offence MANKURA PASI v QUEEN EMPRESS I L R 27 Calc 139 [4 C W N, 97

See SHRIRAM VENKATASAMI v QUEEN [6 Mad., 120

3 CHEMICAL EXAMINER

11. ———— **Report of Chemical Examiner**—*Criminal Procedure Code (Act XXV of 1861) s 370*—Under s 370 Act XXV of 1861 the report of a Chemical Examiner is evidence in a crim nal trial if it bear the signature of the Examiner The original should be produced QUEEN v BISWAMBHAR DAS [6 B L R, Ap, 122 15 W R., Cr, 49

12 ———— *Criminal Procedure Code 1869 s 380A*—The report of the Chemi cal Examiner to Government may be acted upon as evidence by all Criminal Courts by virtue of s. 380A of the amended Code of Crim nal Procedure ANONYMOUS 6 Mad., Ap, 11

13 ———— **Report of "Additional Chemical Examiner"**—*Criminal Procedure Code—Act X of 1882 s 510*—A document purporting to be a report under the hand of an Additional Chemical

EVIDENCE—CRIMINAL CASES —*continued.*

4. DEPOSITIONS—*continued.*

officer the witnesses deposed to the absconder having been one of the participators in the crime charged against the prisoners then under trial. In the Sessions Court the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only. In 1886 the absconder was apprehended and tried before the Court of Session upon the charge of murder. At that time most of the former witnesses were dead, and the Sessions Judge, referring to s. 33 of the Evidence Act, admitted in evidence against the prisoner the depositions given in 1874 before both the Magistrate and the Sessions Court. He also admitted the deposition of a surviving witness which had been given in 1874 before the Sessions Court. This witness now also gave evidence against the prisoner. *Held* that the depositions were not admissible in evidence under s. 33 of the Evidence Act, the prisoner not having been a party to the former proceedings and not having then had an opportunity of cross-examining the witnesses. *Held*, however, that under the circumstances the depositions given in 1874 before the committing Magistrate, though not those given in the Court of Session, were admissible in evidence under s. 512 of the Criminal Procedure Code. *Per* STRAIGHT, *J.*, that under the special circumstances the deposition taken in 1874 of the surviving witness was admissible under s. 157 of the Evidence Act as corroboration of her evidence given at the trial of the prisoner. QUEEN-EMPRESS *v.* ISHRI SINGH . . I. L. R., 8 All., 672

41. ———— **Depositions in counter case.** —The depositions of witnesses given in a counter case may be used as evidence against them on their trial as accused persons, but such depositions could only be evidence against the persons making them. *Queen-Empress* v. *Gopal Dass, I. L. R., 3 Mad., 271,* and *Queen-Empress* v. *Ganu Sonba, I. L. R., 12 Bom., 440,* followed. MOHER SHEIKH *v.* QUEEN-EMPRESS [I. L. R., 21 Calc., 392

42. ———— **Deposition of medical witness taken by Magistrate tendered at sessions trial**—*Criminal Procedure Code, s. 509—Magistrate's record not showing, and evidence not adduced to show, that deposition was taken and attested in accused's presence—Deposition not admissible in evidence—Evidence Act (I of 1872), s. 114, illus. (e).*—Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Criminal Procedure Code, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record or be proved by the evidence of witnesses to have been taken and attested in the accused's presence. It should not merely be presumed, under s. 114, illus. (*e*), of the Evidence Act (I of 1872) to have been so taken and attested. QUEEN-EMPRESS *v.* RIDING . . . I. L. R., 9 All., 720

43. ———— *Criminal Procedure Code, s. 509—Magistrate's record not showing, and evidence not adduced to show, that deposition was taken and attested in accused's presence—Evidence Act (I of 1872), s. 80.*—Although all depositions of witnesses in criminal cases should be taken and attested in the presence of the accused, and a few apt words should be used on the face of the deposition to make it apparent that this has been done, there is no provision of the law which makes the attestation of the deposition by the Court in the presence of the accused obligatory. S. 80 of the Evidence Act, therefore, does not warrant the presumption that the deposition of a medical witness taken by a committing Magistrate has been taken and attested in the accused's presence, so as to make such deposition admissible in evidence at the trial before the Court of Session under s. 509 of the Criminal Procedure Code. *Queen-Empress* v. *Riding, I. L. R., 9 All., 720,* referred to. QUEEN-EMPRESS *v.* POHP SINGH . . I. L. R., 10 All., 174

44. ———— **Depositions of witnesses before Magistrate**—*Criminal Procedure Code, s. 288—Evidence—Confession retracted—Corroboration.*—Where a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial,—*Held* that the prisoner should not have been convicted on such evidence. QUEEN-EMPRESS *v.* BHARMAPPA [I. L. R., 12 Mad., 123

45. ———— **Previous statements of witnesses, Admissibility of**—*Criminal Procedure Code (1882), s. 288.*—Although previous statements made by witnesses may be used, under s. 145 of the Evidence Act, for the purpose of contradicting statements made by them subsequently at the trial of an accused person, they cannot, if they have been made in the absence of the accused, be treated as independent evidence of his guilt or innocence; s. 288 of the Criminal Procedure Code will not avail anything for this purpose. ALIMUDDIN *v.* QUEEN-EMPRESS . . . I. L. R., 23 Calc., 361

46. ———— **Deposition of medical witness**—*Criminal Procedure Code (X of 1882), s. 509—Deposition wrongly admitted in evidence—Evidence Act (I of 1872), ss. 80 and 114, ill. (e).*—Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Code of Criminal Procedure, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested by the Magistrate in the presence of the accused. The Court is neither bound to presume under s. 80, nor ought it to presume under either s. 80 or s. 114, ill. (*e*), of the Evidence Act (I of 1872), that the deposition was so taken and attested. *Queen-Empress* v. *Riding, I. L. R., 9 All., 720,* and *Queen-Empress* v. *Pohp Sing, I. L. R., 10 All., 174,* approved. KACHALI HARI *v.* QUEEN-EMPRESS . . . I. L. R., 18 Calc., 129

47. ———— **Self-incriminating statements of witness**—*Evidence Act, ss. 80 and 132*

EVIDENCE—CRIMINAL CASES —continued

4 DEPOSITIONS—continued

ladies examined before the committing Magistrate in the presence of the accused are not admissible in evidence on the trial before the Sessions Court under s 369 of the Criminal Procedure Code 1861 ANONYMOUS 4 Mad, Ap, 15

28 ———— *Discrepancies in*

29 ———— *Criminal Procedure Code, 1861, s 369* —When a deposition is received in evidence under s 369, Code of Criminal Procedure at a trial before a Sessions Judge there ought to be on the record distinct proof of the existence of such a state of things as makes the deposition legal evidence QUEEN v BHEEKUN DOSS [7 W R, Cr, 114

30 ———— **Depositions taken before Civil Court**—*Criminal Procedure Code 1861, s 369—Evidence Act (II of 1855), s 57* —When a Civil Court authorizing a criminal prosecution in cases of offences against public justice instead of completing the investigation itself and committing the parties for trial before the Court of Session simply refers the proceedings and leaves it to the

II of 1855 the improper admission of such evidence is not of itself ground for the reversal of the Sessions Judge's sentence, when independently of that evidence there is sufficient evidence to justify the decision QUEEN v NUJUM ALI [6 W R, Cr, 41

31 ———— *Deposition in previous inquiry under Companies Act (VI of 1882), ss 162 and 163—Accused tried jointly*—

32 ———— **Depositions taken on commission**—*Evidence Act s 33—Evidence of witness taken upon commission when admissible in criminal trial High Court's Criminal Procedure Act (X of 1875), s 76*—The evidence of a witness

[I L R, 6 Calc, 532

EVIDENCE—CRIMINAL CASES —continued

4 DEPOSITIONS—continued

33 ———— **Depositions taken in absence of accused where he has absconded**—*Criminal Procedure Code 1882 s 512* —Where an accused person has absconded and it is intended to record evidence against him in his absence it is requisite, under s 512 of the Code of Criminal Procedure that the fact of the absconding of the accused should be alleged tried and established before the deposition is recorded GHURBIN BIND v QUEEN EMPRESS I L R, 10 Calc, 1097

34 ———— **Deposition of absent witness**—*Act I of 1859 s 111* The deposition of a person other than a merchant seaman is not admissible in evidence under s 111 of the Merchant Seaman's Act (I of 1859) QUEEN v RAMCOMAL MITTER I Hyde, 195

deposition not objected to QUEEN v GAGALU MOYALU [4 B L R, Ap, 50 12 W R, Cr, 80

36 ———— **Written reports of depositions**—*Criminal Procedure Code 1861 s 369* —Written reports of depositions are not evidence except in the case provided for by s 369 of the Code of Criminal Procedure 1861 QUEEN v KALLY CHURN GANGOOLY 6 W R, Cr, 92

37 ———— **Documents tendered in civil case**—*False evidence Trial for giving*—Documents which were tendered in the civil suit if relied on in a prosecution for giving false evidence must be proved in the Criminal Court before they can be received as evidence QUEEN v KARTICK CHUNDER HALDAR 9 W R, Cr, 58

38 ———— **Documents not on record**

QUEEN v. SOOBJAN 10 B L R, 332

39 ———— **Records of former trial**—

40 ———— **Depositions taken in former sessions case**—*Criminal Procedure Code s 512 —Act I of 1872 ss 33 157—Witness Threatening —Duty of Magistrate* —In 1874 five out of six persons who were named as having committed a murder were arrested and after enquiry before a Magistrate were tried before the Court of Session and convicted. At the time of the enquiry before the Magistrate the sixth accused person absconded as was recorded by the Magistrate In their examination before that

EVIDENCE—CRIMINAL CASES —*continued.*

5. DYING DECLARATIONS—*concluded.*

as to their impressions of what the signs meant were inadmissible, and should be eliminated; but that, assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by s. 32. *Per* MAHMOOD, *J.*, that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. *Per* PETHERAM, *C.J.*, that the signs could not be proved as "conduct" within the meaning of s. 8 of the Evidence Act, inasmuch as, taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under explanation 2 of s. 8 or under s. 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to effect, or of the facts which they were intended to explain. The "conduct" made relevant by s. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. *Per* MAHMOOD, *J.*, that the word "conduct" as used in s. 8 does not mean only such conduct as is directly and immediately influenced by a fact in issue or relevant fact; that the signs made by the deceased were the conduct of "a person an offence against whom was the subject of any proceeding" and were relevant as such under s. 8, and that the questions put to her were admissible in evidence either under explanation 2 of the same section or under s. 9 by way of an explanation of the meaning of the signs. QUEEN-EMPRESS *v.* ABDULLA . . . . I. L. R., 7 All., 385

56. ———— Statement of deceased—*Rape.* —The dying declaration of a deceased person is admissible in evidence on a charge of rape. QUEEN *v.* BISSORUNJUN MUKERJEE . 6 W. R., Cr., 75

57. ———— *Sessions Court, Record of.*—The dying declaration of a deceased person is admissible, and should form part of the sessions record. QUEEN *v.* SOYUMBER SINGH [9 W. R., Cr., 2

IN THE MATTER OF THE PETITION OF CHINTAMUNEE NYE . . . . 11 W. R., Cr., 2

6. EXAMINATION AND STATEMENTS OF ACCUSED.

58. ———— Statements made by accused person.—Statements of accused persons can only be used in evidence as against the parties making them, and cannot be used as corroborative evidence against others. QUEEN *v.* HURGOBIND [2 N. W., 336

QUEEN *v.* BUSSIRUDDI . 8 W. R., Cr., 35

59. ———— Statements of prisoners—*Depositions before Magistrate.*—Bare statements of prisoners are not admissible in evidence; nor are depositions taken before the Magistrate unless to contradict the evidence of the same witnesses as given before the Sessions Court. QUEEN *v.* BHEKOO SINGH [7 W. R., Cr., 108

60. ———— Confession of prisoner made to Magistrate or to private person.—A confession made to a Joint Magistrate of a district in charge of the sudder subdivision is receivable in evidence, although the Joint Magistrate may not have been specially empowered, under Act VIII of 1869, to receive the confessions of prisoners. A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. QUEEN *v.* GOPEENATH KOLLU . . 13 W. R., Cr., 69

61. ———— Admission by husband of having kicked his wife—*Causing death.*—An admission by a husband in the presence of several witnesses that he had kicked his wife, and that she died after receiving the kick, was held to be direct evidence against him. QUEEN *v.* BYSAGOO NOSHYO [8 W. R., Cr., 29

62. ———— Withdrawal of uncorroborated evidence by the witness—*Criminal Procedure Code, ss. 342, 364—Confessions.*—*A* and *B* were charged with the murder of *C*, the husband of *B*. There was some evidence that *B* had said her husband was dead a few days after his disappearance; and some bones, a skull and some cloths were found in a neighbouring burying ground which were identified as those of *C*. *B* made a statement, recorded on June 4th by the village Munsif, to the effect that she had lured *C* into a garden, and that *A*, who was her paramour, had murdered him in her arms, which statement she repeated frequently with greater detail in answer to questions from the committing Magistrate, and subsequently before the Sessions Court. On her appeal to the High Court, after she had been sentenced to death, she retracted her former statements and made the usual charges of ill-treatment against the police. *A* made a statement to the committing Magistrate, which he subsequently repudiated before the Sessions Court, to the effect that he had assisted in disposing of the corpse of *C* at the request of his brother-in-law, who corroborated the statement in two depositions before the Magistrate, which were likewise repudiated by the deponent before the Sessions Court. *Held* that the conviction of *A* was wrong, and further (PARKER, *J.*, dissenting) that the conviction of *B* was wrong. *Per* KERNAN, *J.*—"As the second

EVIDENCE—CRIMINAL CASES —*continued*

4. DEPOSITIONS—*concluded*

—*Proof and admissibility of depositions containing such statements in proceedings against the witness*—A revenue official was charged with the offence of attempting to receive a bribe from certain raiyats who gave evidence for the prosecution, and he was convicted He subsequently charged the raiyats with having conspired to bribe him, and in their trial their depositions in the previous case were tendered in evidence for the prosecution *Held* that the depositions should have been admitted in evidence QUEEN EMPRESS *v* SAMIAPPA

[I. L. R., 15 Mad., 63

5 DYING DECLARATIONS

48 ———— **Proof of state of deceased person**—*Mode of recording declaration*—A dying declaration is admissible in evidence in all criminal cases, provided the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of enquiry There must be evidence of the state of the deceased person at the time of making the declaration The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death QUEEN *v* UJRAIL . . . 3 N. W., 212

49 ———— *Criminal Procedure Code 1861, s 371*—In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under s 371, Code of Criminal Procedure, a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death The evidence of persons who cannot speak of their own personal

50 ———— *Procedure*—Be-

examination IN THE MATTER OF TANOO

[15 W. R., Cr., 11

51. ———— **Statement made by deceased**—*Evidence Act, s 32, cl 1*—*Murder*—In a case of murder the statement made by the deceased in the presence of his neighbours and of a head constable was admitted as relevant evidence under s 32, cl 1, Act I of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not at the time when it was made under expectation of death QUEEN *v* DEGUMBER THAKOOR

[19 W. R., Cr., 44

52. ———— **Declaration made before Magistrate other than the committing Magistrate**—*Evidence of making of declaration*—The declaration of a dying person, albeit made on

53. ———— **Dying statement**—*Presence of accused*—The dying statement of a deceased

be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the witness's memory IN THE MATTER OF THE PETITION OF SAMIRUDDIN EMPRESS *v* SAMIRUDDIN . I L R, 8 Calc, 211 [10 C L R., 11

54. ———— **Statement of deceased as to cause of death**—*Evidence Act, s 32*—Where the accused was charged with culpable homicide not amounting to murder, the question was whether the deceased had died from the effects of a beating. *Held* that a statement by the deceased that he had been beaten by the accused was admissible in evidence under s 32 of the Evidence Act, without proof that at the time of making the statement the deceased was conscious of any fatal effect of such beating EMPRESS *v* BLECHYNDEN

[6 C. L. R., 278

55. ———— *Cause of death* ... *ssibility of* ... *I of 1872)*, —"*Fact*"— a trial upon ... ie deceased by various persons as to the circumstances in which the injuries had been inflicted on her, that she was at that time unable to speak, but was conscious and able to make signs Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in answer to such questions *Held* by the Full Bench (MAHMOOD, *J*, dissenting) that the

EVIDENCE—CRIMINAL CASES—*continued.*

6. EXAMINATION AND STATEMENTS OF ACCUSED—*continued.*

71. ——— **Evidence of co-accused charged, but not arrested**—*Admissibility of evidence.*—A charge of theft having been laid against *A* and *B*, process was issued against *A* only, and upon his being put upon his trial, *B*, who had not been arrested, was produced as a witness for the defence. *Held* that his evidence was admissible. *Queen* v. *Ashruff Sheikh, 6 W. R., Cr., 91,* and *Reg.* v. *Hanmanta, I. L. R., 1 Bom., 610,* distinguished. MOHESH CHUNDER KAPALI *v.* MOHESH CHUNDER DASS . . . . **10 C. L. R., 553**

72. ——— **Examination of accused person**—*Mode of recording evidence.*—The examination of an accused person should be taken down in the language in which it is delivered and as far as possible in the words used by him. QUEEN *v.* MOONSAI BIBEE . . **24 W. R., Cr., 54**

73. ——— **Statement of accused before Magistrate**—*Mode of recording evidence—Criminal Procedure Code, 1872, s. 80.*—The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness and was by him acknowledged to be correct, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Criminal Procedure Code, and the memorandum was taken under s. 80, Code of Criminal Procedure, as evidence of the facts stated in it, and as affording some evidence that the translation was correct. QUEEN *v.* GONOWRI [**22 W. R., Cr., 2**

74. ——— *Omission to make memorandum of evidence by Civil Court in case of perjury.*—The failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. IN THE MATTER OF BEHARY LALL BOSE . . . . **9 W. R., Cr., 69**

75. ——— *Evidence Act, s. 91—Criminal Procedure Code, 1872, s. 339—Prosecution for false evidence.*—In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given or which he understood; nor was it read over in accordance with the requirements of s. 339, Code of Criminal Procedure, in the presence of the person then accused. *Held* that the English record of the Magistrate was not legal evidence under the Evidence Act I of 1872, s. 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction. QUEEN *v.* MUNGUL DASS [**23 W. R., Cr., 28**

76. ——— **Statement of accused, Informality in**—*Evidence Act, s. 91—False evidence in judicial proceedings—Deposition of the accused when admissible as evidence—Civil Procedure Code (Act X of 1877), ss. 178, 182, 183, and 647.*—Failure to comply with the provisions of ss. 182 and 183 of Act X of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I of 1872 (Evidence Act), no other evidence of such deposition is admissible. IN THE MATTER OF THE PETITION OF MAYADEB GOSSAMI. EMPRESS *v.* MAYADEB GOSSAMI [**I. L. R., 6 Calc., 762: 8 C. L. R., 292**

77. ——— **Examination of accused**—*Criminal Procedure Code, 1861, ss. 205, 366—Attestation of Magistrate.*—Before the examination of a prisoner in the presence of the committing officer can be used as evidence against him under s. 366, Criminal Procedure Code, the provisions of s. 205 of that Code must have been complied with, and the committing officer's attestation affixed in full to the examination. QUEEN *v.* CHUPPUT KHYRWAR [**15 W. R., Cr., 83**

78. ——— *Record of statements.*—When the examination of the prisoner by the Magistrate has not been recorded in full so as to include the questions as required by s. 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session, under s. 366, without further proof. REG. *v.* KALLA LAKHMAGI . . **2 Bom., 419: 2nd Ed., 395**

REG. *v.* PEVADI BIN BASAPPA [**2 Bom., 421: 2nd Ed., 397**

REG. *v.* VITHOJI **2 Bom., 422: 2nd Ed., 398**

REG. *v.* GANU BAPU [**2 Bom., 422: 2nd Ed., 398**

But *see* EMPRESS *v.* SAGAMBUR [**12 C. L. R., 120**

79. ——— *Criminal Procedure Code, 1861, s. 205.*—Where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by s. 205 of the Code of Criminal Procedure, it does not of itself constitute *primâ facie* evidence of the examination within the meaning of s. 366 of that Code, and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the sessions. QUEEN *v.* PETAMBUR DHOOBEE [**14 W. R., Cr., 10**

80. ——— *Criminal Procedure Code, Act XXV of 1861, s. 205.*—A Deputy Magistrate committed certain prisoners for trial on

EVIDENCE—CRIMINAL CASES —*continued*

6 EXAMINATION AND STATEMENTS OF ACCUSED—*continued*

prisoner has withdrawn all the confessional statements made by her it is necessary according to the rulings of this Court to examine the evidence and see if there is reliable independent evidence to corroborate to a material extent and in material particulars the statements contained in the withdrawn confessional statements If no such corroborative evidence exists then the contradictory statements of the second prisoner remain and doubts exist as to which statement is true and the confessional statement cannot be safely relied on against the prisoner *Semble*—*The same rule should* be followed when a witness withdraws his deposition before the Sessions Court *Per* KERNAN J—The examination of an accused person under Criminal Procedure Code s 364 is subject to the purpose referred to in s 342 *vi* to enable him to explain any circumstances appearing against him and not to supplement the case for the prosecution against him to show that he is guilty QUEEN EMPRESS *v* RANGI [I L. R., 10 Mad, 295

See QUEEN EMPRESS *v* JADUB DAS [I. L R., 27 Calc, 295

63 ———— **Putting to jury to consider document purporting to be proved by statement**

Criminal Procedure Code It is a misdirection to ask the jury to consider a document purporting to be proved by such a statement as evidence against the accused. BASANTA KUMAR GHATTAK *v* QUEEN EMPRESS I L R, 26 Calc, 49

64 ———— **Statement under promise of pardon**—A statement made under promise of pardon is no evidence against a prisoner QUEEN *v* RADHANATH DOSADH 8 W R., Cr, 53

65 ———— **Statement made by prisoner after acceptance of pardon**—*Subsequent retraction of statement*—A person accused of an offence was offered a pardon the conditions of which he accepted On being examined he stated in detail the circumstances of the offence and named the prisoner as an accomplice He afterwards retracted his statement *Held* that the statement could not be used as evidence against the prisoner QUEEN *v* HARDEWA 5 N W, 217

66 ———————— *Examination of accused person—Witness—Criminal Procedure Code s 347*—It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under s 347 of the Code of Criminal Procedure Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session held not relevant that person not having been acquitted or discharged or convicted QUEEN *v* HANMANTA [I L R., 1 Bom, 610

See QUEEN EMPRESS *v* DURANT [I L R, 23 Bom, 213

67 ———— **Statement of person to whom pardon has been wrongly tendered**—*Criminal Procedure Code 1872 s 347*—Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Session and such person was examined as a witness in the case—*Held* that the tender of pardon to such person not being warranted by s 347 of Act X of 1872 he could not legally be examined on oath and his evidence was inadmissible EMPRESS *v* ASHGAR ALI I L. R., 2 All, 260

68 ———— **Statement of prisoner after tender of pardon**—*Evidence Act (I of 1872) s 80*—A deposition given by a person is not admissible in evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition A pardon was tendered to an accused and his evidence was recorded by the Magistrate Subsequently the pardon was revoked and he was put on his trial before the Sessions Judge along with the other accused At the trial the deposition given by him before the Magistrate was put in and used in evidence against him without any proof being given that he was the person who was examined as a witness before the Magistrate *Held* that the deposition was inadmissible without proof being given as to the identity of the accused with the person who was examined as a witness before the Magistrate QUEEN EMPRESS *v* DURGA SONAR [I L R, 11 Calc, 580

69 ———————— *Criminal Procedure Code 1861 ss 205 211 and 366*—Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered the Sessions Judge in exercising the power given him by s 211 of the Code of Criminal Procedure ought not to try him along with the prisoners in whose case he has already given testimony QUEEN *v* PETUMBER DHOOBEE [14 W R., Cr., 10

70 ———— **Statements of accused illegally pardoned.**—In cases not of the kind contemplated in s 337 of the Criminal Procedure Code (X of 1882) it is not competent to a Magistrate holding a preliminary enquiry to tender a pardon to the accused or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant QUEEN EMPRESS *v* DALA JIVA I L R., 10 Bom, 190

See QUEEN EMPRESS *v* DURANT [I L R, 23 Bom, 213

EVIDENCE—CRIMINAL CASES—*continued.*

8. HANDWRITING—*concluded.*

memorandum was wrongly received in evidence. NOBIN KRISHNA MOOKERJEE *v.* RASSICK LALL LAHA [I. L. R., 10 Calc., 1047

9. HEARSAY EVIDENCE.

90. ——— Hearsay evidence, Inadmissibility of.—The admission of hearsay evidence prohibited. QUEEN *v.* KALLY CHURN GANGOOLY [7 W. R., Cr., 2

QUEEN *v.* PITAMBUR SIRDAR . 7 W. R., Cr., 25

91. ——— Statement in absence of accused.—A statement by a witness that he heard *A* say, in the absence of the accused, that he had paid a sum of money to the accused as a bribe, is hearsay evidence and is not admissible. RAJONI KANT BOSE *v.* ASAN MULLICK . 2 C. W. N., 672

10. HUSBAND AND WIFE.

92. ——— Admissibility of wife's evidence for or against husband or person charged jointly with him.—Upon a criminal trial in the mofussil, the evidence of a wife was held to be admissible for or against her husband or persons charged jointly with him. NORMAN, J., dissented. QUEEN *v.* KHYROOLLA [B. L. R., Sup. Vol., Ap., 11 6 W. R., Cr., 21

REG. *v.* KADIR VALAD BALU . 7 Bom., Cr., 50

93. ——— Privileged communication—*Letter from husband to wife—Letter taken on search of wife's house—Evidence Act (I of 1872), s. 122.*—On a trial for the offence of breach of trust by a public servant, a letter was tendered in evidence for the prosecution which had been sent by the accused to his wife at Pondicherry and had been found on a search of her house made there by the police. *Held* that the letter was admissible in evidence against the accused. S. 122 of the Evidence Act was not applicable. QUEEN-EMPRESS *v.* DONAGHUE [I. L. R., 22 Mad., 1

11. ILLEGAL GRATIFICATION.

94. ——— Illegal gratification—*Evidence of person bribing.*—The evidence of the person who bribes is admissible against the person bribed. QUEEN *v.* ABHOY CHURN CHUCKERBUTTY [3 W. R., Cr., 19

95. ——— *Receiving illegal gratification—Penal Code (Act XLV of 1860), ss. 161, 165—Evidence of subsequent but unconnected receipt, showing footing on which parties stood—Evidence Act (I of 1872), ss. 5-13 and 14.*—The accused was charged with having received illegal gratification from *C & Co.* on three specific occasions in 1876. In 1876, 1877, and 1878, *C & Co.* were doing business as commissariat contractors, and the accused was the manager of the Commissariat office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from *C & Co.* in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act, *Held per* GARTH, C.J. (MACLEAN, J., concurring), the evidence was not admissible under s. 14. *Per* GARTH, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a *man's mind or feeling.* *Per* MITTER, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876. EMPRESS *v.* VYAPOORY MOODELIAR . . I. L. R., 6 Calc., 655 [8 C. L. R., 197

12. JUDGMENT IN CIVIL SUIT.

96. ——— Judgment in civil suit out of which criminal prosecution arises.—In a suit by *A* against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of *A* on a charge of forgery. On the trial of *A* before a jury, this judgment of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury. *Held* that this judgment had been illegally admitted. GOGUN CHUNDER GHOSE *v.* EMPRESS [I. L. R., 6 Calc., 247 : 7 C. L. R., 74

97. ——— Admissibility in criminal prosecutions of judgment in a civil suit.—*Per* RAMPINI, J.—A judgment in a civil action cannot be given in evidence in a criminal prosecution for establishing the truth of the facts upon which it is rendered. Whatever may be the nature of the decision of the Civil Court, the Magistrate ought to decide the question of the accused's criminality by himself. *Per* GHOSE, J.—The decision in a civil suit would be admissible in evidence in a criminal case if the parties are substantially the same and the issues in the two cases are identical. RAJ KUMARI DEBI *v.* BAMA SUNDARI DEBI [I. L. R., 23 Calc., 610

13. LETTERS.

98. ——— Letters implicating prisoner found in his house.—Letters, etc., found in a man's house after his arrest are admissible in evidence, if their previous existence has been proved. QUEEN *v.* AMIR KHAN . . 9 B. L. R., 36 [17 W. R., Cr., 15

EVIDENCE—CRIMINAL CASES
—continued

6 EXAMINATION AND STATEMENTS OF ACCUSED—continued

charge of dacoity Some of the prisoners had confessed before the Deputy Magistrate but he failed to record the examination of the prisoners or to attest it as required by s 205 of the Code of Criminal Procedure The Sessions Judge therefore refused to admit the examination of the prisoners by the Deputy Magistrate in evidence and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter *Held* that the examination of the prisoners was inadmissible in evidence QUEEN v RADHU JANA
[3 B L R, A Cr, 59 12 W R., Cr, 44

81 ———— *Statement of prisoner on examination before Magistrate—Criminal Procedure Code 1861 s 205—Signature of Magistrate* —To make the examination of an accused person before a Magistrate legal evidence in a Session s Court something more than the mere signature of the Magistrate thereto is necessary The certificate under the

BEEKEE 4 N, W, 16

See QUEEN v NIRUNI 7 W R, Cr, 49

and QUEEN v BHIKAREE 15 W R, Cr, 63

82. ———— *Attestation of Magistrate* —The attestation of the Magistrate is *primâ facie* proof of such examination and it is to be presumed the proceedings were regular QUEEN v JAGA POLY 11 W R, Cr, 39

S C QUEEN v JOGE POLY [7 B L R, 67 note

REG v TIMMI 2 Bom, 131 2nd Ed, 125

83 ———— *Attestation of Magistrate* —The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *primâ facie* proof of the fact and may be laid before a jury QUEEN v RASOOKOOLLAH
[12 W R, Cr, 51

84 ———— *Evidence in Sessions Court* —If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court the whole of it should be read out ANONYMOUS
[5 Mad, Ap, 4

85 ———— *Statement of*

tion of prisoners before a Magistrate is to be received in evidence and the attestation of the Magistrate is *primâ facie* proof of the circumstances QUEEN v MISSER SHEIKH 14 W R., Cr, 9

86 ———— *Statements made before Magistrate as approvers—Refusal of Judge of Sessions Court to put them on record—Criminal Procedure Code s 287* —It is not optional with the prosecution on the trial before the Court of Session to put in confessional statement of persons who have been examined before the Magistrate where the Sessions Judge refused to place on the record such statements he was held to have committed an irregularity QUEEN EMPRESS v RAMA TEVAN I L R., 15 Mad, 352

EVIDENCE—CRIMINAL CASES
—continued

6 EXAMINATION AND STATEMENTS OF ACCUSED—concluded

7 GOVERNMENT GAZETTE

87 ———— Gazette of India—*Calcutta Gazette—Act II of 1855 ss 6 and 8—Official letters* —The *Gazette of India* or *Calcutta Gazette* containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier was rightly admitted in evidence under ss 6 and 8 of Act II of 1855 as proof of the commencement continuation and determination of hostilities Similarly under s 6 a printed letter from the Secretary to the Government of the Punjab to the Secretary to the Government of India was properly resorted to by the Court for its aid as a document of reference It was not necessary that these documents should be interpreted to the prisoner It was sufficient that the purposes for which they were put in were explained QUEEN v AMIRUDDIN
[7 B L R, 63 15 W R, Cr, 25

8 HANDWRITING

88 ———— Handwriting Knowledge of —The knowledge by the Sessions Judge of the handwriting of the judicial officer before whom the statement was made is no evidence of the statement having been made before that officer QUEEN v FATIK BISWAS 1 B L R., A Cr, 13

S C QUEEN v FUTTEALI BISWAS [10 W R., Cr, 37

89 ———— Handwriting, Proof of—*Statement by third party Memorandum.*—*N* was charged with having made a false statement before a Sub Registrar in identifying *A* a person who had executed a mortgage deed in favour of *B* and who

EVIDENCE—CRIMINAL CASES —*continued.*

8. HANDWRITING—*concluded.*

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EVIDENCE—CRIMINAL CASES —*continued.*

11. ILLEGAL GRATIFICATION—*concluded.*

Commissariat office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from *C & Co.* in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act, *Held per* GARTH, C.J. (MACLEAN, J., concurring), the evidence was not admissible under s. 14. *Per* GARTH, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. *Per* MITTER, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876. EMPRESS *v.* VYAPOORY MOODELIAR . . I. L. R., 6 Calc., 655 [8 C. L. R., 197

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13. LETTERS.

98. ———— Letters implicating prisoner found in his house.—Letters, etc., found in a man's house after his arrest are admissible in evidence, if their previous existence has been proved. QUEEN *v.* AMIR KHAN . . 9 B. L. R., 36 [17 W. R., Cr., 15

EVIDENCE—CRIMINAL CASES
—*continued*

14. MEDICAL EVIDENCE

99. — ... of medical witne ... 123 —Per ... of the Co ... of a medical witness taken and duly attested may be given in evidence in any criminal trial, but in order that such evidence may be admissible against any individual accused person, the examination must have been taken in the presence of the accused person IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON EMPRESS v JHUBBOO MAHTON

[I. L. R., 8 Calc., 739: 12 C. L. R., 233

100. ——— *Experts, Evidence of—Medical witnesses, Evidence of—Opinion of experts how elicited—Evidence Act (I of 1872), s. 45*—A medical man who has not seen a corpse which has been subjected to a *post mortem* examination, and who is called to corroborate the opinion of the medical man who made such *post mortem* examination, and who has stated what he considered was the cause of death, is in a position to give evidence of his opinion as an expert The ...

MULLICK ... I. L. R., 15 Calc., 5..

101. ——— *Expert's opinion—Report of post-mortem examination*—The evidence of a medical man who has seen and has ... the ... ad ... hich ... opi nion of an expert as to the manner in which those ... of death ...

... refresh his memory by referring to a report which he has made of his *post mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom RAJHUNI SINGH v EMPRESS

[I. L. R., 9 Calc., 455: 11 C. L. R., 569

102. ——— Report of subordinate ... ...rior officer ... subordinate ... urrence by ... nder s 368 ... HE MATTER ...

[.. W. R., Cr, 2

103 ——— Letter from medical officer—*Letter expressing opinion*—A letter of a ...

[.. W. R., Cr., ..

15. NATIVE SEALS

104. ——— Comparison of native seals—*Evidence Act, 1855 s 48*—S 48, Act II ... The test of ... ne, ... on. ... 5

16 NOTES OF INQUIRY

105 —— Notes on inquiry by registering officer—The notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion QUEEN v PURNANUND BARICK 11 W. R., Cr., 13

17 POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS

106. ——— Evidence of police officer —*Act II of 1855, s 31*—The practice of not examining a *police officer who investigates a case* condemned The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge under s 31, Act II of 1855 QUEEN v AHMED ALLY 11 W. R., Cr., 25

107. ——— Statement of constable of police—Where the accused was charged with attempting to murder her child, the chief constable's statement (he having gone to search the house of the accused) that he "had information that the accused was about to kill the child," was most *improperly* admitted as evidence against the accused REG v. CHIMA 8 Bom, Cr, 164

108. ——— Police diaries—*Corroborative evidence*—Under s 154, Code of Criminal Procedure, police diaries cannot be admitted as corroborative evidence QUEEN v THAKOOR CHUND SURMA

[13 W. R., Cr., 22

109. ——— *Corroborative evidence*—Police diaries cannot be legally used as substantive evidence or read to the jury QUEEN v HURDUT SURMA 8 W. R., Cr., 68

110 ——— *Use of portion of diary—Criminal Procedure Code, 1861, s 154.*—Where certain portions of a police officer's diary are used as evidence against him, s 154 of the Code of Criminal Procedure does not bar the admission of other portions of the diary as explaining the portions so used. QUEEN v NOBOKRISTO GHOSE

[8 W. R., Cr., 87

111 ——— Police papers—*Judicial* ... judicial test ...

[8 W. R., Cr., 35

112 ——— Police reports—Police reports are not evidence, except against the reporting police officer GOVERNMENT v MUDUN DASS

[6 W. R., Cr, 52

EVIDENCE—CRIMINAL CASES
—*continued.*

20. STATEMENTS TO POLICE OFFICERS
—*continued.*

132. ——— *Evidence Act (I of 1872), s. 157—Criminal Procedure Code, 1882, s. 162.*—S. 157 of the Evidence Act, which lays down the general rule, must be taken subject to the exception contained in the special rule enacted by s. 162, Code of Criminal Procedure, which makes statements to the police other than dying declarations inadmissible in evidence against the accused. QUEEN-EMPRESS *v.* BHAIRUB CHUNDER CHUCKERBUTTY . . . . **2 C. W. N., 702**

133. ——— *Evidence Act, ss. 155 and 159—Criminal Procedure Code (Act X of 1882), s. 162—Statement taken down by a police officer under s. 162—Evidence.*—A statement reduced to writing by a police officer under s. 162 of the Code of Criminal Procedure (Act X of 1882) cannot be used as evidence for the accused. But though it is not evidence, the police officer to whom it was made may use it to refresh his memory under s. 159 of the Evidence Act (I of 1872), and may be cross-examined upon it by the party against whom the testimony aided by it is given. The person making the statement may also be questioned about it; and, with a view to impeach his credit, the police officer, or any other person in whose hearing the statement was made, can be examined on the point under s. 155 of the Evidence Act. *Reg.* v. *Uttamchand, 11 Bom., 120,* followed. QUEEN-EMPRESS *v.* SITARAM VITHAL
[I. L. R., 11 Bom., 657

134. ——— *Criminal Procedure Code, 1882, s. 161—Statement taken down by police officer.*—A statement taken down in the course of a police investigation by a police constable under s. 161 of the Criminal Procedure Code (Act X of 1882) is not evidence at any stage of a judicial proceeding. QUEEN-EMPRESS *v.* ISMAL VALAD FATARU . . . **I. L. R., 11 Bom., 659**

135. ——— *Statement of accused to police officer during investigation—Admissions—Confessions—Criminal Procedure Code, ss. 25, 26, 27.*—Instances of statements made by an accused person to a police officer held to be admissible or inadmissible in evidence against such accused person. QUEEN-EMPRESS *v.* MEHER ALI MULLICK . . . **I. L. R., 15 Calc., 589**

136. ——— *Evidence Act, ss. 26, 27—Confessional statements made in the custody of police—Tests of admissibility.*—The test of the admissibility under s. 27 of the Ev dence Act of information received from an accused person in the custody of a police officer, whether amounting to a confession or not, is—"Was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact?" QUEEN-EMPRESS *v.* COMMER SAHIB
[I. L. R., 12 Mad., 153

137. ——— *Criminal Procedure Code (Act X of 1882), ss. 161, 172, 211—Statements of witnesses recorded by police officers investigating under Ch. XIV, Criminal Procedure Code, right of accused to call for and inspect—Police diaries.*—Statements of witnesses recorded by a police officer while making an investigation under s. 161 of the Criminal Procedure Code form no portion of the police diaries referred to in s. 172, and an accused person on his trial has a right to call for and inspect such statements and cross-examine the witnesses thereon. BIKAO KHAN *v.* QUEEN-EMPRESS . **I. L. R., 16 Calc., 610**

MAHOMED ALI HADJI *v.* QUEEN-EMPRESS
[I. L. R., 16 Calc., 612 note

138. ——— *Criminal Procedure Code, s. 161—Penal Code (Act XLV of 1860), ss. 191 and 193—False evidence—Statement made to a police officer investigating a case—Mode of recording such statement.*—It is not necessary that the statement of a witness recorded under s. 161 of the Code of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made. The provisions of ss. 191 and 193 of the Penal Code apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. It is not illegal, though unnecessary, for a police officer recording a statement under s. 161 of the Code of Criminal Procedure, 1882, to obtain the signatures of persons present at the time to authenticate his record of such statement. QUEEN-EMPRESS *v.* BHAGWANTIA . . **I. L. R., 15 All., 11**

139. ——— *Criminal Procedure Code, ss. 161 and 162—Statement made by a witness to police officer making an investigation—Use of such statement to contradict witness—Use of statement against accused.*—A statement made by a witness under s. 161 of the Code of Criminal Procedure to a police officer investigating a case may be proved at the trial of such case to contradict such witness, the witness having been first cross-examined on the point in respect of which it is sought to contradict him. But where it appeared that, but for the principal witness for the defence having been discredited by means of proof of a previous inconsistent statement made by the said witness before the investigating officer, the accused would have been acquitted, it was *held* that this amounted to a using of such statement as evidence against the accused within the meaning of s. 162 of the Code of Criminal Procedure. *Queen-Empress* v. *Sitaram Vithal, I. L. R., 11 Bom., 657,* approved. QUEEN-EMPRESS *v.* MADHO **I. L. R., 15 All., 25**

140. ——— *Criminal Procedure Code (Act X of 1882), ss. 161 and 172—Statements of witnesses recorded by police officers investigating under Ch. XIV of the Criminal*

EVIDENCE—CRIMINAL CASES
—*continued*

14 MEDICAL EVIDENCE

99. ——— Examination of medical witness—*Criminal Procedure Code, 1872, s 323* —*Per* FIELD, *J*—Under the provisions of s 323 of the Code of Criminal Procedure, the examination of a medical witness taken and duly attested may be given in evidence in any criminal trial, but in order

100. ——— *Experts, Evidence of—Medical witnesses, Evidence of—Opinion of experts how elicited—Evidence Act (I of 1872), s 45*—A medical man who has not seen a corpse which has been subjected to a *post mortem* examination, and who is called to corroborate the opinion of the medical man who made such *post-mortem* examination, and who has stated what he considered was the cause of death, is in a position to give evidence of his opinion as an expert The

101. ——— *Expert's opinion—Report of post-mortem examination*—The evidence of a medical man who has seen and has

A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert *A medical man in giving evidence may refresh his memory by referring to a report which he* has made of his *post mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom. RAJHUNI SINGH *v* EMPRESS

[I. L. R., 9 Calc., 455 : 11 C. L. R., 569

102. ——— Report of subordinate medical officer—*Concurrence of superior officer*—The substance of a report from a subordinate medical officer, with an expression of concurrence by his superior, cannot be read in evidence under *s 368* of the Code of Criminal Procedure In THE MATTER OF THE PETITION OF CHINTAMONEE NYE

[11 W. R., Cr, 2

103 ——— Letter from medical officer—*Letter expressing opinion*—A letter of a medical officer expressing an opinion is not evidence under ss 368 and 370 of the Code of Criminal Procedure QUEEN *v* KAMINEE DOSSEE

[12 W. R., Cr., 25

EVIDENCE—CRIMINAL CASES
—*continued*

15. NATIVE SEALS

104. ——— Comparison of native seals—*Evidence Act, 1855 s 48*—S 48, Act II of 1855, is applicable to criminal trials The test of comparison of native seals is at best but a fallible one, and must always be received with extreme caution. QUEEN *v* AMANOOLLAH MOLLAH 6 W. R., Cr, 5

16 NOTES OF INQUIRY

105. ——— Notes on inquiry by registering officer—The notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion QUEEN *v* PURNANUND BARICK 11 W. R., Cr., 13

17 POLICE EVIDENCE DIARIES, PAPERS, AND REPORTS

106. ——— Evidence of police officer —*Act II of 1855, s 31*—The practice of not examining a police officer who investigates a case condemned The statements made to him might be proved by him in the witness box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge under s 31, Act II of 1855 QUEEN *v* AHMED ALLY 11 W. R., Cr, 25

107. ——— Statement of constable of police.—Where the accused was charged with attempting to murder her child, the chief constable's statement (he having gone to search the house of the accused) that he "had information that the accused was about to kill the child," was most improperly admitted as evidence against the accused REG *v.* CHIMA 8 Bom., Cr, 164

108 ——— Police diaries—*Corroborative evidence*—Under s 154, Code of Criminal Procedure, police diaries cannot be admitted as corroborative evidence QUEEN *v* THAKOOR CHUND SURMA

[13 W. R., Cr, 22

109. ——— *Corroborative evidence*—Police diaries cannot be legally used as substantive evidence or read to the jury QUEEN *v* HURDUT SURMA 8 W. R, Cr., 68

110. ——— *Use of portion*

ure
of

Criminal Procedure does not bar the admission of other portions of the diary as explaining the portions so used. QUEEN *v* NOBOKRISTO GHOSE

[8 W. R., Cr., 87

111 ——— Police papers—*Judicial notice*—Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test evidence QUEEN *v.* BUSSIRUDDI

[8 W. R., Cr., 35

112. ——— Police reports—P

are not evidence, except against the
officer. GOVERNMENT *v* MUDUN DASS
16

EVIDENCE—CRIMINAL CASES —*continued.*

20. STATEMENTS TO POLICE OFFICERS —*concluded.*

Reg. v. *Ullamchand Kapurchand, 11 Bom., 120.* QUEEN-EMPRESS v. MANSE I. L. R., 19 All., 390

144. ——————— *Criminal Procedure Code (Act V of 1898), s. 161—Impropriety of taking down statements of persons immediately before their arrest—Evidence Act (I of 1872), s. 25.*—Where there is evidence in the hands of a police officer upon which he is bound to arrest a person, it is improper for him to obtain a statement from that person professedly under s. 161 of the Criminal Procedure Code and reduce it to writing; and by virtue of s. 25 of the Evidence Act such statement is inadmissible in evidence. QUEEN-EMPRESS v. JADUB DAS . . . . I. L. R., 27 Calc., 295 [4 C. W. N., 129

145. ——————— **Statement as to ownership of property**—*Evidence of ownership—Criminal Procedure Code (Act X of 1882), ss. 517 and 523—Confession made to police officer, Admissibility of, for other purposes than as a confession.*—Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an enquiry held by the Magistrate under s. 523 of the Criminal Procedure Code (X of 1882). QUEEN-EMPRESS v. TRIBHOVAN MANEKCHAND [I. L. R., 9 Bom., 131

146. ——————— **Admission of guilty knowledge**—*Criminal Procedure Code, 1861, s. 150—Dacoity.*—To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained evidence under s. 150 of the Code of Criminal Procedure, it must be shown that the admission was antecedent to the discovery of the money. QUEEN v. KAMAL FUKEER . . . . 17 W. R., Cr., 50

147. ——————— **Statement of accused overheard by police officer.**—The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity and uninfluenced by it, is not legally inadmissible. QUEEN v. SAGEENA [7 W. R., Cr., 56

21. STOLEN PROPERTY.

148. ——————— **Evidence of possession of stolen articles**—*Non-production of, for recognition by witness.*—Recognition of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things. QUEEN v. JOOMNEE 8 W. R., Cr., 16

22. TEXT BOOKS.

149. ——————— **Text books, Reference to**—*Work on medical jurisprudence.*—A well-known treatise such as Taylor's Medical Jurisprudence may be referred to in the course of a trial. *Hatim* v. *Empress, 12 C. L. R., 86*, followed. HURRY CHURN CHUCKERBUTTY v. EMPRESS [I. L. R., 10 Calc., 140

150. ——————— *Evidence Act, ss. 57 and 60—Reference to work on medical jurisprudence.*—Under the provisions of the penultimate paragraph of s. 57 and of the first proviso of s. 60 of the Evidence Act, the Court referred to Taylor's Medical Jurisprudence with reference to the effect likely to be caused by a sudden blow on the abdomen. HATIM v. EMPRESS . . 12 C. L. R., 86

23. THUMB IMPRESSIONS.

151. ——————— **Comparison of Thumb impressions**—*Evidence Act (I of 1872), ss. 9, 11, cl. (e), and 45—Expert evidence as to impressions.*—*F* was charged with having forged a document purporting to have been executed by *N* and with falsely personating *N*. When the document was presented, a witness was called to prove the identity of the thumb mark of the person, who alleged that he was the executant of the document, taken at the Registration office with an admitted thumb mark of the accused *F*. *Held* that, though a comparison of thumb mark was admissible in law, it can only be made by the Court: no evidence of the identity of thumb marks can be given by a witness. QUEEN-EMPRESS v. MAHOMED SHEIKH . 1 C. W. N., 33

EVIDENCE—PAROL EVIDENCE.

See ACCOUNT, ADJUSTMENT OF. [B. L. R., Sup. Vol., 3

See CONTRACT—BOUGHT AND SOLD NOTES. [I. L. R., 20 Calc., 854

1. VALUE OF, IN VARIOUS CASES.

1. ——————— **Proof of fact or title.**—Oral testimony, if worthy of credit, is sufficient, without documentary evidence, to prove a fact or a title. RAM SOONDUR MUNDUL v. AKIMA BIBEE [8 W. R., 366

SURUT SOONDUREE DEBIA v. RAJENDUR KISHORE ROY CHOWDHRY . . 9 W. R., 125

GOLUCK KISHORE ACHARJEE CHOWDHRY v. NUND MOHUN DEY SIRCAR . . . 12 W. R., 394

GIRDHAREE LALL SINGH v. MODHOO ROY [18 W. R., 323

DINOO SINGH v. DOORGA PERSHAD [18 W. R., 348

EVIDENCE—CRIMINAL CASES
—*continued*

20 STATEMENTS TO POLICE OFFICERS
—*continued*

Procedure Code—Police diaries—The privilege given by s 172 of the Code of Criminal Procedure does not extend to statements taken under s 161, but recorded in the diary made under s 172 SHERU SHA *v* QUEEN EMPRESS I L R., 20 Calc, 642

141 ———————— *Criminal Procedure Code (1882), ss 161 and 162—Statements made to police officer in the course of an investigation—Use of notes of such statements at trial before the Court of Session—Police diaries—Practice*—A police officer's notes of statements made to

QUEEN EMPRESS *v* NASIR UD DIN
[I. L R, 16 All, 207

142 ———————— *Criminal Procedure Code (1882), ss 161 and 162—Use at trial in Sessions Court of statements made to police*

used a the trial in favour of an accused person such statements can only be so used when they are legally brought as evidence before the Court that is to say, a witness having been cross examined as to a statement it may be shown by the evidence of the police officer that he did make a statement favourable to the accused, which the witness denies having made and if the statement was at the time reduced into writing by the police officer, he would be allowed to refresh his memory by referring to it but the written statement itself, when the statement has been reduced into writing (according to the section it must not be signed by the person making it) cannot be used as direct evidence of what was stated by the witness to the police officer QUEEN EMPRESS *v* TAJ KHAN
[I L R., 17 All., 57

143 ———————— *Criminal Procedure Code (1882), ss 161, 162, 167, and 172—Police diaries—What the diary should or should not contain—statements recorded under s 161 of the Code of Criminal Procedure—Use which may be made of the special diary by the Court—Sessions Judge, Power of—Right of the accused or his agent to see the special diary—Evidence Act (I of 1872), ss 39, 145 and 161*—A

Court of Session and in every criminal appeal the police diaries shall be submitted to the Court simultaneously with the Magistrate's record of the case Such an order is illegal In no case is an accused person entitled as of right to a copy of any statement recorded by a police officer in the special diary prepared under the authority of s 172 of the Code of Criminal Procedure The special diary may be used

themselves be taken as evidence of any date, fact, or statement therein contained The special diary may

pose of refreshing his memory If the special diary is used by the Court to contradict the police officer who made it or by the police officer who made it to refresh his memory, the accused person or his agent ... uch has that is itled to rred to of the Court, is necessary in that particular matter to the full understanding of particular entry so used, but no more So *held* by the Full Bench *Per* EDGE, *C J*, KNOX BLAIR and BURKITT *JJ*—A police officer

is part of the special diary and is just as much privileged as any other entry in the diary All statements made under s 161 of the Code of Criminal Procedure to a police officer and reduced into writing by him, should be reduced into writing in the special diary, and not elsewhere *Per* BANERJI, *J*, and AIKMAN, *J*—Statements recorded under s 161 of the Code of

not privileged, but the accused person or his agent is entitled to see them A mere summary however of facts ascertained by an investigating officer from persons examined by him not being a report of their actual statements, may properly find a place in the special diary The following cases were referred to —*Empress* v *Kali Churn Chunari, I L R, 8 Calc 154 Kallu* v *Queen Empress, 29 Panj Rec, Cr, 55 Queen-Empress* v *Nasir-ud din, I L R 16 All, 207, Queen Empress*

EVIDENCE—PAROL EVIDENCE —*continued.*

2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

17. ———— **Proof of existence of mortgage.**—Where a question arises (not between mortgagor and mortgagee) as to the previous existence or non-existence of a particular mortgage, the oral evidence of the mortgagee that it did exist will be sufficient to prove the fact, without the production of the mortgage-deed. AMJAD ALI *v.* MONIRAM KOLITA [I. L. R., 12 Calc., 52

18. ———— **Evidence that bond was executed in different capacity from what appears.**—It is competent to a party to show that a bond executed in favour of *A* was really in favour of *B*, and that *A* was a party to it merely in the capacity of gomastah of *B*. SUHOODERA *v.* RAM RUTTON TEWAREE . . Marsh., 3 : 1 Hay, 24

19. ———— **Benami purchase**—*Hindus.*—As between Hindus, oral evidence is admissible to show that land nominally purchased for *A* and conveyed to him by an instrument in writing was really purchased for *A*, *B*, and *C*. PALANYAPPA CHETTI *v.* ARUMUGAM CHETTI . . . . . 2 Mad., 26

20. ———— **Explaining use of benami name.**—Parol evidence is admissible to show that the name of the party used in a deed was only benami for another person. TARA MONEE DEBIA *v.* SHIBNATH TULAPATTUR . . . 6 W. R., 191

21. ———— **Explaining terms of document.**—Oral evidence may be submitted to explain a document, but not to vary the terms thereof when such terms are in themselves clear and undoubted. RAMBUDDUN SINGH *v.* SREE KOONWAR [W. R., 1864, Act X, 22

CHUNDER NATH DEB *v.* GANGA GOBIND SINGH ROY . . . . 1 W. R., 94

MOHUN LALL ROY *v.* UNNOPOORNA DOSSEE [9 W. R., 566

22. ———— **Patent ambiguity**—*Intention of parties.*—Extrinsic evidence may be received to identify the thing referred to in a written agreement. Where there is a written agreement to deliver a quantity of grain (gulla) at a particular time, parol evidence is admissible under certain limitations to show what kind of grain the contracting parties had in their contemplation at the time the contract was made. VALLA BIN HATAJI *v.* SIDOJI BIN KONDAJI [5 Bom., A. C., 87

23. ———— **Latent ambiguity**—*Altering written contract.*—Extrinsic evidence is not admissible to alter a written contract or to show that its meaning is different from what its words import; where there is a latent ambiguity in the wording, parol evidence is admissible to explain it. RAM LOCHUN SHAHA *v.* UNNOPOORNA DASSEE [7 W. R., 144

24. ———— **Evidence to explain deed**—*Intention of parties.*—Parol evidence was held admissible to explain a deed, *e.g.*, to prove that a village not included in a patni lease was intended by the parties to be included in it. DHUNPUT SINGH DOOGUR *v.* JOWAHUR ALI . . . 8 W. R., 152

25. ———— **Admissibility of evidence to identify land as that mentioned in document.**—In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under s. 15 of the Act of Limitation (XIV of 1859). The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees. *Held* that oral evidence was admissible to apply the document to the land to which it was intended to refer. VALAMPUDDUCHERRI PADMANABHAN *v.* CHOWAKAREN PUDIAPURAYIL KUNHI KOLENDAN . . 5 Mad., 320

26. ———— **Evidence to identify land mortgaged**—*Evidence Act, s. 92, cl. 6, and s. 95.*—The obligors of a bond for the payment of money, describing themselves as "sons of *R*, zamindar and pattidar, resident of mouzah *S*," hypothecated as collateral security for such payment "their one biswa five biswansi share." *Held*, in a suit on the bond to enforce a charge on the one biswa five biswansi share of the obligors in mouzah *S*, that, under prov. 6, s. 92, and s. 95 of Act I of 1872, evidence might be given to show that the obligors hypothecated by the bond their share in mouzah *S*. RAM LAL *v.* HARRISON [I. L. R., 2 All., 832

27. ———— **Evidence to explain clause in document.**—*Evidence Act, s. 92—Specific Relief Act, ss. 17, 22, and 26.*—The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter aliâ*, that the defendants had agreed to sell, etc., under "certain conditions as agreed upon." The defendants alleged that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention. *Held* (reversing the judgment of WILSON, *J.*) that the parol evidence was admissible to show what was meant by the clause "certain conditions as agreed upon." Per PONTIFEX, *J.* (GARTH, *C.J.*, dissenting)—The evidence was admissible under prov. 1, s. 92 of the Evidence Act (I of 1872). Discussion as to the meaning of s. 92 of the Evidence Act, and of ss. 17, 22, and 26 of the Specific Relief Act. CUTTS *v.* BROWN [I. L. R., 6 Calc., 328 : 7 C. L. R., 171

28. ———— **Evidence to explain identity of persons**—*Evidence to specify debt—Suit on promissory note.*—A suit was brought on a promissory note by which the defendant promised to pay to the plaintiff R1,000 with interest. The defendant afterwards wrote the following letter to *W*: I further hold myself responsible to you for the two sums of R1,000 and R900 respectively, the latter sum bearing interest at 24 per cent. per annum. Both these sums of R1,000 and R900 I engage to pay you." *Held* that parol evidence was admissible to show that, though the letter was addressed to *W*, the

EVIDENCE—PAROL EVIDENCE —*continued*

1. VALUE OF, IN VARIOUS CASES—*continued*

2. ———— Evidence of possession.—In a suit brought on an allegation of forcible dispossession oral evidence if credible and pertinent, is sufficient to establish the fact of possession. SHEO SUHAYE ROY *v.* GOODUR ROY . . 8 W. R., 328

DINOBUNDHOO SUHAYE *v.* FURLONG [9 W. R., 155

3. ———— *Documentary evidence*.—Mere oral testimony was, under the particular circumstances, held to be insufficient to prove possession of land without any of the documentary evidence (leases agreements collection papers, etc.) which is the invariable concomitant of actual possession in this country. THAKOOR DEEN TEWAREE *v.* ALI HOSSEIN KHAN [8 W. R., 341. S. C. on appeal, 13 B. L. R., 427. 21 W. R., 340. L. R., 1 I. A., 192

4. ————Boundary dispute.—In a boundary dispute oral evidence is quite insufficient to establish either the fact of possession or of title. GOLUCK CHUNDER BOSE *v.* SREEMUTD RAJESHUREE BIDDIADHUR SOONDEAH NURENDUR [W. R., 1864, 135

5. ———— Proof of prescriptive title.—Oral evidence if credible is legally sufficient to prove a prescriptive title. MEHARBAN KHAN *v.* MUHBOOB KHAN 7 W. R., 462

6. ———— Suit for purchase-money—*Apportionment of money*.—In a suit for purchase-money oral evidence is admissible to show how the purchase-money has been apportioned. DHOKA THAKOOR *v.* RAM LALL SAHEE 7 W. R., 408

7. ———— Guarantee.—There may be cases in which the Courts would accept and act upon parol evidence of the existence of a guarantee and its amount, but such parol evidence must be beyond suspicion. LEKHRAJ *v.* PALEE RAM 2 N. W., 210

8. ———— Pedigree, Question of—*Proof of native pedigree*.—In proving a native pedigree the oral statements of deceased relatives will be admitted in the absence of any registers of births and deaths. MOHEDEEN AHMED KHAN *v.* MAHOMED [1 Ind. Jur., O. S., 132 1 Mad., 92

9. ———— Oral evidence of acknowledgment—*Limitation Act*, 1877, *s*. 19.—Under s. 19 of the Limitation Act (XV of 1877) oral evidence of the contents of an acknowledgment cannot be received. ZIULNISSA LADLI BEGAM *v.* MOTIDEY RATANDEY I. L. R., 12 Bom., 268

10. ———— Adjustment of account.—An adjustment of accounts may be proved by oral evidence. KAMPILIKARIBASANAPPA *v.* SOMA SAMUDDIRAM 1 Mad., 183

11. ———— Evidence of payment of debt on bond.—*Payment of a debt due on a sama* dushut may be proved by oral evidence alone. GUMAN GALUBHAI *v.* SORABJI BARJORJI 1 Bom., 11

12. ———— Evidence of discharge of written obligation.—Oral evidence of the discharge of an obligation executed by writing is admissible. RAMANADAMISARAIYAR *v.* RAMABHATTAR [2 Mad., 412

13. ———— Repayment of mortgage debt—*Verbal agreement to repay in bond*.—*Held* that though there may be a condition for repayment of a mortgage-debt in money, the mortgagee may bind himself to receive the payment in money's worth, and this orally, notwithstanding that the mortgage-debt is created by a written obligation. The mode in which an obligation may be discharged and satisfied by payment is a distinct matter from the obligation itself. DURGA *v.* MOHUR SINGH 2 Agra, 163

14. ———— Proof of payment—*When payments are to be endorsed*.—A stipulation in a document that no other payments except payments endorsed on the document itself shall be admitted does not exclude proofs of payment by other evidence. SASHACHELLUM CHETTY *v.* GOBINDAPPA [5 Mad., 461

AGGUR MULL *v.* AZEEMOOLLAH [1 N. W., 146: Ed. 1873, 228

15. ———— *Mortgage bond, Discharge of—Admissibility of oral evidence—Evidence Act (I of 1872), s. 92 (4)*.—Oral evidence is admissible to prove the discharge and satisfaction of a mortgage bond. The provisions of s. 92 prov. 4, of the Evidence Act do not exclude such ev[illegible] RAMLAL CHANDRA KARMOKAR *v.* GOBINDA K[illegible] KAR 4 C. W.

16. ———— *Evidence Act—Contemporaneous oral agreement—Bond p[illegible] by instalments*.—In a suit upon a kistibundi [illegible] the defendants pleaded that the debt had been [illegible] dated from the usufruct of certain property, [illegible] by an oral agreement entered into at the time of [illegible] execution of the bond had been assigned by them to the plaintiffs for that purpose. The assignment having been proved, the Court of first instance, without further enquiry, dismissed the plaintiffs suit. The District Judge, however, reversed the order of that Court on the ground that under s. 92 Act I of 1872 evidence of the alleged oral agreement was inadmissible, it being a contemporaneous agreement varying and to some extent contradicting the terms of the kistibundi bond. On appeal it was held that the allegation of the defendants amounted merely to a plea of payment and that s. 92 of the Evidence Act was not a bar to an enquiry as to the [illegible]

[illegible] ... profits of the land assigned. GOVINDO PROSAD ROY CHOWDHRY *v.* ANUND CHUNDER CHOWDHRY . . 4 C. L. R., 274

EVIDENCE—PAROL EVIDENCE —*continued.*

2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—*concluded.*

show the relation of the written language to existing facts. BALKISHEN DAS *v.* LEGGE [I. L. R., 22 All., 149 L. R., 27 I. A., 58 4 C. W. N., 153

Affirming decision of High Court. [I. L. R., 19 All., 434

38. ———— *Evidence Act (I of 1872), s. 92, cl. 5—Evidence of previous dealings between parties when admissible.*—Evidence of previous dealings is admissible only for the purpose of explaining the terms used in a contract and not to impose on a party an obligation as to which the contract is silent, or to read into it a liability which would otherwise not exist. It was impossible to find in dealings carried out on the basis of signed indents any clue to the intention of the parties when not only was no indent signed, but the defendant refused to sign one. MAHOMED HAJI JIVA *v.* SPINNER [I. L. R., 24 Bom., 510

39. ———— *Deed, Delivery of—Escrow.*—Where a deed is delivered to the party in whose favour it is executed, evidence is not admissible to show that it was intended to operate as an escrow only. MOHSUM ALLY *v.* BALASOO KOER [2 Hay, 576

40. ———— *Purchase under joint deed—Agreement as to division.*—Where the plaintiff and defendants purchased property by a joint deed, - *Held* that parol evidence was admissible to show the terms on which they agreed amongst themselves to purchase it and also as to the mode in which the land so purchased was to be divided. RAM GUTTEE *v.* IBRAHIM ISMAILJEE SEEDAT [7 W. R., 353

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

41. ———— Evidence to vary deed—*Evidence of conduct of parties—Oral stipulation at variance with a written document—Evidence Act (I of 1872), s. 92.*—Evidence cannot be admitted to prove a contemporaneous oral stipulation varying, adding to, or subtracting from, the terms of a written contract. Evidence of the acts and conduct of the parties to a written contract is not admissible if tendered solely in support of an oral stipulation varying its terms. DAIMODDEE PAIK *v.* KAIM TARIDAR [I. L. R., 5 Calc., 300 : 4 C. L. R., 419

42. ———— Parol evidence is inadmissible to vary the terms of written document, except under special circumstances. RAM DEYE KOWER *v.* BISHEN DYAL SING . 8 W. R., 339

43. ———— *Fraud or mistake, Allegation of.*—Parol evidence cannot be admitted to contradict a deed except when fraud, mistake, surprise, or the like is alleged. ERSKINE & Co. *v.* OKHOY CHUNDER DUTT . . W. R., 1864, 58

KASSIM MUNDLE *v.* NOOR BIBEE 1 W. R., 76

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

44. ———— *Conduct of parties—Inadequacy of consideration.*—Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing. MADHAB CHANDRA ROY *v.* GANGADHAR SAMANT [3 B. L. R., A. C., 83 : 11 W. R., 450

45. ———— *Contemporaneous agreement.*—Oral evidence is admissible in equity where, by way of defence, the object is to get rid of a written contract of a sale of land by showing that it is not the contract really entered into by the parties, but the evidence must be very powerful to induce the Court to believe that the terms expressed are not the real ones. Evidence of a contemporaneous oral agreement to suspend the operation of a written contract of sale until an agreement for a re-sale is executed is admissible as a defence even in a Court of law. DADA HONAJI *v.* BABAJI JAGUSHET [2 Bom., 38 : 2nd Ed., 36

46. ———— *Evidence Act, s. 92.*—Where the defendant claimed the property as a preferential heir, and also set up an alternative defence of an alleged oral agreement cancelling a registered deed of sale of property by her co-widow to the plaintiffs,—the lower Court was of opinion that prov. 4 of s. 92 of the Evidence Act (I of 1872) was a bar to any inquiry into the merits of this defence. *Held* that the lower Court was wrong. The object of the oral agreement was not to rescind the original transaction, but to transfer any rights acquired by the plaintiffs to the defendant, and was an entirely new transaction. RAKHMABAI *v.* TUKARAM . . . I. L. R., 11 Bom., 47

47. ———— *Suit in Small Cause Court—Agreement not correctly stated in deed.*—In a suit in a Small Cause Court to enforce a written agreement, the defendant has a right to set up and adduce parol evidence to prove such a state of facts as would show that the instrument did not correctly set forth the terms of the arrangement between the parties, and thereby justify the Court in its character of a Court of equity in amending the agreement in a suit for that express purpose. FREWIN *v.* PAUL . . . 12 W. R., 532

48. ———— *Suit on bond—Intention of parties as to penal clause.*—In a suit on a bond the defendant sought to adduce evidence to show that after the execution of the bond the plaintiff stated that a certain clause as to a high rate of interest in default was intended to operate as a penal clause, and that the conditions therein would not be enforced. *Held* that the evidence tendered was not admissible. *Bakshu Lakshman* v. *Govinda Kanji, I. L. R., 4 Bom., 594*; and *Hem Chunder Soor* v. *Kally Churn Dass, I. L. R., 9 Calc., 528,* approved and distinguished. BEHARY LOLL DOSS *v.* TEJ NARAIN . . . I. L. R., 10 Calc., 764

[illegible]

[illegible]

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

and for occupation after the expiry of a lease for three years, the defendant pleaded that it had been verbally agreed between himself and his lessors that he should be entitled to renewal of the lease for a further period of three years, if he so desired. *Held* that evidence of this oral agreement was inadmissible under s. 92 of the Indian Evidence Act (I of 1872), being inconsistent with the terms of the second clause of the lease, which was as follows:—"If you mean me to vacate at the completion of the term, you must give one month's notice. In accordance therewith, I will vacate and give up possession to you." EBRAHIM PIR MAHOMED *v.* CURSETJI SORABJI DE VITRE [I. L. R., 11 Bom., 644

56. ———— *Mortgage of, and advances to, indigo concern—Evidence Act, s. 92.*—*M*, the manager of an indigo concern, under s. 243, Act VIII of 1859, by a deed dated the 1st February 1873, in which the owners of the concern joined, which was duly registered, and which was made with the Court's sanction, mortgaged the concern, and pledged and assigned the season's crop to *A* and *B*, who were parda-nashins, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A* and *B* should have a first charge upon the indigo to be manufactured in the season in respect of the moneys secured thereby; that the indigo should be sold, subject to *A*'s and *B*'s direction; that until the debt was paid, *M* should have no power to transfer, sell, or mortgage the properties thereby mortgaged, pledged, and assigned, or in any way to deal with the sale-proceeds of the manufactured indigo; and that *A* and *B* should have full power to arrange for the appointment and dismissal of the servants of the concern and for its better management. Previously to this, namely, in October 1872, *M* had, in pursuance of his letter of appointment, filed an estimate for the season's outlay largely exceeding the sum mentioned in the deed as the estimated outlay, and had alleged that, at the time of executing the mortgage-deed, he had informed one *C*, who was the general manager of *A* and *B*, and as such was the only medium of communication between *M* and *A* and *B*, that further advances would be necessary. According to *M*'s account, *C* told him that *A* and *B* were unable to make further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiffs, who were indigo brokers. In previous years, during the lifetime of the husband of *A* and *B*, who had held similar mortgages of the concern and of the crop in those years to secure advances made by him, such advances had, with the mortgagee's knowledge, been supplemented by loans obtained from the plaintiffs on the security of a first charge upon the crop to the extent of such loans. And it was alleged by *M* that it was upon the understanding that the same course was to be followed in the present instance that the mortgage-deed to *A* and *B* was executed. In a suit against *A*, *B*, and *M*, to establish a first charge in respect of their advances to *M* upon 360 maunds of the indigo,—*Held per* GARTH, *C.J.*, PHEAR and MACPHERSON, *JJ.*, that the alleged oral agreement between *C* and *M*, as to obtaining loans, if necessary, from the plaintiffs and giving them a first charge on the season's indigo in respect of such loans, was in direct contravention and defeasance of the mortgage-deed to *A* and *B*, and was therefore inadmissible in evidence under s. 92 of the Evidence Act. MORAN *v.* MITTU BIBI . . I. L. R., 2 Calc., 58

57. ———— *Evidence Act, s. 92—Admissibility of parol evidence inconsistent with kabuliat.*—Plaintiff having sued for arrears of rent payable under a kabuliat in respect of a share of four villages, the defendant pleaded that he had been put in possession of one only of the four leased to him, and that therefore he was not liable for the whole claim. Parol evidence was admitted to show that at the time the kabuliat was granted it had been agreed between the plaintiff and defendant (the title of the former being under dispute) that the whole rent payable under the kabuliat should be payable in respect of such of the villages as should actually come into defendant's possession. *Held* that such parol evidence was rightly admitted, there being no stipulation in the lease that the defendant should only pay rent on being put completely into possession, and that, although payment of rent is not ordinarily enforced, unless the lessor puts the lessee into possession, it was quite competent to the parties to waive such privilege. RAM KISHORE LALL *v.* NAND RAM [4 C. L. R., 100

58. ———— *Evidence Act, s. 92—Verbal assignment of rent of land in lieu of interest—Jamog.*—Subsequently to the execution and registration of a bond, a jamog was made orally between the creditor and debtor, by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the tenants (who were parties to the arrangement) agreed to pay their rents to the creditor. No mutation of names was effected in the revenue registers. The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond, alleging that he had never received any rents under the jamog. *Held* that the jamog was not a subsequent oral agreement rescinding or modifying a contract which was registered according to the law for the time being in force within s. 92, prov. (4), of Act I of 1872. AUTU SINGH *v.* AJUDHIA SAHU [I. L. R., 9 All., 249

59. ———— *Evidence Act (I of 1872), s. 92, prov. 4—Endorsement on grant—Transaction distinct from original grant.*—The plaintiff sought to attach a certain hak as belonging to his judgment-debtor *K*. The defendant, who was the original grantor of the hak, pleaded a re-grant of the hak to himself. In support of this plea, the

EVIDENCE—PAROL EVIDENCE —*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

49. ——————— *Proof of consideration different from that expressed in contract* —Parol evidence is inadmissible to show that in an [illegible] considera- [illegible] rent from [illegible] ALI NIZAM

[illegible] Bom, A. C, 37

50. ——————— *Evidence Act (I of 1872), s 92 prov 4— Oral agreement"—Variation of terms of registered instrument—Oral agreement to reduce rent* —The lessor of certain land held by the lessee under a registered deed of lease

[illegible]

[illegible] OLIVER I. L R., 22 Mad., 261

51.——— Evidence to contradict deed —*Contract contained in written instrument*— [illegible]

no difference that the evidence was put forward as evidence of a custom MORRIS v PANCHANADA PILLAY 5 Mad, 135

52. ——————— *Subsequent written agreement to abate rent—Variation of lease—Evidence Act (I of 1872), s 92—Form of decree* —In the year 1879 the plaintiff granted a lease of certain lands to the father of the defen[illegible]

for the amount of rent due at the reduced rate SATYESH CHUNDER SIRCAR v DHUNPUT SINGH [I L R, 24 Calc, 20

EVIDENCE—PAROL EVIDENCE —*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

53 ——————— *Evidence of verbal agreement not to enforce document* —When a plaintiff attempts to enforce as a contract of loan binding upon the defendant, immediately upon its execution an instrument which he verbally agreed at the time should not so operate, and for which the defendant received no consideration, the latter may give evidence of the verbal agreement ANNAGURUBALA CHETTI v KRISTNASWAMI NAYAKAN [I Mad, 457

54.——————— *Contemporaneous oral agreement—Evidence Act s 92* —Plaintiff sued to recover R21 650 5 1, balance of principal and interest due He alleged in his plaint that between the 16th February and 23rd July 1867 he paid at the request of defendant's father, the late G F Fischer R25 000 on account of the Shivagunga zamindari that the defendant, having assumed the management of the zamindari under an assignment from his father gave plaintiff a receipt for the said sum of R25 000 under date the 7th August 1867, that in October and December 1867 defendant paid the sum of R5 000 and R3 000 respectively in part liquidation of the debt but since 20th December 1867 refused any further payment [illegible]

late G F Fischer and imposed no obligation on defendant to pay the said amount, that there was no consideration for defendant s promise to pay R25 000, that when defendant executed the receipt, he was not aware of the effect of the release, and that the part payments were made under a mistaken idea of liability At the hearing it was not disputed that a release was executed, and that this claim was embodied and intended to be embodided in that written release, but it was attempted to set up a contemporaneous oral agreement leaving this claim as a subsisting demand The Civil Judge dismissed the suit holding that this oral evidence could not be adduced to contradict the written release. *Held* on regular appeal that the Civil Judge was right The principle is —Is the matter of the contemporaneous oral agreement so outside the scope of the written one that they can logically subsist together so that the oral shall neither contradict nor modify the written?

what they were intended to mean The subsequent receipt for the money did not create a debt for the release had already extinguished it FISCHER v FISCHER 6 Mad, 303

55 ——————— *Evidence Act, s 92—Agreement for renewal inconsistent with terms of lease* —In a suit by a lessor for possession

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

Dyal, I. L. R., 9 Calc., 791, dissented from. ESHOOR DOSS *v.* VENKATASUBBA RAO [I. L. R., 17 Mad., 480

67. ———— *Evidence Act, s. 92—Bill of exchange—Exclusion of evidence of oral agreement.*—It was agreed between the Bank of Bengal at Calcutta and *C & Co.*, who carried on business there, that the branch of the Bank at Cawnpore should discount bills to a certain extent drawn by *C*, who carried on business at Cawnpore, on *C & Co.*, against goods to be consigned by rail to *C & Co.*, and that the railway receipts for such consignments should be forwarded to *C & Co.*, through the Cawnpore branch of the Bank. *C* accordingly drew a bill on *C & Co.*, payable twenty-one days after date, which the Cawnpore branch of the Bank discounted, receiving the railway receipt for certain goods consigned to *C & Co. C & Co.* having accepted this bill, the Bank handed over the railway receipt to them. In a suit by the Bank against *C* on the bill, the latter set up as a defence that the bill had been discounted by the Bank on the oral understanding that the railway receipt was not to be transferred to *C & Co.* until they had paid the amount of the bill, and that the Bank had, by the breach of this condition, determined the defendant's liability. *Held* by STRAIGHT, *J.* (SPANKIE, *J.*, dissenting), that evidence of such oral understanding was not admissible even under prov. 3 of s. 92 of Act I of 1872. COHEN *v.* BANK OF BENGAL [I. L. R., 2 All., 598

68. ———— *Evidence Act, s. 92, prov. (4)—Oral agreement to rescind registered contract.*—*D* sold a house to *P* and executed a deed of conveyance which was duly registered. *P* did not pay the purchase-money, and therefore did not get possession. Shortly after the conveyance had been registered, *P* returned it to *D*, with an endorsement thereon to the effect that it was returned because *P* was unable to pay the purchase-money. In a suit by the purchaser at an execution-sale of the right, title, and interest of *P* in the house against *D* for possession,—*Held,* the conveyance by *D* to *P* having been registered, no oral agreement to rescind it could be proved under the Evidence Act (I of 1872), s. 92, prov. (4). UMEDMAL MOTIRANI *v.* DAVU BIN DHONDIBA [I. L. R., 2 Bom., 547

69. ———— Evidence to vary nature of deed—*Parol evidence to vary contents of documents—Mortgage by Hindu parda-nashin lady—Execution, Proof of.*—In a suit to enforce a mortgage against a Hindu parda-nashin lady, the Court will look strictly at the circumstances under which the mortgage was executed; and if it appears that she was acting without sufficient advice, that her ignorance was taken advantage of, or that undue influence was exerted to induce her to execute the deed, the Court will refuse to enforce the mortgage. The onus is upon the party interested in upholding the transaction to show the absence of undue influence, and that its terms were fair and equitable. He should show that the party he wishes to bind had good advice in the matter, and acted therein independently of himself. This is especially so when there was any fiduciary relationship between the contracting parties. KANAI LALL JOWHARI *v.* KAMINI DEBI . 1 B. L. R., O. C., 31 note

70. ———— *Deed of sale.*—Oral evidence is not admissible to set aside a deed of sale which by its terms is clearly absolute. JUGOBUNDHOO MOOKERJEE *v.* LUCKHEESSUREE DEBIA [W. R., 1864, 338

RAM DOOLAL SEN *v.* RADHA NATH SEN [23 W. R., 167

71. ———— *Parol evidence qualifying an engagement in a written document—Admissibility of such evidence.*—The proper meaning of prov. 3 to s. 92 of the Evidence Act (I of 1872) is that a contemporaneous oral agreement, to the effect that a written contract was to be of no force or effect, and that it was to impose no obligation at all until the happening of a certain event, may be proved. An oral agreement purporting to provide that the promise to pay on demand in a promissory note, though absolute in its terms, was not to be enforceable by suit until the happening of a particular event, *i.e.*, that the legal obligation to perform the promise was to be postponed, is not such an agreement as falls within the prov. 3 to s. 92 of the Evidence Act. *Jugatanund Misser* v. *Nerghan Singh, I. L. R., 6 Calc., 433,* and *Cohen* v. *Bank of Bengal, I. L. R., 2 All., 598,* followed. RAMJIBUN SEROWGY *v.* OGHORE NATH CHATTERJEE [I. L. R., 25 Calc., 101
2 C. W. N., 188

72. ———— Conveyance by lease and release in fee, under the circumstances, held to be subject to a parol defeasance, and to be in the nature of a mortgage, with a power of repurchase on the footing of redemption; and a reconveyance was decreed. MUTTY LALL SEAL *v.* ANNUNDO CHUNDER SANDLE [5 Moore's I. A., 72

73. ———— Parol evidence may be received to show that, notwithstanding a deed purports to be a deed of absolute sale, the true nature of the transaction is a mortgage. KASHINATH ROY *v.* NOWCOWRY KOONDOO . 1 W. R., 22

SOOKNA MEHDEE *v.* GUNDHOO RAM MUNDUL [12 W. R., 264

BANESHUR DASS *v.* BANEE MADHUB DOSS [18 W. R., 256

NANDOLALL MITTER *v.* PROSONNO MOYEE DEBIA [19 W. R., 333

74. ———— *Allegation of fraud and collusion—Execution of deed.*—In a suit by a pardah lady to set aside a bill of sale,

EVIDENCE—PAROL EVIDENCE —*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

defendant produced from his possession the original

The defendant was at liberty to adduce evidence to prove this transaction. HERAMBDEV DHARNIDHAR DEV *v* KASHINATH BHASKAR [I. L. R., 14 Bom., 472

60. ———— **Evidence to add terms to deed**—*Evidence Act, s 92—Suit for specific performance of written contract subsequently varied*

whole property leased It was alleged by the lessee that it was then verbally arranged that the rent should be reduced in proportion, and the lessee in fact did pay the rent during the term in proportion to the interest of the lessors On the expiration of the term, he sued for specific performance of the contract, as modified, for a renewal of the lease of the 6 annas *Held* that evidence of the parol variation of the contract was not admissible under s. 92 (4) of the Evidence Act, and that the plaintiff was not entitled to the relief sought DWARKA NATH CHATTOPADHYA *v*. BHOGOBAN PANDA 7 C. L. R., 577

61. ——— **Evidence to add terms to contract**—*Evidence Act, s 92, prov (3)—Parol evidence in addition to condition in kistbundi—Part performance of portion of obligation in kistbundi*—*Per* GARTH, *C J*—Where, at the time of the execution of a written contract, it is orally agreed between the parties that the written agreement shall not be of any force until some condition precedent has been performed, the rule that parol evidence of such oral agreement is admissible to show that the condition has not been performed, and consequently that the contract has not become binding, cannot apply to a case where the written agreement had not only become binding but had actually been performed as to a large portion of its obligations The true meaning of the words "any obligation" in the third proviso to s 92 of Act I of 1872 is any

62 ———————— *Evidence Act, s 92—Bond—Contemporaneous oral agreement providing for mode of repayment*—In defence to a suit upon a hypothecation bond payable by instalments it was pleaded that at the time of the execution of the bond it was orally agreed that the obligee should, in lieu of instalments, have possession of part of the hypothecated property, until the amount due on the bond should have been liquidated from the rents, that in accordance with this agreement, the plaintiff obtained possession of the land, and that he thus realized the whole of the amount due *Held* that the oral

RAM BAKHSH *v* DURJAN I. L. R., 9 All., 392

63 ———————— *Evidence Act, s 92, prov (1)—Fraud—Unlawful consideration—Act IX of 1872, s 23*—Plaintiff sued to recover rent under a kabuliat The defendant admitted execution of the kabuliat, but asserted that he executed it in order to enable the plaintiff to sell the land at a high price, the plaintiff agreeing to make over to him R282 out of the purchase money, and to obtain for him from the purchaser a maurasi pottah of the land, it never having been intended that any rent should be payable under the kabuliat *Held* that evidence of the oral agreement was admissible for the purpose of proving the fraudulent character of the transaction between the parties KASHI NATH CHUCKERBUTTY *v* BRINDABUN CHUCKERBUTTY I L R, 10 Calc, 649

64. ———————— *Evidence Act, 1872, s 92—Time bargain—Wagering contract—Sale of Government securities*—The question whether an unambiguous written contract for the sale and purchase of Government paper is a contract or agreement by way of wager must be decided on the expressed terms of the contract itself and parol evidence is not admissible to vary or contradict those terms JUGGERNATH SEW BUX *v* RAM DYAL [I L R, 9 Calc., 791

65 ———————— *Evidence Act, s 92, prov 1—Contract—Wagering contract—Bombay Act III of 1865—Oral evidence admissible to prove a contract to be a gaming transaction*—In an action on a contract for the purchase and sale of goods on a certain day the defendant pleaded that the contract was a wagering contract, that the parties never intended to give or take delivery of the cotton, and that the contract was therefore void *Held* that oral evidence was admissible to prove the defence set up by the defendant. ANUPCHAND HEMCHAND *v* CHAMPSI UGERCHAND [I. L. R., 12 Bom., 585

66. ———————— *Evidence Act (I of 1872), s 92—Oral evidence to show that an agreement in writing to sell is only wager*—Oral evidence is admissible to show that an agreement in writing to sell is really only an agreement by way of wager (See Evidence Act, s 92) *Anupchand Hemchand* v *Champsi Ugerchand, I. L R., 12 Bom., 585,* followed *Juggernauth Sew Bux* v. *Ram*

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

grantee from proceeding upon his document. BAKSU LAKSHMAN *v.* GOVINDA KANJI

[I. L. R., 4 Bom., 594

78. ———— *Evidence Act, s. 92—Admissibility of evidence to contradict document.*—*A*, by a deed of sale absolute on its face, transferred certain land to *B* for the sum of R379. *A* alleged that at the time the transaction was entered into it was understood and orally agreed that the sale was merely by way of security for the payment of R400 due to a third party, *C*, under a compromise made by *A* with *C* for the satisfaction of a decree for R832, which the latter held against *A*; and that it was at the same time orally agreed between *A* and *B* that on the payment of the money by *A* to *C* the deed of sale should be delivered to the former. Subsequently *A* brought a suit against *B* for the return of the kobala, alleging that the whole of the money had been paid to *A*. *Held* that s. 92 of the Evidence Act, I of 1872, prevented the admission of evidence of the oral agreement to contradict the deed of sale which had admittedly been contemporaneous. RAM DYAL BAJPIE *v.* HEERA LALL PARAY . . . . 3 C. L. R., 386

79. ———— *Evidence Act, s. 92—Evidence contradicting document—Mortgage—Conditional sale.*—It does not necessarily follow from s. 92 of the Evidence Act that subsequent conduct and surrounding circumstances may not be given in evidence for the purpose of showing that what on the face of it is a conveyance is really a mortgage. This rule turns on the fraud which is involved in the conduct of the person who is really a mortgagee, and who sets himself up as an absolute purchaser, and the rule of admitting evidence for the purpose of defeating this fraud would not apply to an innocent purchaser without notice of the existence of the mortgage, who merely bought from a person who was in possession of title-deeds and was the ostensible owner of the property. KASI NATH DASS *v.* HURRIHUR MOOKERJEE

[I. L. R., 9 Calc., 898: 13 C. L. R., 11

80. ———— *Evidence Act (I of 1872), s. 92—Mortgage—Sale—Conduct of parties—Oral evidence when admissible to prove that an apparent sale is a mortgage—Admissibility of parol evidence to vary a written contract.*—The defendant, in answer to a suit by the plaintiff for possession of certain land, alleged that the kobala, which purported to be an out-and-out sale in favour of the plaintiff and on which the plaintiff based his title to the property, was intended by the parties to operate only as a mortgage, and to prove such allegations tendered evidence of the circumstances under which the kobala was executed, and of the conduct of the parties to show that the document had all along been treated as a mortgage and intended to operate as such. *Held* that such evidence was admissible. *Held* also that s. 92 of the Evidence Act made no alteration in the law as laid down in *Kashi Nath Chatterjee* v. *Chandi Churn Banerjee, B. L. R., Sup. Vol.,* 393, but is in accordance with what was decided in that case. *Baksu Lakshman* v. *Govinda Kanji, I. L. R., 4 Bom., 594,* followed. *Ram Doyal Bajpai* v. *Heera Lall Paray, 3 C. L. R., 386,* and *Daimoddee Paik* v. *Kaim Taridar, I. L. R., 5 Calc., 300,* dissented from. HEM CHUNDER SOOR *v.* KALLY CHURN DASS

[I. L. R., 9 Calc., 528: 12 C. L. R., 287

81. ———— *Evidence Act (I of 1872), s. 92—Oral evidence to show that an apparent sale-deed was a mortgage.*—In a suit by an attaching creditor to set aside an order (which allowed an objection made to his attachment by one claiming under a sale-deed from the judgment-debtor), and for the declaration of the judgment-debtor's title, the sole issue framed was whether the sale-deed was *bonâ fide* and supported by consideration. *Held* that the plaintiff was entitled to show by collateral evidence that the sale-deed was really a usufructuary mortgage, and that the mortgage had expired. VENKATRATNAM *v.* REDDIAH

[I. L. R., 13 Mad., 494

82. ———— *Evidence Act (I of 1872), s. 92—Sale-deed—Contemporaneous oral agreement for re-conveyance—Mortgage.*—In a suit to recover possession of land on the footing of a sale-deed executed by the defendants to the plaintiff's vendor, the defendants set up a contemporaneous oral agreement for the re-conveyance of the land to them on the repayment of a sum of money then borrowed by them from the vendee, and alleged that they had retained possession of, and held the pottah for, the land throughout. *Held* that the defendants were entitled to prove by oral evidence that the transaction was a mortgage and not a sale, unless the plaintiff was an innocent purchaser for value without notice of the mortgage. *Lincoln* v. *Wright, 4 De G. & J., 16,* followed. *Venkatratnam* v. *Reddiah, I. L. R., 13 Mad., 494,* considered. RAKKEN *v.* ALAGAPPUDAYAN . . I. L. R., 16 Mad., 80

83. ———— *Evidence Act (I of 1872), s. 92—Oral evidence when admissible to prove that an apparent sale is a mortgage—Admissibility of parol evidence to vary a written contract.*—Oral evidence of the acts and conduct of parties, such as oral evidence that possession remained with the vendor notwithstanding the execution of a deed of out-and-out sale, is admissible to prove that the deed was intended to operate only as a mortgage. PREONATH SHAHA *v.* MADHU SUDAN BHUIYA

[I. L. R., 25 Calc., 603
2 C. W. N., 562

84. ———— *Evidence Act (I of 1872), s. 92—Evidence of conduct—Return of a lease—Intention of parties.* Evidence of conduct, as for instance return of a lease, is admissible in evidence under s. 92 of the Evidence Act to prove that such return was due to an intention to make the

EVIDENCE—PAROL EVIDENCE—*continued*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intended by her to operate only as a mortgage, and to vary the rate of interest therein stipulated for MANOHUR DASS *v* BHAGABATI DASI 1 B. L. R, O C., 23

75 ——————— *Mortgage—Bill of sale—Suit for specific performance*—In a suit for specific performance of an agreement to convey certain property, the contract, which was in writing was admitted by the parties, but the defendant alleged that there had been an understanding verbally come to that, if he repaid the consideration money with interest, etc, to the plaintiff within two years, the plaintiff would reconvey the premises to him,—*Held* that the defendant could give parol evidence to supplement the written contract, and show that it was intended to be a mortgage and not an absolute bill of sale. BHOLANATH KHETTRI *v* KALIPRASUD AGURWALLA 8 B L. R, 89

76. ——————— *Evidence Act, s 92—Oral agreement contemporaneous with deed of sale*—The defendant admitted the execution of a deed of sale but alleged that contemporaneously with it he entered into an oral agreement with the vendee that the deed was to be merely a security for the payment of a certain sum of money by the defendant to the vendee, and that a large portion of the sum so secured had already been paid to the vendee *Held* in special appeal that, as the alleged agreement was wholly inconsistent with the terms of the deed of sale, evidence to prove such agreement was excluded by Act I of 1872, s 92 *Mutty Lall Seal v. Annundo Chunder Sandle, 5 Moore's I A, 72,* distinguished BANAPA *v* SUNDARDAS JAGJIVANDAS I. L. R., 1 Bom., 333

Court will give effect to it as a mortgage, and not as a sale, and therefore, if it be necessary to ascertain what were the terms of the mortgage, the Court will for that purpose allow parol evidence to be given

tion of a bill of sale there was an oral agreement by way of defeasance, yet the Court will look to the subsequent conduct of the parties, and if it clearly

EVIDENCE—PAROL EVIDENCE—*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

appears from such conduct that the apparent vendee treated the transaction as one of mortgage, the Court will give effect to it as a mortgage and nothing more It is a mistake to reject evidence of the conduct of parties to a written contract on the ground that it is only an indication of an unexpressed unwritten contract between them Conduct is no doubt, evidence of the agreement out of which it arose, but it may be very much more In many cases it may amount to an estoppel In such a case it is clear that evidence of conduct would be strictly admissible under s 115 of the Evidence Act (I of 1872) And even when conduct falls short of a legal estoppel there is nothing in the evidence Act which prevents it from being proved or when proved from being taken into consideration Courts of Equity in England will always allow a party (whether plaintiff or defendant) to show that an assignment of an estate, which is on the face of it an absolute conveyance was intended to be nothing more than a security for debt, and they will not only look to the conduct of the parties, but will admit mere parol evidence to show or explain the real intention and purpose of the parties at the time The exercise of this remedial jurisdiction is justified on two grounds *viz*, part performance and fraud The Courts in India are not precluded by the Evidence Act from exercising a similar jurisdiction The rule of estoppel, as laid down in s 115, covers the whole ground covered by the theory of part performance That section does not say that, in order to constitute an estoppel, the acts which a person has been induced to do must have been acts prejudicial to his own interest Its terms are sufficiently wide to meet the case of a grantor who has simply been allowed to remain in possession on the understanding and belief

be rested is the obligation which lies upon them to prevent fraud The Courts will not allow a rule or even a statute which was passed to suppress fraud, to be the most effectual encouragement to it, and accordingly in England the Courts, for the purpose of preventing fraud, have in some cases set aside the common law rules of evidence and the statute of frauds The Courts in India have the same justification in dealing similarly with the obstacles interposed by the Evidence Act In thus modifying the rules laid down by ss 91 and 92 of that Act the Courts will not be acting in opposition to the intention of the Legislature which by enacting the provisions of s 26, cl (c) of the Specific Relief Act (I of 1877) has shown an intention to relax the rules of the Evidence Act so as to bring them into conformity with the practice of the English Courts of Chancery. *Quære*—Whether prov. (1) to s 92 of the Evidence Act is not large enough to let in evidence of such subsequent conduct as in the view of the Court of Equity would amount to fraud, and would entitle a grantor to a decree restraining the

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

evidence of the true contract. By KERNAN, J. (concurring with the Chief Justice as to the admissibility of the evidence), that assuming that the promissory note did represent a complete contract between the parties, such contract was waived and discharged by the acts and agreement of the parties before breach, and a new contract, namely, the contract for larger interest, substituted. *Abray* v. *Crux, L. R., 5 C. P.*, 37, distinguished. GUDDALU RUTHNA MUDALIYAR *v.* KUNNATTUR ARUMUGA MUDALIYAR [7 Mad., 189

90. ——— Consideration for deed— —*Proof of consideration—Recital in bond.*—Oral evidence is admissible to prove that consideration has not been paid at all or in full, notwithstanding the recital in the bond that full consideration has been paid. WALEE MAHOMED *v.* KUMUR ALI 7 W. R., 428

91. ——— ——— *Proof of want of consideration, or only portion paid.*—Oral evidence may be received to prove that the consideration stated in a deed to have been paid was not paid, but not to prove that only a small portion of the consideration stated in the deed to have been received in full was to be paid at the time, and that the rest was not only to remain in abeyance pending the result of a suit, but to be paid only in case of the successful termination of that suit. SHEWAB SINGH *v.* ASGUR ALI . . . . 6 W. R., 267

92. ——— ——— *Evidence to show only portion of consideration of bond was received.*—Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. GAUREVALLABA RAMCHANDRA VELLIA BOMAYA NAYIK *v.* VIRAPPA CHETTI . . 2 Mad., 174

93. ——— ——— *Proof of consideration stated in a deed.*—S. 92 of the Evidence Act (I of 1872) prevents the admission of oral evidence for the purpose of contradicting or varying the terms of a contract, but does not prevent a party to a contract from showing that there was no consideration, or that the consideration was different from that described in the contract. Where, therefore, a deed of sale described the consideration to be R100 in ready cash received, but the evidence showed that the consideration was an old bond for R63-12-0 and R36-4-0 in cash,—*Held* that there was no real variance between the statement in the deed and the evidence as to consideration, having regard to the fact that it is customary in India, when a bond is given wholly or partially in consideration of an existing debt, to describe the consideration as being "ready money received." HUKUMCHAND *v.* HIRALAL . . . . I. L. R., 3 Bom., 159

VASUDEVA BHATLU *v.* NARASAMMA [I. L. R., 5 Mad., 6

94. ——— ——— *Oral evidence when admissible to prove that consideration-money, stated in contract to have been paid, has not been paid, but has been applied in a way agreed on between the parties—Evidence Act, I of 1872, s. 92.*—A deed of putowa contained a recital of the payment of the sum of R2,000 as bonus to the plaintiff by the defendant, the mode of payment being stated to be in cash in one lump sum. The plaintiff sued to recover the sum of R1,850, alleging that only R150 had been paid, and not R2,000 as recited in the putowa. The defendant admitted that R850 was due, and as to the remaining R1,000 alleged that at the time of the transaction it was agreed that the sum of R1,000 was to be retained by him on account of a debt due by one of the plaintiff's relations to him. The plaintiff objected that the evidence of the agreement set up by the defendant was inadmissible. *Held* that, inasmuch as it was open to the plaintiff under prov. 1 of s. 92 of the Evidence Act to prove by oral evidence that the whole of the consideration-money had not been paid, it was equally competent to the defendant, in answer to such case, to adduce evidence to prove the true nature of the contract, and that the consideration was different from that stated in the contract. *Held* also that the plea of the defendant substantially was that, although the consideration was fixed at R2,000, there was a separate oral agreement to the effect that out of that sum the plaintiff was to refund R1,000 on account of the debt due from his relative, and that on this ground the oral evidence tendered was admissible under prov. 2 of s. 92 of the Act, the stipulation as to the refund of the R1,000 not being inconsistent with the recital as to the consideration in the contract. LALA HIMMAT SAHAI SINGH *v.* LLEWHELLEN [I. L. R., 11 Calc., 486

95. ——— ——— *Evidence Act (I of 1872), s. 92—Evidence to show manner in which consideration was agreed to be paid.*—S. 92 of the Indian Evidence Act, 1872, will not debar a party to a contract in writing from showing, notwithstanding the recitals in the deed, that the consideration specified in the deed was not in fact paid as therein recited, but was agreed to be paid in a different manner. *Hukum Chand* v. *Hira Lal, I. L. R., 3 Bom., 159, Lala Himmat Sahai Singh* v. *Llewhellen, I. L. R., 11 Calc., 486,* and *Ram Bakhsh* v. *Durjan, I. L. R., 9 All., 392,* referred to. INDARJIT *v.* LAL CHAND [I. L. R., 18 All., 168

On appeal to the Privy Council, the Judicial Committee, approving the decision of the High Court on the point, regard it as settled law that where there has been a false acknowledgment by recital in a deed of sale of the payment by the purchaser of the consideration-money and its receipt by the vendor, it is open to the latter to prove that no consideration-money was actually paid, notwithstanding anything in s. 92 of the Indian Evidence

EVIDENCE—PAROL EVIDENCE —*continued*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

lease inoperative *Preonath Shaha* v *Madhu Sudan Bhuiya, I L R, 25 Calc, 603* followed SHYAMA CHARAN MANDAL v HERAS MOLLAH [I L R, 26 Calc, 160

85. ——— *Evidence Act (I of 1872), s 92, prov 4—Mortgage—Power of sale—Suit to set aside sale under power of sale Promise by mortgagee to postpone sale—Evidence of such promise admissible*—The plaintiff mortgaged certain property to the first defendant on 28th December 1895 By the mortgage deed the mortgage debt was made repayable on 28th December 1896 On the 12th May 1897, the first defendant sold it by auction under the power of sale contained in the mortgage-deed, and the second defendant was the purchaser The plaintiff now sued to set aside the sale and be allowed to redeem alleging that on the day before the sale the first defendant had orally promised and agreed to postpone the sale for four days, and that the second defendant had notice of this fact before he purchased the property *Held* that evidence of such oral agreement was admissible It was not an agreement to modify any of the terms of the mortgage, it was merely an agreement to forbear, for a period of four days, from the exercise of the power of sale given by the mortgage It therefore did not fall within prov 4 of s 92 of the Evidence Act (I of 1872) TRIMBAK GANGADHAR RANADE v BHAGWANDAS MULCHAND I L R, 23 Bom, 348

86. ——— Evidence of agreement to pay interest on document—*Evidence of contemporaneous agreement—Suit on hath chitta*—In a suit upon a hath chitta, the Court, having

MOHINI MOHUN DASS 9 C L R, 301

87. ——— *Suit on promissory note*—Where a promissory note is silent as to interest, a verbal agreement made subsequently to the execution of the note to pay interest may be proved under cl 2 of s 92 of the Evidence Act IN THE MATTER OF SOWDAMONEE DEBYA v SPALDING 12 C L R, 163

88 ——— *Suit on promissory note*—When a note of hand promised repayment of a loan, with interest at five per cent, without stating either *per mensem* or *per annum*—*Held* that the construction that interest was to be calculated without reference to time was contrary to all practice, and that the ambiguity was one which might fairly be explained by previous transactions between the parties and by custom MAHOMED SHAMSOODEEN v ABDOOL HUQ W R., 1864, 379

89 ——— Evidence to show rate of interest—*Evidence Act, s 92—Suit on promissory note*—Suit for balance of principal due for money lent with interest thereon at 5 per cent per mensem It appeared that the defendant, being indebted to plaintiff on a promissory note for R500, applied to him for a further loan of R1,500 proposing to lay out the whole amount of R2 000 in the performance of a contract then subsisting between himself and the Madras Railway Company and offering to give plaintiff a share in such contract, that plaintiff consented to lend the said sum payable with interest at 6 or 7 per cent per mensem in lieu of becoming a partner and also to give defendant two months' previous notice on requiring repayment of the loan Defendant demurred to the rate of interest,

for R500 which was returned, a promissory note for 2 000, payable on demand, with interest at 12 per cent per annum, which note, plaintiff alleged it was agreed, should be cancelled on receipt of a letter from the defendant fixing the rate of interest (this was denied by defendant) Defendant subsequently wrote two letters to plaintiff, agreeing to pay interest at 5 per cent per mensem and plaintiff endorsed the said note as cancelled Plaintiff also alleged that he received interest at the rate of 5 per cent per mensem for two months and produced a witness who deposed to that effect This defendant denied *Held* by the Original Court (following *Abray* v. *Crux, L R, 5 C P, 37*) that the oral evidence was inadmissible to show the rate of interest *dehors* that of the promissory note, and that the subsequent letters offering a higher rate of interest, were without consideration, for there was not any evidence of forbearance, and that the plaintiff had a right to sue on the promissory note the very day after it was made Plaintiff

upon sufficient evidence that this writing is not really the contract, and the risk of groundless defence does

gests caution

time of the

agreement touching the transaction of loan although the rate of interest was still unsettled and under discussion, the plaintiff declined to lend on the terms of a joint interest in the venture as proposed by the defendant, and the latter refused to pay the rate demanded, before any final agreement and while the transaction was still incomplete, the note was given, not as a writing which expressed or was meant to express the final contract, but rather as a voucher,

parties or is a written contract excluding other

EVIDENCE—PAROL EVIDENCE —*continued.*

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

executed on behalf of a minor by his guardian in favour of *T* (who did not execute it), it was recited that the mortgage was made to secure the repayment of a certain sum which *T* had undertaken to expend in liquidating certain debts due by the minor's estate, and, amongst others, a debt due to *K T* having failed to pay this debt, *K* obtained a decree against, and was paid by, the minor's guardian. In a suit brought on behalf of the minor against *T* to recover the amount paid in satisfaction of *K*'s decree, *T* pleaded that it had been orally agreed at the time of the mortgage that he was to obtain an indemnity either from *K* or from the minor's guardian before payment, in case the minor repudiated the debt on coming of age. The District Court rejected the evidence in support of this plea, on the ground that it was inadmissible by virtue of s. 92 of the Evidence Act, 1872. *Held* that the evidence was admissible. TIRUVENGADA *v.* RANGASAMI . . . . **I. L. R., 7 Mad., 19**

100. ——— *Evidence Act, 1872, s. 92—Evidence—Oral agreement inconsistent with written documents.*—*R*, prior to his death, was a partner with defendants in the firm of *N C & Co.* He died on 8th November 1884. On the 9th November 1885, his executors passed a release to the defendants, which recited that *R*'s share in the firm and future business had ceased on his death; that the surviving partners had requested the executors to settle the account of their testator with the firm, and that, after examining the books and taking accounts, etc., a balance of R8,395-11 was found due, on payment whereof the executors released the defendants from all claims in respect of the share and interest of *R*, etc. On the 7th April 1887, the executors assigned over to the plaintiff a one-anna share in the said firm, and the plaintiff, as assignee, brought this suit for a declaration of his right to the share and for an account. He alleged that there had been no accurate examination of the books at the time of the release; that the amount really due to the testator's estate by the firm had not been ascertained; and that it had been agreed on by the partners at the time of the release that, in addition to the sum therein mentioned, the executors, as representing the testator's estate, should receive a one-anna share in the partnership. The defendants denied the right of the plaintiff, and contended that the interest of *R* and his estate in the partnership ceased at his death. They relied on the release, and denied any agreement to give the executors a share, and contended that, under s. 92 of the Evidence Act (I of 1872), no evidence could be given of the alleged agreement. For the plaintiff it was contended that the agreement as to the one-anna share was quite independent of the release. *Held* that evidence of the agreement that the executors should continue to have a one-anna share in the partnership was inadmissible, as being inconsistent with the written release (Evidence Act, s. 92). By the release the executors of *R* released the partners from all claims whatever in respect of *R*'s share, and the consideration for that release was stated in the document to be a lump sum, on payment of which, under the writing, all claims arising out of the old partnership ceased and determined. The oral agreement added another term to the consideration for release in respect of the past accounts, *viz.*, the continuance of a one-anna share in the partnership. Such an agreement was not a purely collateral or additional agreement. It was an addition to the terms of a contract that had been reduced to writing, and was inconsistent with those terms. COWASJI RUTTONJI LIMBOOWALLA *v.* BURJORJI RUSTOMJI LIMBOOWALLA **[I. L. R., 12 Bom., 335**

101. ——— *Evidence Act, s. 92—Civil Procedure Code, s. 317.*—By an agreement in writing, *A*, after reciting that he bid for certain property sold in execution of a decree benam for *B* and paid the deposit amount into Court for *B* and that *B* paid the balance, promised to convey their property to *B*. In a suit by *B* to recover the property from *A*,—*Held* that, under s. 92 of the Evidence Act, *B* was not debarred from proving that *A* bought the property for himself, and not benami for *B*. KUMARA *v.* SRINIVASA . **I. L. R., 11 Mad., 213**

102. ——— *Exclusion of evidence of oral agreement—Evidence Act (I of 1872), s. 92—"Between the parties."*—The words in s. 92 of the Evidence Act (I of 1872) "between the parties to any such instrument" refer to the persons who on the one side and the other came together to make the contract or disposition of property, and would not apply to questions raised between the parties on the one side only of a deed, regarding their relations to each other under the contract. The words do not preclude one of two persons in whose favour a deed of sale purported to be executed from proving by oral evidence in a suit by the one against the other that the defendant was not a real, but a nominal, party only to the purchase, and that the plaintiff was solely entitled to the property to which it related. *M* conveyed certain houses and premises to plaintiff and defendant jointly by a sale-deed. Plaintiff sued defendant for ejectment from the premises, alleging that he alone was the real purchaser, and that defendant was only nominally associated with him in the deed. *Held* that s. 92 of the Evidence Act did not preclude plaintiff from showing by oral evidence that he alone was the real purchaser, notwithstanding that the defendant was described in the sale-deed as one of the two purchasers. MULCHAND *v.* MADHO RAM . . . . **I. L. R., 10 All., 421**

103. ——— *Custom or usage qualifying contract—Evidence Act (I of 1872), s. 92, prov. 5—Shipment, meaning of.*—On the 18th April 1890, the defendant signed a contract (No. 3053) to buy from the plaintiffs 25 bales grey dhoties "June shipment, in four lots, with an interval of four weeks." These goods were not supplied, as they could not be obtained at the price limited. On the

EVIDENCE PAROL EVIDENCE —*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

Act 1872 That sect on does not enact that no statement of fa t in a written instrument is to be contrad cted by oral evidence Where the considera tion money had been acknowledged to have been paid by a recital in the sale deed to that effect —*Held* that it was no infringement of the above section for a Court to accept proof that by a collat eral arrangement between vendor and purchaser the consideration money remained with purchaser in his hands for the purposes and under the conditions agreed upon between them LAL CHAND v INDARJIT

[I L R, 22 All, 370
L R, 27 I A, 93
4 C W N, 485

96 ———— Evidence to prove contract —*Statute of Frauds—Variance bet een bougnt and sold notes* —The defendant, a Hindu, entered into a contract of sale with the plaintiff through the medium of a bro er The broker made no entry of the contract in his book, and there was a material variance in the bought and sold notes delivered by him The notes were accepted and retained by the plaintiff and defendant respectively In an action for non delivery under the contract —*Held* that the contract was made before the notes were written the notes were sent by the broker to his principals merely by way of information and the Statute of Frauds not applying, the plaintiff was at l berty to give parol evidence of the terms of the contract CLARTON v SHAW

[9 B L R, 245 16 W R, 414

97 ———— *Evidence to vary written contract—Evidence Act (I of 1872) s 92—Bought and sold notes—Oral evidence as to matter on which document is silent—Damages* —The defendants agree l to purchase to arrive from

t between the responded one with the other and constituted a contract for delivei four aboute godow betwe defenc 6 chittacks of copper within time, and made no further delivery to the plaintiffs no other shipment of the copper contracted for arriving within time at Calcutta In a suit brought by the plaintiffs to recover damages for breach of contract to deliver the defendants sought to show by oral evidence that the contract was for delivery of 7.0 maunds if one fourth of each of the successive arrivals at Ralli Brothers' godowns should in the aggregate amount to 750 maunds *Held* that such evidence was inadmissible under s 92 of the Evidence Act, and that the plaintiffs were entitled to recover JADU RAI v BHUBOTARAN NUNDY

[I L R, 17 Calc, 173

98 ———— *Evidence Act (I of 1872) ss 92 and 94—Evidence to show language of document not meant to apply to exist ng facts—Evidence contrary to submission to arbitration* — An executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will and the matter was duly regis tered as a suit The executor and the caveatrix subsequently referred the dispute" to arbit ation signing a submission paper which was as follows "To Bhangsali Kalidas Ramji Written by us the undersigne l By this instrument we give to you in writing as follows In the matter of an application presented by Ghellabhai Atmaram Thambuwala to obtain 'power' (probate) from the High Court for the administration and enjo ment between us two persons of the property of Bai Godiwari widow of Dar i (tailor) Bhowan Deva Dave I Nandubai the wife of Mulji Mali having raised an objection have got a caveat registered in the High Court In the matter thereof we the said plaintiff (and) defendant have appo nted you an arbitrator to bring about a settlement of the said dispute As to whatever award you may make and give on arriving at a decision the same is to be agreed to and abided by us two persons In this matter we each other a ree and consent to act according to your 'award' This submission paper we of our free will and pleasure and in sound mind and consciousness have made and delivered after having read and understood the same It is agreed to and approved of by us and our heirs and repre sentatives in Court (and) the Darbar Bombay The English date the 30th of October in the year 1893" Before the arbitrator the parties were represented by s licitors witnesses were called and examined and the arbitrator made an award finding that the alleged will had not been executed The

question of the execut on of the will o arbitration and tendered evidence to prove this *Held* on appeal (FARRAN C J and STRACHEY, J) that the evidence was admissible The language of the submission paper was not so plain in itself nor did it apply so accurately to exist ng facts as to prevent the evidence being given—s 94 of the Evi dence Act (I of 1872) GHELLABHAI ATMARAM v NANDUBAI I L R, 21 Bom, 335

Reversing same case in Court below (CANDY J) where it was decided on other g ounds GHELLABHAI ATMARAM v NANDUBAI I L R, 20 Bom, 238

99 ———— *Contract of in demnity—Evidence Act, s 92—Mortgage—Con temporaneous oral contract* —In a deed of mortgage

EVIDENCE ACT (I OF 1872).

See CASES UNDER EVIDENCE.

1. ———— s. 3—"*Court," Meaning of.*—The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purpose of the Act itself, and should not be extended beyond its legitimate scope. QUEEN-EMPRESS *v.* TULGA

[I. L. R., 12 Bom., 36

2. ———— "*Court*" - *Registration Act (VIII of 1871), s. 82—Sub-Registrar—Penal Code, s. 228.* By s. 82 of the Registration Act a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228 of the Penal Code; and as he is legally authorized to take evidence, he is a "Court" as defined by the Evidence Act, s. 3. IN THE MATTER OF THE PETITION OF SARDHARI LAL

[13 B. L. R., Ap., 40 : 22 W. R., Cr., 10

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . I. L. R., 14 Bom., 260

1. ———— s. 8, ill. (k)—*Admission—Confession.*—A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and stated his loss to a railway police inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present. This statement was tendered in evidence, and admitted under s. 8, ill. (*k*), of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between "admission" and "confession." QUEEN *v.* MACDONALD . 10 B. L. R., Ap., 2

2. ———— ill. (g), and s. 6—*Statement made to third person by person injured.*—The only evidence against a prisoner charged with having voluntarily caused grievous hurt was a statement made in the presence of the prisoner by the person injured to a third person immediately after the commission of the offence. The prisoner did not, when the statement was made, deny that she had done the act complained of. *Held* that the evidence was admissible under s. 6 and s. 8, ill. (*g*), of the Evidence Act. IN THE MATTER OF THE PETITION OF SURAT DHOBNI . . . I. L. R., 10 Calc., 302

———— s. 9—*Copy of proceeding anterior to suit containing mention of the descent of one of the parties to the suit—Document showing parentage of party—Proof of pedigree—Civil Procedure Code, s. 568.*—One of the questions in issue in a suit as to the pedigree of a certain family being whether one *G* was son of *B S*, or of one *M S*, belonging to a totally different family from that of *B S*, an attested copy of a rubkar in some proceedings long anterior to the suit was tendered in evidence, in which rubkar *G* was described as the son of *B S*. *Held* that the rubkar was admissible in evidence under the provisions of s. 9 of Act I of 1872. RADHAN SINGH *v.* KUARJI DICHHIT . I. L. R., 18 All., 98

EVIDENCE ACT (I OF 1872)—*continued*.

———— s. 10.

See ABETMENT . 4 C. W. N., 523

———— s. 11.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 6 Calc., 171
[I. L. R., 3 Bom., 3
I. L. R., 25 Calc., 522
2 C. W. N., 501

1. ———— *Fact making probable a fact in issue—Admission by one defendant relevant against other defendants.*—In a suit brought by the plaintiff against several defendants to prevent encroachments by the defendants in a lane which was the common property of himself and the defendants,—*Held* that the admission of one of the defendants in a previous suit to which the other defendants were not parties as to the common character of the portion of the lane between his house and the plaintiff's, and also a similar statement in a deed put in by another of the defendants to prove his title to his own house, were admissible in evidence to establish the common character of the entire lane as alleged by the plaintiff. The fact of common ownership of other parts of the lane should be treated as relevant to the issue as to the common character of the entire lane on the principle laid down in s. 11 of the Evidence Act. NARO VINAYEK *v.* NARHARI

[I. L. R., 16 Bom., 125

2. ———— and s. 21, cl. (3)—*Admissibility of petition and written statement filed in a previous proceeding.*—Where the plaintiff and some of the defendants were co-owners of certain properties, the question at issue being whether there was a partition between them and whether under that partition the defendants came to be in possession of a specific property in lieu of their shares in all the properties, a petition and a written statement filed by the defendants in certain previous suits admitting the partition and the exclusive acquisition of the specific property were put in, but objected to as inadmissible in evidence. *Held* that the documents were admissible against those defendants under ss. 11, cl. (2), and 21, cl. (3), of the Evidence Act. *Naro Vinayek* v. *Narhari, I. L. R., 16 Bom., 125*, relied upon. GYANNESSA *v.* MOBARAKANNESSA

[I. L. R., 25 Calc., 210
2 C. W. N., 91

3. ———— and ss. 5 and 153—*Statement that another witness was at a particular place at a particular time.*—The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time and consequently could not then have been at another place, where the latter states he was and saw the accused persons, is properly admissible in evidence, even though the witness for the prosecution may not himself have been cross-examined on the point: ss. 5, 11, and 153, ill. (*c*), of Act I of 1872. REG. *v.* SAKHARAM MUKUNDJI . . . . 11 Bom., 166

4. ———— and ss. 43, 54, and 153—*Admissibility of evidence of one crime to prove*

EVIDENCE-PAROL EVIDENCE —*continued*

3 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued*

dhoties relating to No 3053 at an all round advance of 1*d* per pair on original limits for November, December January shipments in three monthly lots about 8 bales to be shipped in each month" This order was accepted, and the goods were shipped as follows —6 bales were handed to the carriers (the S & N W Railway Co) in Manchester on the 28th November 1890, and were shipped at Birkenhead on the 9th December 1890, 6 bales were handed to the same carriers on the 4th December 1890 and were shipped on the 13th December 1890, 10 bales were handed to the same carriers on the 23rd December and one bale on the 24th December, and these 11 bales

weeks He also contended that the shipment on the 9th December 1890 was a late shipment and that he was not therefore bound to accept the goods under the contract As to this last contention, the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece goods Association the date of the carriers' weight

alleged, originated in consequence of the above association having agreed that all piece goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only, and by no others It was stated that, unless some such custom existed,

that the alleged custom existed, and was generally accepted and understood by merchants and dealers in Bombay On reference to the High Court,—*Held* that evidence of the alleged custom or usage of trade was not admissible under s 92 prov (5, of the Evidence Act (I of 1872) to explain or vary the natural and ordinary meaning of the words in the contract The parties contracted for a shipment on

allow evidence of a usage repugnant to or inconsistent with, the express terms of the contract SMITH *v* LUDHA GHELLA DAMODAR

[I L. R., 17 Bom, 129

104. ———————— *Evidence Act (I of 1872), s 92, prov 1—Mutual mistake of facts—Equitable relief—Rectification of a deed of conveyance* —Where the plaintiffs brought a suit to recover possession of some land on the allegation that it was covered by the conveyance executed in their favour by the defendant, and the defence was to the effect that what was intended to be sold and purchased was the *revenue paying estate of the defendant* but that the land in suit which was the homestead of the defendant, though found included in the estate, was not expressly excepted because both the parties were under the mistaken impression that it was not so included but was lakhiraj, and it was contended that it was not open to the defendant to raise such a defence in this suit *Held* that it was open to the Court having regard to prov 1 to s 92 of the Evidence Act, to allow oral evidence to be put in to prove the mutual mistake *Held* also that, where there is a mutual mistake of fact in a case as here a Court administering equity will interfere to have the deed rectified so that the real intention of both parties may be carried into effect, and will not drive the defendant to a separate suit to rectify the instrument *Held* by BANERJEE J —That prov 1, s 92 of the Evidence Act, does not limit the admissibility of oral evidence to a suit to obtain a decree on the ground of mistake. MOHENDRO NATH MUKHERJEE *v* JOGENDRA NATH ROY

[2 C W N, 260

EVIDENCE ACT (II OF 1855)

See CASES UNDER EVIDENCE

———— s. 14.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—QUESTIONS OF LAW AND FACT 8 W R., Cr., 60

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESS—CROSS EXAMINATION 13 W. R., Cr, 18

———— s 24

See PRIVILEGED COMMUNICATION

[15 W. R, 340
1 B L R., A Cr, 8
10 W. R., Cr, 14

———— s 32

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED

[8 Bom, Cr, 103

———— s 34

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION 15 W. R., Cr, 23

———— s. 57

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL

[8 W. R, 499

EVIDENCE ACT (I OF 1872)—*continued.*

Act (I of 1872) include the police officers and Magistrates of Native States as well as those of British India. QUEEN-EMPRESS *v.* NAGLA KALA [I. L. R., 22 Bom., 235

—— s. 27 (Criminal Procedure Code, 1861-69, s. 150).

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE-OFFICERS.

See CASES UNDER EVIDENCE—CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

—— s. 29.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS. [20 W. R., Cr., 33

—— s. 30.

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

—— s. 31.

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 14 Bom., 312

1. —— s. 32, cl. (2)—*Letter of advice.*—On the trial of a person charged with forging a railway receipt or bill of lading for the purpose of obtaining possession of certain goods which had been sent from Delhi to Calcutta, a letter from the consignee at Delhi to his partner in Calcutta, advising the despatch of the goods, was tendered in evidence under s. 32, cl. 2, of Act I of 1872 (the Evidence Act), but the Court refused to receive it, and intimated a doubt whether it fell within the instances specified in the section. QUEEN *v.* TARINICHARAN DEY . . . . 9 B. L. R., Ap., 42

2. —— *Entry in Mahomedan marriage register to prove amount of dower fixed.*—A register of marriages kept by the Istahad, since deceased, who celebrated this marriage, in which register was entered the amount of the dower, was held to be admissible and relevant, as evidence of the sum fixed, being an entry in a book kept in the discharge of duty within s. '2, cl. (2), of the Evidence Act, 1872. ZAKERI BEGUM *v.* SAKINA BEGUM . . . I. L. R., 19 Calc., 689 [L. R., 19 I. A., 157

1. —— cl. (3)—*Declaration of party against proprietary interest—Presumption of party being dead.*—In 1847, *A*, a Hindu widow, executed in favour of *B* a varaspatra (a deed of heirship) in the following terms:—"My husband has died. We have no issue, and you are a son of my husband's cousin. Taking this into consideration, my husband expressed his wish, when he was on the point of death, that all the houses and shops situate in Poona, except the house at Benares, should be given to you, and that you should be made owner of all money-dealings connected with Poona. I therefore, in obeying his command, pass this deed of heirship to you, and make you owner of all the property mentioned above like our son. You therefore enjoy the property in your name joyfully." Under this varaspatra, *B* took possession of the property mentioned therein, and enjoyed it during his lifetime. After his death, his gomasta (agent) managed it for and on behalf of *B*'s minor son *C*. In 1881, *C* filed a suit to redeem a house and a garden, part of the property covered by the varaspatra, and which had been mortgaged by *A*'s husband in 1831. One of the defences to this suit was that neither *C* nor his father was the heir of the original mortgagor, and that therefore *C* could not redeem the property in dispute. At the trial *C* produced the varaspatra of 1847 in support of his title, alleging that he had found it among the papers of the old gomasta of his father, who used to look after his affairs during his minority. *Held* that the varaspatra was admissible under s. 32, cl. 3, of the Evidence Act (I of 1872), as it was manifestly a declaration by *A* against her proprietary interest; for by it she divested herself of her widow's estate in the property, and there being no evidence of her existence after 1847, she must be presumed to have been dead in 1881, when the suit was filed. HARI CHINTAMAN DIKSHIT *v.* MORO LAKSHMAN [I. L. R., 11 Bom., 89

2. —— *Statements made by deceased tenants—Road-cess returns—Bengal Cess Act (Bengal Act IX of 1880), s. 95.*—*Semble*—The statements made by deceased tenants in road-cess returns filed by them regarding assets of the tenancy are not admissible in evidence under s. 32 of the Evidence Act. HEM CHANDRA CHOWDHRY *v.* KALI PRASANNA BHADURI . I. L. R., 26 Calc., 832

—— cls. (2) and (3)—*Recitals in deed—Description of boundary—Statement against pecuniary or proprietary interest.*—The plaintiff sued in 1893 to recover possession of certain land. The defendants denied the plaintiff's title. The plaintiff tendered in evidence a registered mortgage-deed of adjacent land executed in 1877, which set forth the boundaries of the land comprised in the mortgage, and as one of such boundaries referred to the land in question as then belonging to the plaintiff. At the date of the deed there was no litigation existing between the present litigants, and at the date of the present suit the mortgagor was dead. *Held* that the statement in the deed was admissible under cl. 3 of s. 32 of the Evidence Act (I of 1872) as a statement against the pecuniary or proprietary interest of the mortgagor. NINGAWA *v.* BHARMAPPA . . I. L. R., 23 Bom., 63

—— cl. (4)—*Statement as to custom as to adoption by widow without authority of husband.*—The lower Court having, under s. 32 of the Evidence Act, I of 1872, admitted in evidence a statement signed by several witnesses to the effect that a widow of the Kadva Kunbi caste cannot adopt, according to the custom of the caste, without the express authority of her husband,—*Held* that s. 32, cl. 4, of the Evidence Act was not applicable to the case, as the evidence was required to prove a

EVIDENCE ACT (I OF 1872)—*continued*

existence of another—Possession of forged documents—S 11 of the Evidence Act should not be construed in its widest signification but considered as limited in its effect by s 54 of the Act So construed s 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime even though it be cognate Accordingly the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document with the forgery of which he is charged *Per* WEST J—Where a person charges another with having forged a promissory note and denies having ever executed any promissory note at all the evidence that a note similar to the one alleged to be forged was in fact executed by that person is not admissible nor even would a judgment founded upon such note be so ss. 43 and 153 of the Evidence Act REG v PARBHUDASS AMBARAM 11 Bom, 90

——— s 13

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES

See RES JUDICATA—ESTOPPEL BY JUDGMENTS I L. R., 3 Bom., 3
[I. L. R., 6 Calc, 171
I. L R, 25 Calc, 522
2 C W N, 501

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT
[I. L R., 23 Calc., 179
I L R, 21 Bom, 110
I L R, 22 Bom, 430

——— *Right—Public right*—The right mentioned in the Evidence Act s 13 is not a public right only SOORJO NARAIN PANDA v BISSUMBER SINGH 23 W R, 311

——— ss 14 and 15—*Admissibility of* [illegible]

three different persons on a certain day in order to prevent their being seized in execution of a decree and the prosecution tendered evidence of five other fraudulent transfers of property effected by the accused on the same day and apparently with the same object—*Held* that this evidence was admissible under ss 14 and 15 of the Evidence Act to prove either that all those transfer were parts of one entire transaction or that the particular transfers which were specified in the charge were made with a fraudulent intent *Reg* v *Parbhudas 11 Bom*, *90* distinguished QUEEN EMPRESS v VAJIRAM . I L R, 16 Bom, 414

——— s 16

See COMPANY—WINDING UP—GENERAL CASES I L. R, 9 All, 366

EVIDENCE ACT (I OF 1872)—*continued*

——— ss 17 and 18—*Horoscope—Admission*—A horoscope which had been a public record from a period *ante litem motam* was relied upon by the defendants in the present suit and was put in as an admission' under the Indian Evidence Act ss 17 and 18 and was *held* to be admissible in evidence to prove the plaintiff's age *Ram Narain Kal a* v *Monee Bibee I L R 9 Calc 613* and *Satis Chunder Mukhopadhya* v *Mohendro Lal Pathuk I L R 17 Calc 849* distinguished GOUNDAN v GOUNDAN
[I. L R, 17 Mad., 134

——— s 18

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS
[22 W R, 303 304 note
23 W R. 27
I L. R., 11 Calc, 588

——— and s 21

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR I L. R, 19 All, 76
[I. R., 23 I A, 106

——— s 21— *Representative in interest—Purchaser at sale in execution of decree*—The purchaser at a sale in execution of a decree was held to be a representative in interest of the judgment debtor within the meaning of the Evidence Act I of 1872 s 21 UNNOPOORNA DASSEE v NUFUR PODDAR 21 W R, 148

——— s 24.

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 2 All., 260
[I. L R. 3 All., 338
I L R, 22 Calc, 50
2 C W N, 702

See CASES UNDER CONFESSION—CONFESSIONS UNDER THREAT OR PRESSURE

——— ss 25 and 26

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS

——— s 26 (Criminal Procedure Code, 1861, s 149)

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 15 Calc, 595
[2 C W N, 702
I. L R., 22 Bom, 235

See CONFESSION—CONFESSIONS TO POLICE OFFICERS I. L R, 20 Bom, 165

1 ——— *Village Munsif—Magistrate*—A Village Munsif in the Madras Presidency is a Magistrate within the meaning of s 26 of the Evidence Act 1872 EMPRESS v RAMANJIYYA . I L R., 2 Mad, 5

2 ——— *Police officer or Magistrate of a Native State*—The words police officer and Magistrate in s 26 of the Indian Evidence

EVIDENCE ACT (I OF 1872)—*continued.*

9. ———————— *Statements as to existence of relationship—Proof of age and order of birth of children.*—Case in which the plaint in a former suit verified by a deceased member of the family, and as such having special means of knowledge, was held admissible under s. 32, sub-s. 5, of the Evidence Act (I of 1872), to prove the order in which certain persons were born and their ages. DHANMULL *v.* RAM CHUNDER GHOSE
[I. L. R., 24 Calc., 265
1 C. W. N., 270

10. ———————— *Statement relating to the existence of any relationship contained in a document signed by several persons, some only of whom are dead.*—A statement relating to the existence of any relationship contained in a document signed by several persons, some only of whom are dead, is admissible in evidence under cl. 5 of s. 32 of the Evidence Act. CHANDRA NATH ROY *v.* NILMADHAB BHUTTACHARJEE . I. L. R., 26 Calc., 236
[3 C. W. N., 88

1. ———————— cl. (6)—*Statement in will —Words not purporting or operating to extinguish an interest in the present or in future—Registration Act (III of 1877), s. 17, cl. (b).*—S. 17, cl. (*b*), of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts. Such a statement would, if proved, be admissible also under s. 32, cl. 6, of the Indian Evidence Act (I of 1872). CHAMANBU JAVJE MAHOMED ALI BOHORI *v.* MULTANCHAND SHIVRAM
[I. L. R., 20 Bom., 562

2. ———————— *Horoscope.*—In a suit to recover possession of immoveable property, the plaintiff tendered in evidence a horoscope which he said had been given to him by his mother, and had been seen by members of his family and used on the occasion of his marriage. He was unable to say by whom the horoscope, or an endorsement on it, which purported to state what his name was, had been written. *Held* that the horoscope was not admissible under s. 32, cl. 6, of the Evidence Act. RAMNARAIN KALLIA *v.* MONEE BIBEE. RAMNARAIN KALLIA *v.* GOPAL DASS SINGH. . I. L. R., 9 Calc., 613

3. ———————— *Horoscope—Age, Proof of.* —In a suit to set aside a decree on the ground of minority, the plaintiff relied upon a horoscope to prove his age. *Held*, following *Ram Narain Kallia v. Monee Bibee, I. L. R., 9 Calc., 613,* that the horoscope was not admissible under s. 32, cl. 6, of the Evidence Act. SATIS CHUNDER MUKHOPADHYA *v.* MOHENDRO LAL PATHUK
[I. L. R., 17 Calc., 849

See GOUNDAN *v.* GOUNDAN
[I. L. R., 17 Mad., 134

———————— cl. (7)—*Evidence of family custom.*—In a suit to establish the existence of a family custom, the plaintiffs offered in evidence a deed containing a recital that the custom of the family was as alleged in the plaint, and a covenant to do nothing contrary to it. The deed was executed before action brought by the present plaintiffs, and also by a plaintiff who had died since the institution of the suit, and, as the plaint alleged, by "a considerable majority" of the family, but the defendant was not a party to it. *Held* that the deed was admissible as evidence on behalf of the plaintiffs, though they could themselves be called as witnesses; but that, though admissible, the custom as against the defendant must be proved *aliunde.* HURRONATH MULLICK *v.* NITTANUND MULLICK . . . . 10 B. L. R., 263

———————— cl. (8)—*Statement of police officer—Common statement by a number of persons.*—The statement of a police officer who goes about from place to place and collects information from different persons, which he afterwards puts in second hand before the Court, cannot be received as evidence under the Evidence Act, I of 1872, s. 32, cl. 8. The meaning of that clause is that, when a number of persons assemble together to give vent to one common statement, which statement expresses the feelings or impressions made in their mind at the time of making it, that statement may be repeated by the witnesses, and is evidence. QUEEN *v.* RAM DUTT CHOWDHRY
[23 W. R., Cr., 35

———————— s. 33.

See COMMISSION—CRIMINAL CASES.
[I. L. R., 19 Calc., 113
I. L. R., 19 Bom., 749

See CASES UNDER EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

See RECOGNIZANCE TO KEEP PEACE—SECOND APPLICATION FOR SECURITY,
[22 W. R., Cr., 9, 36, 79

1. ———————— *Representatives in interest.* —In order to satisfy the requirements of s. 33 of the Evidence Act, the two suits must be brought by or against the same parties or their representatives in interest at the time when the suits are proceeding and the evidence is given. SITANATH DASS *v.* MOHESH CHUNDER CHUCKERBUTTY
[I. L. R., 12 Calc., 627

2. ———————— *"Incapable of giving evidence."*—The incapacity to give evidence mentioned in s. 33 of the Evidence Act need not be a permanent incapacity. IN THE MATTER OF THE PETITION OF ASGUR HOSSEIN. EMPRESS *v.* ASGUR HOSSEIN
[I. L. R., 6 Calc., 774 : 8 C. L. R., 124

3. ———————— *"Incapable of giving evidence"—Discretion of Court—Casual incapacity.* —The words "incapable of giving evidence" in s. 53 of the Evidence Act, I of 1872, denote an incapacity of a permanent, not of a temporary, kind; and when a witness is proved to be incapable of giving evidence, the Court has no discretion as to admitting his deposition. But where the absence of a witness is casual or due to a temporary cause, the Court has such a discretion, if his presence cannot be obtained without an amount of delay or expense which, under the circumstances, the Court considers unreasonable. IN THE MATTER OF PYARI LALL 4 C. L. R., 504

EVIDENCE ACT (I OF 1872)—*continued*

fact in issue, and not merely a relevant fact The statement was therefore inadmissible to prove the alleged custom PATEL VANDRAVAN JEKISHAN v PATEL MANILAL CHUNILAL

[I. L R, 15 Bom, 565

1. ———— cl. (5)—*Statement by deceased person as to relationship* —S 32 (5) of the Evidence Act (I of 1872) does not apply to statements made by interested parties in denial, in the course of litigation, of pedigrees set up by their opponents NARAINI KUAR v CHANDI DIN

[I. L R, 9 All, 467

2 ———— *Statements of family priest as to relationship—Special means of knowledge* — Evidence of statements made by a deceased family priest as to the relationship of the members of the family may be given under s 32, cl 5, of the Evidence Act SHAM LALL SINGH v RADHA BIBEE

[4 C. L. R, 173

3 ———— *Statement as to the existence of relationship—Special means of knowledge* —The judgment of an Appellate Court, reversing that of a Court of first instance, on a question as to the existence of a relationship rested mainly on a statement recorded in prior settlement proceedings as made by a person, since deceased, who was employed therein as mukteai by certain members of the family. This judgment was reversed on a second appeal by the Court above on the ground that the statement was inadmissible, not coming within the meaning of Act I of 1872, s 32, sub-s 5, as that of a person having special means of knowledge on the question *Held* that the statement was inadmissible, as it appeared that his only means of knowledge were from his being instructed as such mukteai, he not having been a member of the family, nor intimately connected with it, nor having had any special means of knowing its concerns *Held* also that the Court of second appeal had rightly declined to send the case back for evidence to be taken as to whether he had or had not other means of knowledge SANGRAM SINGH v RAJAN BAHI

[I. L. R, 12 Calc, 219: L. R, 12 I. A., 183

4. —— and ill (1)—*Hearsay evidence—Pedigree, Question of—Proof of birth—Statement of deceased father.*—In a suit on a promissory note, to which the only defence was minority, a statement made by the defendant's father (who [illegible]
conten[illegible]
Held
defend[illegible]
DAW v SREEDAM CHUNDER DEY

[I. L. R, 13 Calc., 42

5. ———— *Evidence proving title by inheritance to raj estates—Proof of pedigree—Estate held as separate under the Hindu law* —A raj estate was claimed by the appellant as the nearest agnatic kinsman of the last Raja in possession, who had died without male issue, but leaving a widow and a daughter by her, both of whom died before this suit The claimant, to prove his title, relied upon a pedigree, not stated in any document produced that had existed in the family before this suit The genealogy on which he claimed was, however, identical with one which his father had more than once asserted, alleging title to two mouzahs of the raj estate The Raja called upon to answer in proceedings at settlement had not given a direct denial to the alleged relationship On the contention that there were steps in the pedigree as to which the evidence adduced did not include proof of statements made by a deceased person who had means of knowledge, or proofs of other statements within s 32 of the Indian Evidence Act (I of 1872), and as to which the evidence was insufficient,—*Held* that the evidence taken altogether, oral and documentary, had been sufficient to prove that the appellant was related to the deceased Raja as he had claimed to be and that the appellant was, as heir to him, entitled to inherit the raj estates on the widow's death this opinion being founded on the documentary evidence BEJAI BAHADUR SINGH v BHUPINDAR BAHADUR SINGH BEJAI BAHADUR SINGH v. KOUNSAL KISHORE PRASAD I. L. R, 17 All, 456

[L. R, 22 I A., 139

6. ———— *Statements in pedigree—Statements of persons who cannot be produced as witnesses* —S 32 of the Indian Evidence Act, which makes statements in a pedigree relevant, only applies when the statements are made by persons who cannot be produced as witnesses Accordingly a pedigree is inadmissible in the absence of evidence to that effect. SURJAU SINGH v SARDAR SINGH

[L. R., 27 I. A., 183

7. ———— *Evidence of existence of family custom (of primogeniture)—Statements derived from deceased persons* —A witness may state his opinion as to the existence of a family custom and (in this case a custom of primogeniture) give as the grounds thereof information derived from deceased persons But it must be independent opinion based on hearsay, and not on mere repetition of hearsay *see* Evidence Act, 1872 s 32, sub-s 5, ss 49 and 60 Its weight depends on the character of the witness and of the deceased persons GARURUDHWAJA PARSHAD SINGH v SAPARAUDHWAJA PARSHAD SINGH L. R., 27 I A., 238

[I. L. R., 23 All, 37

Reversing decision of High Court in SUPURAUDHWAJA PRASAD v GURURADDHWAJA PRASAD

[I. L. R., 15 All., 147

8 ———— [illegible]

spoke to statements made to them by relatives of the plaintiff, who were since deceased, relating to the date of the plaintiff's birth *Held* that such statements were admissible in evidence under s 32, cl 5, of the Evidence Act *Haines* v *Guthrie, L R, 13 Q B D, 818,* not followed RAM CHANDRA DUTT v JOGESWAR NARAIN DEO

[I. L R., 20 Calc., 758

EVIDENCE ACT (I OF 1872)—*continued.*

not brought by those who pleaded the said deposition. BHOOBUN MOYEE DOSSEE *v.* UMBICA CHURN SETT [23 W. R., 343

11. ——————— *Deposition of absent witness.*—Under s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. QUEEN *v.* ETWAREE DHAREE [21 W. R. Cr., 12

12. ——————— *Deposition of absent witness.*—When the evidence of an absent witness is admitted under s. 33 of the Evidence Act, 1872, the ground for its admission should be stated fully and clearly to enable the High Court to judge of the propriety of its admission. In the present case the High Court considered that the evidence of an absent witness had been improperly admitted because there was nothing to show that by ordinary care and the use of ordinary means the witness could not have been produced. In order to make a deposition admissible under s. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining. QUEEN *v.* MOWJAN *alias* NANE KHAN [20 W. R., Cr., 69

13. ——————— *Depositions of absent witnesses—Ground for absence*—Before a Sessions Judge can, under s. 33, Act I of 1872, admit the depositions of witnesses given in a former judicial proceeding as evidence before him instead of and in place of the oral deposition of the witnesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an amount of delay or expense which the Court considers unreasonable; and if there is nothing of a special nature to stand in the way, the case should be adjourned to the next sessions to procure the attendance of the witnesses. QUEEN *v.* LAKKAN SANTHAL [21 W. R., Cr., 56

14. ——————— *Inconvenience to witnesses—Question of identification—Expense.*—At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the enquiry, and the evidence of the servant of those persons taken at the enquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured without an expense of R500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the question of identification

EVIDENCE ACT (I OF 1872)—*continued.*

was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. QUEEN-EMPRESS *v.* BURKE . I. L. R., 6 All., 224

——————— s. 34.

See CASES UNDER EVIDENCE—CIVIL CASES —ACCOUNTS AND ACCOUNT BOOKS.

1. ——————— s. 35 —*Public record.*—S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact" does not make the public book evidence to show that a particular entry has not been made in it. IN THE MATTER OF JUGGUN LALL [7 C. L. R., 356

2. ——————— *Measurement papers prepared by ameen in partition proceedings.*—The measurement papers prepared by a batwara ameen deputed by the Collector to make a partition do not come within s. 35 of the Evidence Act. MOHI CHOWDHRY *v.* DHIRO MISSRAIN . 6 C. L. R., 139

3. ——————— *"Batwara khasra"—Estates Partition Act (Bengal Act VIII of 1876), s. 54—Measurement papers, Entry made in—"Record."*—A batwara khasra or measurement paper prepared under s. 54 of the Estates Partition Act (Bengal Act VIII of 1876) is not a "record" within the meaning of s. 35 of the Evidence Act I of 1872. An entry made therein of the name of a tenant in possession is not admissible in evidence under that section. *Mohi Chowdhry* v. *Dhiro Missrain, 6 C. L. R., 139,* referred to. PERMA ROY *v.* KISHEN ROY . . . I. L. R., 25 Calc., 90

4. ——————— *Evidence of other mortgage than one sued on—Statement of a survey officer as to entry as occupant how far admissible.*—Under s. 35 of the Evidence Act I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such entry as facts in another case. GOVINDRAV DESHMUKH *v.* RAGHO DESHMUKH [I. L. R., 8 Bom., 543

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EVIDENCE ACT (I OF 1872)—*continued*

4. ———— *Deposition in former suit*

5. ———— *Deposition in former suit*—*H N* died on

widow, *B*

S in accor

executed by *H N* *R N*, the uncle of *H N*, died on 6th July 1855, leaving a widow, *M*, in whose favour he had executed an anumati patra, by the terms of

6 ———— *Evidence given in proceeding coram non judice*—The evidence of a witness given in a proceeding pronounced to be *coram non judice* cannot be used under s 33 of the Evidence Act, if the witness is dead, on a re trial before a

7. ———— *Deceased witness—Criminal trial, deposition in, Admissibility of, in civil suit*—A prosecution was instituted by *S* against *N* at the instance and on behalf of *F* for criminal trespass in respect of a certain house, and on his own

the

ntly

the

S

EVIDENCE ACT (I OF 1872)—*continued*

died before the institution of the civil suit At the trial of the civil suit the deposition of *S* in the Criminal Court was tendered by *F* as evidence on the issue of possession *Held* that *S* being dead, and the proceedings being between the same parties, and the issues being substantially the same, the deposition of *S* was admissible FOOLKISSORY DASSEE *v*. NOBIN CHUNDER BHUNJO

[I. L. R, 23 Calc, 441

8. ———— and s 32, cl 1—*"Questions in issue"—Charges added at sessions—Depositions before Magistrate—Witness dying or absconding—Qualification of juryman*—In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses, one of whom was the person assaulted, were examined on behalf of the prosecution The prisoners were committed for trial Subsequently the person assaulted died in consequence of the injuries inflicted on him At the trial before the Sessions Judge, charges of murder and of culpable homicide not amounting to murder were added to the charge of grievous hurt. The deposition of the deceased witness was put in and read at the Sessions trial *Held*

Evidence Act is applicable—that is, whether the questions at issue are substantially the same—

was put in and read *Held* that it was properly admitted under s 33 IN THE MATTER OF THE PETITION OF ROCHIA MOHATO EMPRESS *v* ROCHIA MOHATO . . I. L R, 7 Calc, 42

[8 C. L R, 273

9. ———— *Depositions of witnesses taken by Consul at Zanzibar*—A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High

that the British Consul at Zanzibar was authorized

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10 ———— *Deposition of person denying he presented petition in Court*—A deposition

person might have been brought into Court, but was

EVIDENCE ACT (I OF 1872)—*continued.*

not brought by those who pleaded the said deposition. BHOOBUN MOYEE DOSSEE *v.* UMBICA CHURN SETT [23 W. R., 343

11. ———— *Deposition of absent witness.*—Under s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. QUEEN *v.* ETWAREE DHAREE [21 W. R. Cr., 12

12. ———— *Deposition of absent witness.*—When the evidence of an absent witness is admitted under s. 33 of the Evidence Act, 1872, the ground for its admission should be stated fully and clearly to enable the High Court to judge of the propriety of its admission. In the present case the High Court considered that the evidence of an absent witness had been improperly admitted because there was nothing to show that by ordinary care and the use of ordinary *means the witness could not have* been produced. In order to make a deposition admissible under s. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining. QUEEN *v.* MOWJAN *alias* NANE KHAN [20 W. R., Cr., 69

13. ————*Depositions of absent witnesses—Ground for absence*—Before a Sessions Judge can, under s. 33, Act I of 1872, admit the depositions of witnesses given in a former judicial proceeding as evidence before him instead of and in place of the oral deposition of the witnesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an amount of delay or expense which the Court considers unreasonable; and if there is nothing of a special nature to stand in the way, the case should be adjourned to the next sessions to procure the attendance of the witnesses. QUEEN *v.* LAKKAN SANTHAL [21 W. R., Cr., 56

14. ———— *Inconvenience to witnesses—Question of identification—Expense.*—At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the enquiry, and the evidence of the servant of those persons taken at the enquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured without an expense of R500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. QUEEN-EMPRESS *v.* BURKE . I. L. R., 6 All., 224

———— s. 34.

See CASES UNDER EVIDENCE—CIVIL CASES —ACCOUNTS AND ACCOUNT BOOKS.

1.———— s. 35 -*Public record.*—S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact" does not make the public book evidence to show that a particular entry has not been made in it. IN THE MATTER OF JUGGUN LALL [7 C. L. R., 356

2. ———— *Measurement papers prepared by ameen in partition proceedings.*—The measurement papers prepared by a batwara ameen deputed by the Collector to make a partition do not come within s. 35 of the Evidence Act. MOHI CHOWDHRY *v.* DHIRO MISSRAIN . 6 C. L. R., 139

3. ———— *"Batwara khasra"—Estates Partition Act (Bengal Act VIII of 1876), s. 54—Measurement papers, Entry made in—"Record."*—A batwara khasra or measurement paper prepared under s. 54 of the Estates Partition Act (Bengal Act VIII of 1876) is not a "record" within the meaning of s. 35 of the Evidence Act I of 1872. An entry made therein of the name of a tenant in possession is not admissible in evidence under that section. *Mohi Chowdhry* v. *Dhiro Missrain, 6 C. L. R., 139,* referred to. PERMA ROY *v.* KISHEN ROY . . . I. L. R., 25 Calc., 90

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EVIDENCE ACT (I OF 1872)—*continued*

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[I L R, 9 Calc, 431 12 C L R, 12

6 ——— *Admission—Statement in decree—Practice of Mofussil Courts* —In a suit for possession of a fishery the plaintiff sought to put in evidence an admission alleged to have been made in the year 1818 by the defendant s predecessor in title in a written statement in a former suit The only evidence of the admission was that contained in the decree in the former suit the ordinary part of which was prefaced with a short statement of the pleadings in the suit Under the old practice of Mofussil Courts it was the duty of the Court to enter in the decree an abstract of the pleadings in each case *Held* that the statement in the decree was evidence of the admission under s 35 of the Evidence Act (Act I of 1872) *Lekraj Kuar* v *Mahpal Singh I L R 5 Calc 744* referred to PARBUTTY DASSI *v* PURNO CHUNDER SINGH I L R, 9 Calc, 586

7 ——— *Admission—Abstract of* ... Whether an ... s legally ... to have ... *Dassi* v ... *c 586*
... N, 513

8 ——— *Certificate of guardianship under Act XL of 1858—Minority, Evidence of* —A certificate of guardianship under Act XL of 1858 is no evidence of minority under s 35 of the Evidence Act (I of 1872) being neither a book nor a register nor a record kept by any officer in accordance with any law SATIS CHUNDER MUKHOPADHYA *v* MOHENDRO LAL PATHUK
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9 ——— *Petition and order—Plaint* —The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants who were a donee from and the descendants of a previous karnavan and their tenants An issue was raised as to whether the rights of the parties ... katayom ... reciting ... karnava ... that he had in a particular instance acted in the capacity of karnavan of a Marumakkatayom tarwad. The rough draft of a plaint which had been filed by the alleged previous karnavan was put in evidence to show that he admitted having alienated property in a manner which would be adverse to the claim of his tarwad *Held* that the order and draft plaint were admissible in evidence for the above-mentioned purposes Observations as to documents marked as exhibits without proof BYATHAMMA *v* AVULLA
[I L R, 15 Mad, 19

10 ——— *Recital in a judgment—Admission of jenmi s title* —In a suit by a melkanomdar to redeem a kanom the kanom document was ... position as kanomdars was tendered in evidence to prove the jenmi s title. *Held* that the judgment was admissible in evidence THAMA *v* KONDAN
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12 ——— *Public record—Admissibility of evidence—Teiskhana paper—Beng Reg XII of 1817 s 16* —The teiskhana paper kept by patwaris under s 16 of Bengal Regulation XII of 1817 is not a public register or record within the meaning of s 35 of the Evidence Act and is not admissible as evidence under that section *Baijnath Singh* v *Sukhu Mahton I L R 18 Calc 534* and *Merick* v *Wakley 8 A. & E 170* referred to SAMAR DASADH *v* JUGGUL KISHORE SINGH I L R, 23 Calc, 366

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14 ——— *Statements of fact by* ... the meaning of s 35 of the Evidence Act (I of 1872) MADHAVRAO APPAJI SATHE *v* DEONAK
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7 ——————— *Admission—Abstract of pleadings given in a decree —Quære*—Whether an abstract of the pleadings given in a decree is legally secondary evidence of an admission alleged to have been made in such pleadings *Parbutty Dassi* v *Purno Chunder Singh, I L R, 9 Calc, 586,* doubted SUNDER DAS *v* FATIMULLNISSA

[1 C W. N., 513

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13 ——————— *Certificate of guardianship—Evidence of minority*—A certificate of guardianship is not evidence of minority when the question of minority is in issue. *Satis Chunder Mukhopadhya* v *Mahendro Lal Pathuk, I L R, 17 Calc, 849,* followed. GUNJRA KUAR *v* ABLAKH PANDE

[I. L. R, 18 All., 478

14 ——————— *Statements of fact by Settlement Officer in record of case—Public record, Entries in*—Statements of facts made by a settlement officer in the column of remarks in the dharepatrak, but not his remarks for the same, even though they may consist of statements of collateral facts which it was no part of his duty to inquire into, are admissible in evidence as being entries in a public record stating facts and made by a public servant in the discharge of his official duty within the meaning of s 35 of the Evidence Act (I of 1872) MADHAVRAO APPAJI SATHE *v.* DEOVAK

[I. L R., 21 Bom., 695

15. ——————— and s 48—*Proof of custom—Admissibility of village wajib-ul urz*—*Held,* on the question whether there did or did not

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exist a custom in the Bahrulia clan in Oudh excluding daughters from inheriting, that the wajib-ul-urz of a mouzah in the talukh, stating the custom of the Bahrulia clan as to inheritance, had been properly received in evidence under s. 35 of the Evidence Act, 1872. Further, that this custom was a usage of the kind which Regulation VII of 1822 required officers to ascertain and record; and that it was no valid objection that this wajib-ul-urz had been prepared and attested by officers subordinate to the settlement officer. *Semble*—That had it been the case that these papers were not to be treated as records describing a custom, but as recording only the opinions of those likely to know it, the 48th section of the Act would have made them admissible. LEKRAJ KUAR *v.* MAHPAL SINGH. RAGHUBANS KUAR *v.* MAHPAL SINGH . . . I. L. R., 5 Calc., 744
6 C. L. R., 593
L. R., 7 I. A., 63

16. ——— *Entry in record kept outside British India.*—Whether s. 35 of the Evidence Act applies to an entry in a public register or record kept outside British India—*Quære.* PONNAMMAL *v.* SUNDARAM PILLAI . I. L. R., 23 Mad., 499

——— s. 38—*Statement as to French Law—Unauthorized Translation of Code Napoleon.*—A statement contained in an unauthorized translation of the Code Napoleon as to what the French law is on a particular matter is not relevant under s. 38 of the Evidence Act. CHRISTIEN *v.* DELANNEY
[I. L. R., 26 Calc., 931
3 C. W. N., 614

——— s. 40.

See KHOTI SETTLEMENT ACT, s. 17.
[I. L. R., 20 Bom., 475

——— ss. 40-43.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 6 Calc., 171
[I. L. R., 3 Bom., 3
I. L. R., 16 Mad., 480
I. L. R., 20 Calc., 888

——— s. 41—*Probate—Executor, Power of, before Hindu Wills Act—Probate Act (V of 1881), ss. 2, 149.*—S. 41 of the Evidence Act is applicable to probates granted prior to the passing of the Hindu Wills Act. GRISH CHUNDER ROY *v.* BROUGHTON
[I. L. R., 14 Calc., 861

——— ss. 41, 44.

See DIVORCE ACT, s. 17.
[I. L. R., 22 All., 270

——— s. 42—*Judgment as to transferability of tenures in adjoining villages—Evidence of custom or usage.*—In a suit by the landlords to avoid the sale of an occupancy holding in their mouzah and eject the purchaser thereof, one of the questions was as to the existence of a custom or usage under which the raiyat was entitled to sell such a holding. *Held* that a judgment of the High Court as to the transferability of similar tenures in an adjoining village of the same pergunnah is admissible as evidence of such usage under s. 42 of the Evidence Act. DALGLISH *v.* GUZUFFER HASSAIN . I. L. R., 23 Calc., 427

——— s. 44.

See FRAUD—ALLEGING OR PLEADING FRAUD . I. L. R., 12 Calc., 156
[I. L. R., 27 Calc., 11

See FRAUD—EFFECT OF FRAUD.
[I. L. R., 6 Bom., 703

See INSOLVENT ACT, s. 9.
[I. L. R., 21 Bom., 205

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.
[I. L. R., 15 Mad., 493

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[I. L. R., 6 Bom., 703

——— *Competent Court.—Per Cur.*—The words "not competent" in s. 44 of the Evidence Act refer to a Court acting without jurisdiction. KETTILAMMA *v.* KELAPPAN
[I. L. R., 12 Mad., 228

——— s. 48.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 23 Calc., 427
[I. L. R., 26 Calc., 184

——— s. 50.

See ADULTERY . I. L. R., 5 Calc., 566
[I. L. R., 5 All., 233

——— s. 54.

See CASES UNDER EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

——— s. 57.

See RELIGION, OFFENCES RELATING TO.—
[I. L. R., 7 All., 461

——— *Registering officer—"Court"—Registered power-of-attorney—Judicial notice.*—A registered power-of-attorney admitted under s. 57 of the Evidence Act without proof, the registering officer being a Court under s. 3 of the Act. KRISTO NATH KOONDOO *v.* BROWN
[I. L. R., 14 Calc., 176

1. ——— ss. 60 and 67—*Proof of execution of deed.*—To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendants called a kazi, who deposed that the vendor came before him, accompanied by witnesses, and acknowledged the execution of the deed, which was then registered. The lower Appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under s. 67, Act I of 1872. *Held* the proof of execution was sufficient; direct evidence of the handwriting of the executant was not necessary under s. 67. It was not intended by s. 60 to exclude circumstantial evidence of things which can be seen, heard, or felt. NEEL KANTO PUNDIT *v.* JUGGOBUNDOO GHOSE . 12 B. L. R., Ap., 18

EVIDENCE ACT (I OF 1872)—*continued*

properly speaking the entry of a fact It is a statement that the person is entitled to the property, it is the record of a right, not of a fact *Per* GARTH *C J —Semble*—That s 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession, and his recorded decision upon that question in the register might be evidence of the fact of possession as between those two parties *Ram Bushan Mahto* v. *Jebli Mahto, I L R, 6 Calc 853,* explained SARASWATI DASI v DHANPAT SINGH

[I L R, 9 Calc, 431. 12 C L. R, 12

6 ——— *Admission—Statement in decree—Practice of Mofussil Courts* —In a suit for possession of a fishery, the plaintiff sought to put in evidence an admission alleged to have been made in the year 1818 by the defendant's predecessor in title in a written statement in a former suit The only evidence of the admission was that contained in the decree in the former suit, the ordinary part of which was prefaced with a short statement of the pleadings in the suit Under the old practice of Mofussil Courts, it was the duty of the Court to enter in the decree an abstract of the pleadings in each case *Held* that the statement in the decree was evidence of the admission under s 35 of the Evidence Act (Act I of 1872) *Lekraj Kuar* v *Mahpal Singh I L R, 5 Calc, 744* referred to PARBUTTY DASSI v PURNO CHUNDER SINGH I L R, 9 Calc, 586

7 ——— *Admission—Abstract of* ...

Purno Chunder Singh, I L R 9 Calc, 586, doubted SUNDER DAS v FATIMULULNISSA

[1 C W. N, 513

8. ——— *Certificate of guardianship under Act XL of 1858—Minority, Evidence of* —A certificate of guardianship under Act XL of 1858 is no evidence of minority under s 35 of the Evidence Act (I of 1872), being neither a book nor a register nor a record kept by any officer in accordance with any law SATIS CHUNDER MUKHOPADHYA v MOHENDRO LAL PATHUK

[I L. R, 17 Calc, 849

9. ——— *Petition and order—Plaint* —The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants who were a donee from and the descendants of a previous karnavan and their tenants An issue was raised as to whether the rights of the parties were governed by Makkatayom or Marumakkatayom law and an order of a District Munsif reciting a petition to which the alleged previous karnavan was a party was put in evidence to show that he had in a particular instance acted in the ...

... vad. ... by ... nce ... rty

EVIDENCE ACT (I OF 1872)—*continued.*

in a manner which would be adverse to the claim of his tarwad *Held* that the order and draft plaint were admissible in evidence for the above-mentioned purposes Observations as to documents marked as exhibits without proof BYATHAMMA v AVULLA

[I L R, 15 Mad, 19

10 ——— *Recital in a judgment—Admission of jenmi's title* —In a suit by a melkanomdar to redeem a kanom the kanom document was ...

position as kanomdars was tendered in evidence to prove the jenmi's title. *Held* that the judgment was admissible in evidence THAMA v KONDAN

[I L R., 15 Mad, 378

11 ——— *Entries in Collector's register—Land Registration Act (Bengal Act VII of 1876)—Register of Collector as to land registration* —Entries in a register made under Bengal Act VII of 1876 by the Collector are entries made in an official register kept by a public servant under the provisions of a statute and certified copies of such entries are admissible in evidence for what they are worth *Dictum* of GARTH, C J, in *Saraswati Dasi* v *Dhanpat Singh I L R 9 Calc, 431,* dissented from SHOSHI BHOOSHUN BOSE v GIRISH CHUNDER MITTER I. L. R., 20 Calc, 940

12 ——— *Public record—Admissibility of evidence—Teiskhana paper—Beng Reg XII of 1817, s 16* —The teiskhana paper kept by patwaris under s 16 of Bengal Regulation XII of 1817 is not a public register or record within the meaning of s 35 of the Evidence Act and is not admissible as evidence under that section *Baijnath Singh* v *Sukhu Mahton, I L R 18 Calc, 534* and *Merick* v *Wakley, 8 A. & E, 170,* referred to SAMAR DASADH v JUGGUL KISHORE SINGH I L. R., 23 Calc., 366

13 ——— *Certificate of guardianship—Evidence of minority* —A certificate of guardianship is not evidence of minority when the question of minority is in issue *Satis Chunder Mukhopadhya* v *Mahendro Lal Pathuk, I L R, 17 Calc, 849,* followed. GUNJRA KUAR v ABLAKH PANDE

[I L R., 18 All., 478

14 *Statements of fact by Settlement Officer in record of case—Public record, Entries in* —Statements of facts made by a settlement officer in the column of remarks in the dharepatrak, but not his remarks for the same, even ...

the meaning of s 35 of the Evidence Act (I of 1872) MADHAVRAO APPAJI SATHE v DEONAK

[I L R., 21 Bom., 695

15 ——— and s. 48—*Proof of custom—Admissibility of village wajib ul urz* —*Held,* on the question whether there did or did not

EVIDENCE ACT (I OF 1872)—*continued.*

7. ———— and s. 76—*Public document.*—An anumati-patra is not a public document within the meaning of s. 74, nor, if it were, would its being on the record constitute a copy certified as required by s. 76. KRISHNA KISHORI CHAODHARANI v. KISHORI LAL ROY . I. L. R., 14 Calc., 486 [L. R., 14 I. A., 71

8. ———— and s. 35—*Teiskhana register—Public document—Beng. Reg. XII of 1817, s. 16.*—A teiskhana register prepared by a patwari under rules framed by the Board of Revenue under s. 16 of Beng. Reg. XII of 1817 is not a public document, nor is the patwari preparing the same a public servant. BAIJ NATH SINGH v. SUKHU MAHTON . . . . I. L. R., 18 Calc., 534

9. ———— *Public documents—Evidence Act, s. 76—Right of accused person to inspect and have copies of police reports—Criminal Procedure Code (1882), ss. 157, 168, and 173.*—*Held* by the Full Bench (SUBRAMANIA AYYAR, J., *dissentiente*)—Reports made by a police-officer in compliance with ss. 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled before trial to have copies of such reports. *Held* by COLLINS, *C.J.*, and BENSON, *J.*—The same rule applies to reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code. *Held* by SHEPHARD and SUBRAMANIA AYYAR, *JJ.*—Reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled, by virtue of s. 76 of the Indian Evidence Act, to have copies of such reports before trial. QUEEN-EMPRESS v. ARUMUGAM . . . I. L. R., 20 Mad., 189

10. ———— *Document purporting to be a certified copy of a will taken from the Protocol of record in Ceylon—No proof that it had been made from, or compared with, the original—Inadmissibility of document.*—In support of a claim instituted in a Court in British India for a share in her deceased father's estate, plaintiff tendered in evidence a document which purported to be a certified copy of a will executed by her late father at Colombo, where he was said to have been at the date of the execution of the alleged will. The document was filed as an exhibit in the suit, but the Subordinate Judge held that it was not admissible in evidence. It bore an endorsement purporting to be signed by the Assistant Registrar-General for Ceylon, to the effect that it was a true copy of a last will and testament made from the Protocol of record filed in his office. No evidence was tendered before the Subordinate Judge that the copy had been made from, and compared with, the original. On the question of the admissibility in evidence of the said document,—*Held* that it was inadmissible; that it was not a public document within the meaning of s. 74 (1) (iii) or (2) of the Evidence Act, and that, in the absence of evidence that it had been made from and compared with the original, the provisions of that Act relating to secondary evidence of public documents were inapplicable. PONNAM MAL v. SUNDARAM PILLAI [I. L. R., 23 Mad., 499

11. ———— and s. 77—*Proceedings between the same parties in another suit—Public documents.*—*B* instituted a suit in the Court of the Munsif of the 24-Pergunnahs against *A*, on account of an alleged trespass to a drain which *B* then alleged to be his property; that suit was dismissed on the ground that *B* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A* against *B*, in which *A* stated it was his property, certified copies of the plaint, the defendant's written statement, and the decree in the former suit were produced; and it was contended they were public documents and admissible in evidence under ss. 74 and 77 of the Evidence Act. The Court admitted the plaint and rejected the written statement. MAHOMED SHAHABOODEEN v. WEDGEBERRY . 10 B. L. R., Ap., 31

———— s. 76.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.
[I. L. R., 23 Calc., 950
L. R., 23 I. A., 92

See STAMP ACT, SCH. I, ART. 22.
[I. L. R., 19 All., 293

———— s. 77.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.
[I. L. R., 23 Calc., 950
L. R., 23 I. A., 92

———— s. 80.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 9 Mad., 224
[I. L. R., 15 Calc., 595
I. L. R., 12 All., 595

See CRIMINAL PROCEDURE CODES, s. 288.
[21 W. R., Cr., 5

1. ———— s. 83—*Measurement chittas.*—Chittas made by Government for its own private use are nothing more than documents prepared for the information of the Collector, and are not evidence against private persons for the purpose of proving that the lands described therein are or are not of a particular character or tenure. RAM CHUNDER SAO v. BUNSEEDHUR NAIK . I. L. R., 9 Calc., 741

2. ———— *Evidence of title—Resumption chittas.*—Government resumption chittas, in the absence of the resumption-proceedings, are not conclusive evidence of title as against third persons. *Ram Chunder Sao* v. *Bunseedhur Naik, I. L. R., 9 Calc., 741*, followed. DWARKA NATH MISSER v. TARITA MONI DABIA . I. L. R., 14 Calc., 120

GIRINDRA CHANDRA GANGULI v. RAJENDRA NATH CHATTERJEE . . . . 1 C. W. N., 530

EVIDENCE ACT (I OF 1872)—*continued*

2 ——— *Writer of document and subscribing witness* —The Evidence Act does not require the writer of a document to be examined as a witness nor does s 67 of that Act require the subscribing witnesses to a document to be produced ABDOOL ALI *v* ABDOOR RAHMAN . 21 W R, 429

——— s 63

See REMAND—GROUND FOR REMAND [24 W R., 232

——— s 65

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 9 Mad, 224

See CASES UNDER EVIDENCE—CIVIL CASES —SECONDARY EVIDENCE

See LIMITATION ACT s 19—ACKNOWLEDGMENT OF DEBTS [I L R, 15 Mad, 491

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE [I L R, 18 Calc, 201 L R, 17 I A, 159

——— s 68

See DEED—EXECUTION [I L R, 20 All, 532 2 C W N, 603

1 ——— *Unattested document—Mortgage—Transfer of Property Act (IV of 1882) s 59—Inadmissibility of the unattested document in evidence to prove the debt* —A mortgage for more than R100 which has been prepared and accepted but which is not attested is invalid and it cannot be used in proof of a personal covenant to pay being excluded by s 68 of the Evidence Act MADRAS DEPOSIT AND BENEFIT SOCIETY *v* OONNAMALAI AMMAL . I L R., 18 Mad., 29

2 ——— *Surety bond purporting to hypothecate immoveable property—Bond not pro* [illegible] *(IV of* [illegible] rted to [illegible] was not [illegible] personal [illegible] rety in [illegible] money debt *Madras Deposit and Benefit Society* v *Oonnamalai Ammal I L R 18 Mad 29* dissented from SONATUN SHAHA *v* DINONATH SHAHA [I L R., 26 Calc, 222 3 C W N, 228

——— s 70

See DEED—EXECUTION [I L R., 27 Calc, 190

——— s. 73—*Proof of signature* —Where certain raiyats swore that they got their pottahs from the hands of the person who professed to sign them this was held under the Evidence Act s 73 as proving to the satisfaction of the Court that the signatures were those of the lessor TARA PERSHAD TANGEE *v* LUKHEE NARAIN PAURAI 21 W R., 6

EVIDENCE ACT (I OF 1872)—*continued*

——— s 74

See STAMP ACT SCH I ART 2[illegible] [I L R, 19 All., 293

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 12 All. 595

1 ——— *Letters between district authorities* —Letters between district authorities are public documents forming a record of the acts of public authorities and as such admissible as evidence under Act I of 1872 s 74 PRITHEE SINGH *v* COURT OF WARDS 23 W R, 272

2 ——— *Compromise of case Public record—Proof by office copy* —Where a suit is compromised, and a petition is presented in the usual way and the Court makes an order confirming the agreement which with the order as well as the agreement and power of attorney are all entered upon the record these papers become as much a part of the record in the suit as if the case had been tried and judgment given between the parties in the ordinary way and that record is a public document and may be proved by an office copy BHAGAIN MEGH LANE KOER *v* GOOROOPERSAD SINGH 25 W R., 68

3 ——— *Public document—Jumma* [illegible]

dence Act It is not necessary to show that at the time when such document was prepared a raiyat affected by its provisions was a consenting party to the terms therein specified TARU PATUR *v* ABINASH CHUNDER DUTT I L R, 4 Calc, 76

4 ——— *Board of Trade certificate —Public document* —A certificate granted by the Board of Trade is not a public document within the meaning of s 74 of the Evidence Act IN THE MATTER OF A COLLISION BETWEEN AVA AND BRENHILDA [I. L. R., 5 Calc, 568, 5 C L R, 331

5 ——— *Public documents—Record of measurement* —In a suit to obtain possession under a title acquired by purchase at an auction of certain lands together with mesne profits upon setting aside an alleged talukh etmami right claimed by the defendants the defendants in support of their claim produced certain documents purporting to be abstracted from or copies of, Government measurement chittas dated Mughi 1126 27 (1764) These documents were produced from the Collectorate but there was nothing to show that they were the record of measurements made by any Government officer *Held* that they were not public documents within the meaning of s 74 of the Evidence Act NITTYANUND ROY *v* ABDAR RAHEEM [I L R., 7 Calc, 76

6 ——— *Jummabundi—Public document.—Quære*—Whether a jummabandi is a public document? AKSHAYA COOMAR DUTT *v* SHAMA CHARAN PATITANDA I L R, 16 Calc, 586

EVIDENCE ACT (I OF 1872)—*continued.*

custody. GOUR PARAY *v.* WOOMA SOONDUREE DEBIA . . . . . . 12 W. R., 472

FURLEDUNNISSA *v.* RAM ONOGRA SINGH [21 W. R., 19

And, if possible, acts done according to their terms. GRANT *v.* BYJNATH TEWAREE . 21 W. R., 279

6. ———— *Document 30 years old.*—The rule regarding the proof of documents more than 30 years old is that they need not be proved, provided they have been so acted upon or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. HARI DHANGAR *v.* BIRU DARSA [5 Bom., A. C., 135

7. ———— *Document 30 years old—Proof of custody.*—With regard to the proof of ancient documents, the proper rule is that, if they are more than 30 years old, they need not be proved, provided they have been so acted upon or brought from such a place as to offer reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. Application of this rule considered. VITHAL MAHADEB *v.* DAUD VALAD MUHAMMED HUSEN [6 Bom., A. C., 90

8. ———— *Ancient document—Evidence of proper custody.*—Although ancient documents are admissible in evidence on proof that they have been produced from proper custody, their value as evidence when admitted must depend in each case upon the corroboration derivable from external circumstances, *e.g.*, from the documents having been produced on previous occasions upon which they would naturally have been produced if in existence at the time or from acts having been done under them. BOIKUNT NATH KUNDU *v.* LUKHUN MAJHI [9 C. L. R., 425

9. ———— *Documents more than 30 years old.*—Where the Judge is satisfied that a document is more than 30 years old and that it has come from proper custody, he may, as a rule, dispense with proof of its execution. LALDAS RAMDAS *v.* KASHIRAM . . . . . 4 Bom., A. C., 60

10. ———— *Document of ancient date.*—Where a document is found on independent evidence to have been in existence long prior to the institution of the suit, and also to be genuine, it is not necessary to insist on the testimony of subscribing witnesses. MAHOMED FEDYE SIRDAR *v.* OZEEOODEEN [10 W. R., 340

MOHESH ROY *v.* BOODHUN MAHTOON [18 W. R., 315

11. ———— *Ancient documents, Rule as to.*—The English rule that a document more than 30 years old, if free from suspicion of dishonesty, may be admitted as evidence without proof of the execution or writing, was held to be founded on a reason which had less weight in this country, where less credit should be given to ancient documents which are unsupported by any evidence that might free them from a suspicion of being false or fabricated.

EVIDENCE ACT (I OF 1872)—*continued.*

Even in England such evidence unsupported was held to be of very little weight. Accordingly it was not allowed to prevail here in a case in which there was other evidence inconsistent with the title which those documents professed to create. PHOOL BIBEE *v.* GOUR SURUN DOSS. LUTEEFOONNISSA *v.* GOUR SURUN DOSS . . . . 18 W. R., 485

12. ———— *Document 30 years old—Proof of signature of.*—A Court is not bound to accept as genuine the signature on a document upwards of 30 years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document. UGGRAKANT CHOWDHRY *v.* HURRO CHUNDER SHICKDAR [I. L. R., 6 Calc., 209

13. ———— *Documents more than 30 years old—Proof of execution—Evidence of authority to sign on behalf of others.*—The plaintiffs sued the defendants for enhancement of rent. The defendants resisted the claim, relying, *inter alia*, on a mokurari pottah executed on 9th October 1832. This pottah purported to bear the seal of one of the then maliks of the lands, and also purported to be signed on behalf of all the maliks by *A*. *Held* that, although the pottah might be an authentic document, it would not bind the maliks who did not affix their seals, nor those who claimed under them, unless it was shown that *A* had a special authority to sign the names of such maliks to it or a general authority to sign on their behalf documents of the same description as the pottah; and that, until such proof was given, the document was not admissible in evidence. *Held*, further, the fact that the pottah was more than 30 years old gave rise to the presumption that the signature at the foot of it was in the handwriting of *A*, and that the pottah was executed by him; but that to make it evidence against the representatives of the maliks who had not executed it, the defendants should show that *A* had authority to sign their names. UBILACK RAI *v.* DALLIAL RAI [I. L. R., 3 Calc., 557

14. ———— *Legal presumption—Previous production of such document.*—No legal presumption can arise as to the genuineness of a document more than 30 years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. GUDADHUR PAUL CHOWDHRY *v.* BHYRUB CHUNDER BHATTACHARJI [I. L. R., 5 Calc., 918

15. ———— *Ancient document—Evidence of proper custody.*—To establish the authenticity of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody from which the document comes into Court has been and is the

EVIDENCE ACT (I OF 1872)—*continued*

3 ———— *Presumption as to accuracy of Government survey map—Subsequent Government survey map* —The presumption under the Evidence Act in regard to the accuracy of a map made under the authority of Government is in no way affected by the fact that such map has been superseded by a later survey map made under the same authority and by an order of the Board of Revenue JOGESSUR SINGH *v* BYCUNT NATH DUTT

[I L R, 5 Calc, 822 6 C L R, 519

4 ———— *Map—Evidence Act s 13—Presumption as to accuracy* —A map prepared by an officer of Government while in charge of a khas mehal Government being at the time in possession of the mehal merely as a private proprietor is not a

MULLICK *v* DWARKANATH MYTEE

[I L R, 5 Calc, 287 4 C L.R., 574

5 ————*Thakbust map* —A thakbust map must be presumed to be accurate under this section NIAMUTULLAH KHADUN *v* HIMMUT ALI KHADUN 22 W R., 519

6 ———— *Thakbust map Accuracy of—Evidence of making of map in presence of parties* —The accuracy of a thakbust ameen's map which is assumed in the Evidence Act means accu

supported by evidence that it was drawn in their presence or in that of their agents OMIRTA LALL CHOWDHRY *v* KALEE PERSHAD SHAHA

[25 W R, 179

———— s 85

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION

[I L R., 16 Calc, 776
I. L R., 21 Mad., 492

1 ———— s 86—*Evidence—Foreign judicial records—Execution in British India of decree passed by Courts of Cooch Behar—Civil Proce*

Civil and Revenue Courts of Cooch Behar may be

1879 is now of no use as there is no representative of Her Majesty or the Government of India residing in Cooch Behar and consequently certified copies of judicial records of that State cannot n w be received in evidence in the Courts of British India under the provisions of s 86 of the Evidence Act GANEE MAHOMED SARKAR *v* TARINI CHARAN CHUCKERBATI

[I. L R., 14 Calc., 546

2 ———— and ss 65, 66, and 74 - ... *n Record not ... dary evidence* The record of ... presumed to be ... as directed by ... roceedings may be proved by an official of the Court speaking to what takes place in his presence and also to an uncertified record thereof The latter thereby becomes secondary evidence under ss 65 and 66 of the cert fied record (being a public document under s 74) admissible without notice to the adverse party when the person in possess on thereof is out of the jurisdiction HARANUND CHETLANGIA *v* RAM GOPAL CHETLANGIA

[I. L R., 27 Calc, 639
L R., 27 I A, 1
4 C W N, 429

1 ———— s 90—*Ancient doc ment Proof*

reside were it a real and authentic document SREEKANT BHUTTACHARJEE *v* RAJNARAIN CHATTERJEE

[10 W R., 1

2 ————*Document 30 years old—Proper custody* A document 30 years old does not prove itself in the absence of evidence that it has come from the proper custody GURU DAS DEY *v* SAMBHU NATH CHUCKERBUTTY

[3 B L R, A C, 258

3 ———— *Document 30 years old—*

which, it having been tendered in evidence its genuineness or otherwise becomes the subject of proof MINNU SIRKAR *v* LHEDOY NATH ROY

[6 C L. R., 135

4 ———— *Document 30 years old* —A document more than 30 ye rs old although not requiring to be formally attested by the witnesses who attended at its execution must be sho vn to have come from the custody of the person who would have been the p oper person to keep it THAKOOR PERSHAD *v* BASHMUTTY KOER 24 W R., 428

5 ———— *Document of ancient date—Proof of custody* —Where a party offers documents of such an age as to be incapable of being proved by direct evidence he is bound to prove their

EVIDENCE ACT (I OF 1872)—*continued.*

custody. GOUR PARAY *v.* WOOMA SOONDUREE DEBIA . . . . . . 12 W. R., 472

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MOHESH ROY *v.* BOODHUN MAHTOON [18 W. R., 315

11. ———— *Ancient documents, Rule as to.*—The English rule that a document more than 30 years old, if free from suspicion of dishonesty, may be admitted as evidence without proof of the execution or writing, was held to be founded on a reason which had less weight in this country, where less credit should be given to ancient documents which are unsupported by any evidence that might free them from a suspicion of being false or fabricated. Even in England such evidence unsupported was held to be of very little weight. Accordingly it was not allowed to prevail here in a case in which there was other evidence inconsistent with the title which those documents professed to create. PHOOL BIBEE *v.* GOUR SURUN DOSS. LUTEEFOONNISSA *v.* GOUR SURUN DOSS . . . . 18 W. R., 485

12. ———— *Document 30 years old—Proof of signature of.*—A Court is not bound to accept as genuine the signature on a document upwards of 30 years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document. UGGRAKANT CHOWDHRY *v.* HURRO CHUNDER SHICKDAR [I. L. R., 6 Calc., 209

13. ———— *Documents more than 30 years old—Proof of execution—Evidence of authority to sign on behalf of others.*—The plaintiffs sued the defendants for enhancement of rent. The defendants resisted the claim, relying, *inter alia*, on a mokurari pottah executed on 9th October 1832. This pottah purported to bear the seal of one of the then maliks of the lands, and also purported to be signed on behalf of all the maliks by *A*. *Held* that, although the pottah might be an authentic document, it would not bind the maliks who did not affix their seals, nor those who claimed under them, unless it was shown that *A* had a special authority to sign the names of such maliks to it or a general authority to sign on their behalf documents of the same description as the pottah; and that, until such proof was given, the document was not admissible in evidence. *Held*, further, the fact that the pottah was more than 30 years old gave rise to the presumption that the signature at the foot of it was in the handwriting of *A*, and that the pottah was executed by him; but that to make it evidence against the representatives of the maliks who had not executed it, the defendants should show that *A* had authority to sign their names. UBILACK RAI *v.* DALLIAL RAI [I. L. R., 3 Calc., 557

14. ———— *Legal presumption—Previous production of such document.*—No legal presumption can arise as to the genuineness of a document more than 30 years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. GUDADHUR PAUL CHOWDHRY *v.* BHYRUB CHUNDER BHATTACHARJI [I. L. R., 5 Calc., 918

15. ———— *Ancient document—Evidence of proper custody.*—To establish the authenticity of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody from which the document comes into Court has been and is the

EVIDENCE ACT (I OF 1872)—*continued*

custody in which judging from the purport of the document itself and the other circumstances of the case, it would naturally be expected to reside, then the document ought to be treated as authentic to such extent as to be admissible in evidence between the parties CHUNDER KANT MISTREE v BROJONATH BYSACK [13 W R, 109

RAMDHUN GHOSE v ESHAN CHUNDER GHOSE [17 W R, 34

See DEVAJI GOYAJI v GODABHAI GODBHAI [11 W R., P. C, 35

VENCATASWAR YELLIAPPAH NAIKA v ALAGOO MOOTTOO SERVACAREN [4 W. R., P C, 73. 8 Moore's I A, 327

16 ———— *Old document—Lease Proof of authenticity of—Possession*—Where a document which is not proved because of its great age, and of there being therefore no witnesses to prove it, is put forward as a document intended to operate as a maurasi tenure, it is necessary in order to establish its authenticity, to show that it was accompanied by possession BISHESHUR BHUTTACHARJEE v LAMB 21 W R, 22

17. ———— *Ancient document Custody of*—Where a document purported to be 45 years old and a mohurir swore to its having been in his custody as keeper of the plaintiff s records for the time of his service, the evidence was held to show (if credible) that the document had come from proper custody, within the meaning of Act I of 1872 s 90 and to require no direct evidence of its genuineness EKCOWREE SINGH ROY v KYLASH CHUNDER MOOKERJEE 21 W R, 45

18 ———— *Documents 30 years old, their natural and proper custody*—Where a daughter professed to hold under a pottah more than 30 years old in favour of her father and was found to have been in possession of the land ever since her father's death for a period of 40 years without interruption on the part of the father s heirs —*Held* that the daughter's custody of the pottah was a natural and proper custody within the meaning of s 90 of the Evidence Act The rule laid down in s 90 as to proof of execution of documents 30 years old ought to be applied in this country with special care and caution TRAILOKIA NATH NUNDI v SHURNO CHUNGONI I L R, 11 Calc, 539

19 ———— *Secondary evidence—Document more than 30 years old—Proof of execution—Evidence Act s 65*—Secondary evidence of the contents of a document requiring execution which can be shown to have been last in proper custody and to have been lost, and which is more than 30 years old may be admitted under s 65 cl (c), and s 90 of the Evidence Act, without proof of the execution of the original KHETTER CHUNDER MOOKERJEE v KHETTER PAUL SREETERUTNO [I L R, 5 Calc, 886 6 C L R., 199

20 ———— *Presumption as to ancient documents—Destruction of original—Presumption applied to certified copy—Evidence Act s 65*—The presumption allowed by s 90 of the Indian Evidence Act 1872 may be applied where the original of a document sought to be proved has been [illegible]

SINGH v LALLI JAS KUNWAR [I L R, 22 All, 294

21 ———— *Ancient document—Weight of ancient documents as evidence—Proper custody—Custody of agent*—Under a varaspatra executed in 1847 by *A* a Hindu widow in favour of *B*, *B* took possession of the property mentioned therein and enjoyed it during his lifetime After his death his gomasta (agent) managed it for and on behalf of *B* s minor son *C* In 1881 *C* filed a suit to redeem a house and a garden part of the property covered by the varaspatra and which had been mortgaged by *A* s husband in 1831 One of the defences to this suit was that neither *C* nor his father was the heir of the original mortgagor and that therefore *C* could not redeem the property in dispute At the trial C produced the varaspatra of 1847 in support of his title alleging that he had found it among the papers of [illegible] stances of the case was a proper custody the possession of the gomasta being legally the possession of his master The degree of credit to be given to an ancient document depends chiefly on the proof of transactions or state of affairs necessarily or at least properly or naturally referrible to it HARI CHINTAMAN DIKSHIT v MORO LAKSHMAN [I L R, 11 Bom, 89

As to the weight and admissibility of ancient documents

See also TIMANGAVDA v RANGANGAVDA [I L R, 11 Bom, 94 note

22 ———— *Ancient documents Proof of—Landlord and tenant—Suit for ejectment*—In a suit for ejectment brought in 1894 the defendant contended that he held the land on permanent fazendari tenure and produced a document dated 1848 by which his predecessor was given permission to build upon the land The plaintiff (landlord) however produced the counterparts of a subsequent lease to [illegible]

document, and contended that it was not proved The lower Court held that these documents were admissible as ancient documents and relying upon them passed a decree for the plaintiff On appeal *held* confirming the decree that having regard to the circumstances the documents must be held

EVIDENCE ACT (I OF 1872)—*continued.*

proved, and the plaintiff was entitled to recover possession of the land. HUSAIN *v.* GOVARDHANDAS PARMANANDAS . . I. L. R., 20 Bom., 1

——— s. 91.

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 17 Calc., 862

See CASES UNDER EVIDENCE—CIVIL CASES —SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.
[I. L. R., 12 Calc., 267
I. L. R., 15 Mad., 491

See REGISTRATION ACT, 1877, s. 49.
[I. L. R., 1 All., 442
1 C. L. R., 542

——— s. 92.

See BILL OF EXCHANGE.
[I. L. R., 3 Calc., 174

See CASES UNDER EVIDENCE—PAROL EVIDENCE.

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R., 16 Mad., 238

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . I. L. R., 5 Calc., 71

See REGISTRATION ACT, s. 17.
[I. L. R., 24 Bom., 609

——— s. 105.

See PRIVATE DEFENCE, RIGHT OF.
[11 C. L. R., 232

——— *Onus of proof—Proof of circumstances bringing offence under exception in Penal Code.*—In all criminal cases tried in the mofussil it is incumbent on the accused, since the passing of the Evidence Act (I of 1872), to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisos contained in any part of the Penal Code or in any law defining such offence. *Quære* as to the state of the law in this respect in the Presidency towns. IN THE MATTER OF PETITION OF SHIBO PROSAD PANDAH
[I. L. R., 4 Calc., 124 : 3 C. L. R., 122

——— s. 106.

See ONUS OF PROOF—BAILMENTS.
[I. L. R., 9 All., 398

See ONUS OF PROOF—PRE-EMPTION.
[I. L. R., 5 All., 184

See ONUS OF PROOF—PROFITS, SUITS FOR.
[I. L. R., 12 All., 301

See ONUS OF PROOF—SUIT FOR ARREARS OF RENT . . . 21 W. R., 307

See PENAL CODE, s. 373.
[I. L. R., 22 Calc., 164

EVIDENCE ACT (I OF 1872)—*continued.*

——— ss. 107, 108.

See HINDU LAW—PRESUMPTION OF DEATH . . I. L. R., 8 All., 614
[I. L. R., 23 Bom., 296

——— *Missing person—Presumption of death.*—Ss. 107 and 108 of the Evidence Act, taken together, do not lay down any rule as to the exact time of the death of a missing person. Whenever the question as to the exact time of death arises, it must be dealt with according to the evidence and circumstances of each case, when the death is alleged to have occurred at any time not affected by the presumption of law as to the seven years. DHARUP NATH *v.* GOBIND SARAN. GOBIND SARAN *v.* DHARUP NATH . . . . I. L. R., 8 All., 614

——— s. 108.

See HINDU LAW—PRESUMPTION OF DEATH . . I. L. R., 1 All., 53
[I. L. R., 8 All., 614
I. L. R., 23 Bom., 296

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . . I. L. R., 2 All., 625
[I. L. R., 7 All., 297

——— *Missing person—Hindu law—Inheritance—Presumption of death—Claim after seven years—Co-owners—Absent co-owner—Claim to his share of property a question of evidence, not of succession.*—*D G* and *B* were co-owners of certain khoti villages. *B* disappeared and was unheared of for more than seven years. In his absence, *D* received his (*B*'s) share of the rents and profits, *G* claimed to be entitled to a moiety of *B*'s share therein, and brought this suit against *D*. *Held* that *G* was entitled to such moiety. *B*, having been absent and unheard of more than seven years, might be presumed to be dead under s. 108 of the Evidence Act (I of 1872); and *G*, as one of his two survivors, was entitled to a moiety of his property. Where the right of a party claiming to succeed to the property of another is based on the allegation that the latter has not been heard of for more than seven years, the question to be decided is one of evidence, and not a part of the substantive law of inheritance. *Parmeshar Rai v. Bisheshar Singh, I. L. R., 1 All., 53,* concurred in. DHONDO BHIKAJI *v.* GANESH BHIKAJI
[I. L. R., 11 Bom., 433

——— s. 110.

See ONUS OF PROOF—MORTGAGE.
[I. L. R., 9 Bom., 137
I. L. R., 1 All., 194

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE . . 9 N. W., 39
[I. L. R., 8 Calc., 759
I. L. R., 12 All., 46

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY . 5 C. L. R., 278

——— s. 111.

See ONUS OF PROOF—DEEDS AND DOCUMENTS—SUITS TO ENFORCE [illegible]
[I. L. R., 12 All., 523

EVIDENCE ACT (I OF 1872)—*continued*

custody in which, judging from the purport of the document itself and the other circumstances of the [illegible] be expected to reside then the [illegible]

[13 W. R., 109

RAMDHUN GHOSE *v* ESHAN CHUNDER GHOSE [17 W. R., 34

See DEVAJI GOYAJI *v* GODABHAI GODBHAI [11 W. R., P. C., 35

VENCATASWAR YELLIAPPAH NAIKA *v* ALAGOO MOOTTOO SERVACAREN [4 W. R., P. C., 73 : 8 Moore's I. A., 327

16. ———— *Old document—Lease Proof of authenticity of—Possession*—Where a document which is not proved because of its great age, and of there being therefore no witnesses to prove it, is put forward as a document intended to operate as a maurasi tenure, it is necessary, in order to establish its authenticity, to show that it was accompanied by possession BISHESHUR BHUTTACHARJEE *v* LAMB . 21 W. R., 23

17. ———— *Ancient document, Custody of*—Where a document purported to be 45 years [illegible]

s. 90, and to require no direct evidence of its genuineness EKCOWREE SINGH ROY *v* KYLASH CHUNDER MOOKERJEE . 21 W. R., 45

18. ———— *Documents 30 years old, their natural and proper custody*—Where a daughter professed to hold under a pottah more than 30 years old in favour of her father, and was found to have been in possession of the land ever since her father's death for a period of 40 years without interruption on the part of the father's heirs,—*Held* that the daughter's custody of the pottah was a natural and proper custody within the meaning of s 90 of the Evidence Act The rule laid down in s 90 as to proof of execution of documents 30 years old ought to be applied in this country with special care and caution TRAILOKIA NATH KUNDU *v* SHURNO CHUNGONI I. L. R., 11 Calc., 539

19 ———— *Secondary evidence—Document more than 30 years old—Proof of execution—Evidence Act, s 65*—Secondary evidence of the contents of a document requiring execution, which [illegible]

20 ———— *Presumption as to ancient documents—Destruction of original—Presumption applied to certified copy—Evidence Act, s 65*—The presumption allowed by s 90 of the Indian Evidence Act, 1872, may be applied where the original of a document sought to be proved has been destroyed and only secondary evidence of its contents in the shape of a certified copy is available *Khetter Chunder Mookerjee* v *Khetter Paul Sreeterutno, I L. R, 5 Calc, 886*, followed ISHRI PRASAD SINGH *v* LALLI JAS KUNWAR [I. L. R., 22 All., 294

21. ———— *Ancient document—Weight of ancient documents as evidence—Proper custody—Custody of agent*—Under a varaspatra executed in 1847 by *A*, a Hindu widow in favour of *B*, *B* took possession of the property mentioned therein, and [illegible]

and a garden, part of the property covered by the varaspatra, and which had been mortgaged by *A*'s husband in 1831 One of the defences to this suit was that neither *C* nor his father was the heir of the [illegible] not [illegible]

porting to be [illegible] duced from a custody which, under the circum[illegible]

ancient document depends chiefly on the proof of [illegible]

[I. L. R., 11 Bom., 50

As to the weight and admissibility of ancient documents

See also TIMANGAVDA *v* RANGANGAVDA [I. L. R., 11 Bom., 94 note

22 ———— *Ancient documents, Proof of—Landlord and tenant—Suit for ejectment*—In a suit for ejectment brought in 1894 the defendant [illegible]

[illegible] lease [illegible] dated [illegible] of a [illegible] creat[illegible]ing a yearly tenancy determinable on a month's notice, under which provision this suit was brought The defendant denied that he had executed this document, and contended that it was not proved The lower Court held that these documents were admissible as ancient documents, and relying upon them passed a decree for the plaintiff On appeal *held* confirming the decree, that, having regard to the circumstances the documents must be held

EVIDENCE ACT (I OF 1872)—*continued.*

2. ———— *Protection given to answers which a witness is compelled to give—"Compelled to give," Meaning of the words—Indian Oaths Act (X of 1873), s. 14.*—S. 132 of the Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter of these cases only. Protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give. *Queen* v. *Gopal Dass, I.L.R., 3 Mad., 721*, followed. *Per* BIRDWOOD, *J.* (dissenting)—S. 132 of the Evidence Act (I of 1872), read with s. 14 of the Indian Oaths Act (X of 1873), compels a witness to answer criminating questions, and he is protected by the proviso to s. 132 from a criminal prosecution for any offence of which he criminates himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question and his request is refused that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative, whether he asks to be excused or gives the answer without so asking. QUEEN-EMPRESS *v.* GANU SONBA [I. L. R., 12 Bom., 440

3. ———— *"Compelled"—Compelling witness to answer questions.*—The word "compelled" in the proviso to s. 132 of the Evidence Act (I of 1872) applies only where the Court has compelled a witness to answer a question, and not to a case where the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. QUEEN-EMPRESS *v.* MOSS . . I. L. R., 16 All., 88

4. ———— and ss. 129, 130, 131—*Compelling witness to answer questions.*—The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "shall be compelled to give" in s. 132, Evidence Act, apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. The wording of ss. 129, 130, 131, 132, and 148, Evidence Act, compared and discussed. MOHER SHEIKH *v.* QUEEN-EMPRESS . . . I. L. R., 21 Calc., 392

———— s. 133.

See CASES UNDER ACCOMPLICE.

———— s. 137.

See CHARGE TO JURY—MISDIRECTION. [I. L. R., 17 Calc., 642

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 21 Calc., 401

———— s. 138.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—EXAMINATION BY COURT . I. L. R., 6 Calc., 279

EVIDENCE ACT (I OF 1872)—*continued.*

———— s. 154.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 13 Calc., 53

———— s. 155.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 11 Bom., 166

———— cl. (3)—*Evidence in reply impeaching the credit of a witness.*—In a suit by one *K* claiming (*inter aliâ*) a share in a business as heiress of *A*, her father, the defendant pleading limitation, *K*, before the close of her case, put in evidence an entry in a Koran to shew that she was born in 1279, and in the cross-examination of *M*, a witness for the defence, put to him a letter purporting to have been written by *A* to *M*, supporting *K*'s case. Upon *M* denying the genuineness of the Koran and of certain words in the letter, it was proposed on behalf of *K* to give evidence in reply shewing that *M* had made statements to an attorney before the case inconsistent with his evidence, both as to the Koran and the letter. *Held* that evidence might be given in reply as regards the Koran, but not as regards the letter; no substantive evidence having been given as to the latter before the close of the plaintiff's case. *Semble*—The expression "which is liable to be contradicted" in s. 155 (3) of the Evidence Act is equivalent to "which is relevant to the issue." KHADIJAH KHANUM *v.* ABDOOL KURREEM SHERAJI [I. L. R., 17 Calc., 344

————s. 159—*Bonds destroyed by fire—Refreshing memory of witness.*—The plaints and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's gomastas of the names of the executants of the bonds, the matter in respect of which the bonds had been given, the amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared. *Held* that, though the register was not secondary evidence of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory, under *s. 159 of the Evidence Act.* TARUCK NATH MULLICK *v.* JEAMAT NOSYA. [I. L. R., 5 Calc., 353

———— s. 165.

See PENAL CODE, s. 179. [I. L. R., 10 Bom., 185

See WITNESS CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 24 Calc. 288 [I. L. R., 5 Calc., 614

EVIDENCE ACT (I OF 1872)—*continued*

——— s. 112.

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 18 Bom., 468

——— s. 113.

See CESSION OF BRITISH TERRITORY IN INDIA . 10 Bom., 37
[I. L. R., 1 Bom., 367
L. R., 3 I. A., 102

——— s. 114.

See CASES UNDER ACCOMPLICE

See ACT XL OF 1858, s. 3
[1 C. W. N., 453

See BENGAL CESS ACT, 1871, s. 52
[I. L. R., 13 Calc., 197

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 11 I. L. R., 20 Bom., 732

See CHARGE TO JURY—MISDIRECTION
[I. L. R., 17 Calc., 642

See COMPANY—WINDING UP—GENERAL CASES I. L. R., 9 All., 366

See ESTOPPEL—ESTOPPEL BY CONDUCT
[I. L. R., 9 All., 690

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR
[I. L. R., 20 Bom., 367

See ONUS OF PROOF—NOTICE
[I. L. R., 13 Calc., 197

See RIGHT OF WAY
I. L. R., 15 All., 270

——— s. 115.

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF
[I. L. R., 2 All., 809
I. L. R., 6 All., 322: L. R., 11 I. A., 20

See CASES UNDER ESTOPPEL—ESTOPPEL BY CONDUCT

——— *Auction-purchaser—Representative—Estoppel.*—A purchaser at an execution sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act. LALA PARBHU LAL *v.* MYLNE
[I. L. R., 14 Calc., 401

——— s. 116.

See ESTOPPEL—ESTOPPEL BY CONDUCT
[I. L. R., 7 All., 511, 878
I. L. R., 5 Calc., 669

See ESTOPPEL—ESTOPPEL BY JUDGMENT
[1 C. L. R., 528
I. L. R., 24 Bom., 77

See CASES UNDER ESTOPPEL—LANDLORD AND TENANT, DENIAL OF TITLE

EVIDENCE ACT (I OF 1872)—*continued*

——— s. 118.

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
[I. L. R., 18 Bom., 468

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
[I. L. R., 11 All., 183
I. L. R., 16 Bom., 661

——— s. 120.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 16 Calc., 781

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.
[I. L. R., 16 Calc., 781
I. L. R., 18 All., 107

——— s. 121.

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
[I. L. R., 3 All., 573

——— s. 122.

See PRIVILEGED COMMUNICATION
[I. L. R., 22 Mad., 1

——— ss. 126, 127.

See PRIVILEGED COMMUNICATION
[I. L. R., 3 Bom., 91
I. L. R., 18 Bom., 263
I. L. R., 25 Calc., 736
I. L. R., 26 Calc., 53
2 C. W. N., 484, 649

1. ——— s. 132—*Answers criminating witness—Voluntary statement—Privilege of witness answering criminating question.*—In a Small Cause suit under Ch. XXXIX of the Code of Civil Procedure on a promissory note, which was alleged to have been executed jointly by *G* and his son *V*, *V* filed an affidavit in order to obtain leave to defend the suit, and, having obtained leave to defend, gave evidence at the trial on his own behalf. On a subsequent trial of *V* for forgery of his father's signature to the same promissory note, the affidavit and deposition of *V* in the Small Cause suit were admitted as evidence against *V*. *Held* by TURNER, C. J., INNES and KINDERSLEY, JJ., that both the affidavit and the deposition were properly admitted. By KERNAN and MUTTUSAMI AYYAR, JJ., that the affidavit was properly admitted, but not the deposition. *Per* TURNER, C. J., INNES and KINDERSLEY, JJ.—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, may be used against him on [illegible]

tion, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned and must be overruled. QUEEN *v.* GOPAL DASS
[I. L. R., 3 Mad., 271

EVIDENCE ACT (I OF 1872)—*continued.*

2. ———— *Protection given to answers which a witness is compelled to give—"Compelled to give," Meaning of the words—Indian Oaths Act (X of 1873), s. 14.*—S. 132 of the Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter of these cases only. Protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give. *Queen* v. *Gopal Dass, I.L.R., 3 Mad., 721,* followed. *Per* BIRDWOOD, *J.* (dissenting)—S. 132 of the Evidence Act (I of 1872), read with s. 14 of the Indian Oaths Act. (X of 1873), compels a witness to answer criminating questions, and he is protected by the proviso to s. 132 from a criminal prosecution for any offence of which he criminates himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question and his request is refused that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative, whether he asks to be excused or gives the answer without so asking. QUEEN-EMPRESS *v.* GANU SONBA [I. L. R., 12 Bom., 440

3. ———— *"Compelled"—Compelling witness to answer questions.*—The word "compelled" in the proviso to s. 132 of the Evidence Act (I of 1872) applies only where the Court has compelled a witness to answer a question, and not to a case where the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. QUEEN-EMPRESS *v.* MOSS . . I. L. R., 16 All., 88

4. ———— and ss. 129, 130, 131—*Compelling witness to answer questions.*—The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "shall be compelled to give" in s. 132, Eviden... ...ct, apply to pressure put upon a witness after ...mpt... the box, and when he asks to be excused fron ...e is re... question. The wording of ss. 129, 1... that may go ...d 148, Evidence Act, compared ar... *h Ghose, 1 C. L.* ... SHEIKH *v.* QUEEN-EMPRESS *...ddra, 1 Mad., 199,* ... Calc., 392

...re confessions, they are cle... ———— s. 164, as the appended certifica... were voluntarily made or that t... enquired whether they were so made... nature of the questions put indicates that they w... not so made. And if they are statements other than confessions under s. 364, they are equally inadmissible as having been made before the case reached the stage at which the examination of the accused is authorized. QUEEN-EMPRESS *v.* BHAIRAB CHUNDER CHUCKERBUTTY . . . 2 C. W. N., 702

11. ———— *Cross-examination—Criminal Procedure Code, 1872, s. 250.*—The authority given to a Sessions Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a

EVIDENCE ACT (I OF 1872)—*continued.*

———— s. 154.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . I. L. R., 13 Calc., 53

———— s. 155.

See WITNESS—CRIMINAL CASES · EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 11 Bom., 166

———— cl. (3)—*Evidence in reply impeaching the credit of a witness.*—In a suit by one *K* claiming (*inter alia*) a share in a business as heiress of *A*, her father, the defendant pleading limitation, *K*, before the close of her case, put in evidence an entry in a Koran to shew that she was born in 1279, and in the cross-examination of *M*, a witness for the defence, put to him a letter purporting to have been written by *A* to *M*, supporting *K's* case. Upon *M* denying the genuineness of the Koran and of certain words in the letter, it was proposed on behalf of *K* to give evidence in reply shewing that *M* had made statements to an attorney before the case inconsistent with his evidence, both as to the Koran and the letter. *Held* that evidence might be given in reply as regards the Koran, but not as regards the letter; no substantive evidence having been given as to the latter before the close of the plaintiff's case. *Semble*—The expression "which is liable to be contradicted" in s. 155 (3) of the Evidence Act is equivalent to "which is relevant to the issue." KHADIJAH KHANUM *v.* ABDOOL KURREEM SHERAJI [I. L. R., 17 Calc., 344

———— s. 159—*Bonds destroyed by fire—Refreshing memory of witness.*—The plaints and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's gomastas of the names of the executants of the bonds, the matter in respect of which the bonds had been given, the amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared. *Held* that, though the register was not secondary evidence of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory, under s. 159 of the Evidence Act. ... NATH ... *v.* JEAMAT NOSYA... of the presidi... ...under... hand only, *i.e.*, signed QUEEN *v.* REZZA HOSSEIN . 8 W. R.

See QUEEN . NIRUNI . . 7 W. R.

QUEEN . BHEEBEEKEE . . 4 ...

16. ———— *Attes...* *Magistrate—Proof of signature.*—Wher... satisfied as to the genuineness of an att... a Magistrate, it is unnecessary to call the ... to swear to his signature. QUEEN *v.* REZZ... [8 W. R.

EVIDENCE ACT (I OF 1872)—*concluded*

——— s 167.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS I L R. 1 Calc, 207 [I. L R, 2 Bom, 61

See CRIMINAL PROCEEDINGS [I L. R, 8 Calc, 739 I L R, 9 All, 609

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—GENERALLY [6 Moore's I A, 232

1. ——— *Civil and criminal cases* —S 167 of the Evidence Act applies as well to criminal as to civil cases QUEEN v HURRIBOLE CHUNDER GHOSE [I. L. R, 1 Calc, 207 25 W R, Cr, 36

2 ——— It applies to criminal trials by jury in the High Court REG v NAOROJI DADABHAI 9 Bom, 358

3 ——— *Cases under cl 26 of the*

[4 C W N, 433

4 ——— *Document improperly admitted in evidence* —Where a copy of a deposition is improperly admitted such admission is not ground of itself for a new trial if, independently of the evidence so admitted there is sufficient evidence to justify the decision WOOMA KANT BUKSHEE v GUNGA NARAIN CHOWDHRY 20 W R, 385

5. ——— *Evidence improperly admitted —Power of High Court on appeal—Power to deal with verdict of jury—New trial* —The provisions of s 167 of the Evidence Act (I of 1872) apply to criminal trials by jury When part of the evidence which has been allowed to go to the jury is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s 167 of the Indian Evidence Act (I of 1872) or to quash the verdict and order a re trial The law as settled in England by the *Queen* v *Gibson, L R*

lowed QUEEN EMPRESS v RAMCHANDRA GOVIND HARSHE I L R, 19 Bom, 749

EXAMINATION DE BENE ESSE

See COMMISSION—CIVIL CASES Cor, 7 [5 B L. R, 252 8 B L R, Ap, 101

EXAMINATION FOR PLEADERSHIP

See BOARD OF EXAMINERS [I L. R, 9 All., 611

EXAMINATION OF ACCUSED PERSON.

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 9 Mad., 224 [I L R, 17 Calc, 862 I. L R, 18 Calc, 549 I L. R, 21 Calc, 642 I L R, 21 Bom, 495 2 C W N, 702

I L R, 14 All, 242 I L R., 16 Bom, 661

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

1. ——— Discretion of Magistrate in examining accused—*Evidence insufficient to found charge* —It is a matter of discretion for the Magistrate whether during the enquiry before him it is right and proper that the accused should be examined or not But it is undesirable that the accused should be examined by the Magistrate when he is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him IN THE MATTER OF SHAMA SANKAR BISWAS 1 B L R, S N, 16

2. ——— *Criminal Procedure Code, 1861 s 202* —The discretion of a Magistrate under s 202 Code of Criminal Procedure

3 ——— *Criminal Procedure Code, 1898 s 209—Examination of accused before committal—Discretion of Magistrate* —It is the duty of a Magistrate before committing accused persons for trial to examine them for the purpose of enabling them to explain any circum

I. L R, 23 Mad, 638

4. ——— Refusal to hear statement or examine accused—*Power of Court* —It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement or an offer to be examined IN THE MATTER OF ABDOOL GUFFOOR 10 C L R, 54

5

EXCOMMUNICATION.

See JURISDICTION OF CIVIL COURT—CASTE.
[I. L. R., 13 Mad., 293
I. L. R., 15 Bom., 599
I. L. R., 23 Bom., 122
I. L. R., 24 Bom., 13

——— by Roman Catholic Priest.

See CRIMINAL INTIMIDATION.
[I. L. R., 8 Mad., 140

EXECUTION OF DECREE.

EXECUTION OF DECREE—*continued.*

See CASES UNDER APPEAL—EXECUTION OF DECREES.

See CASES UNDER ARREST—CIVIL ARREST.

See CASES UNDER ATTACHMENT.

See BOMBAY ACT V OF 1862.
[I. L. R., 1 Bom., 581

See CIVIL PROCEDURE CODE, 1882, s. 212 (1859, s. 197) . I. L. R., 4 Calc., 629
[I. L. R., 8 Mad., 137

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 232 (1859, s. 208).
s. 234 (1859, s. 210).
s. 244 (1861, s. 11).
ss. 257, 258 (1859, s. 206), AND s. 257A.
ss. 259, 260 (1859, s. 200).

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 11 All., 228

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE.

See HUSBAND AND WIFE.
[11 B. L. R., 144
I. L. R., 1 Calc., 385
I. L. R., 4 Calc., 140
I. L. R., 1 All., 772

See CASES UNDER INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITOR AND OFFICIAL ASSIGNEE.

See CASES UNDER INTEREST—MISCELLANEOUS CASES—COSTS.

See CASES UNDER INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, ETC.—DECREES,

EVIDENCE ACT (I OF 1872)—*concluded*

——— s. 167.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS I. L. R., 1 Calc., 207 [I. L. R., 2 Bom., 61

See CRIMINAL PROCEEDINGS [I. L. R., 8 Calc., 739 I. L. R., 9 All., 609

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—GENERALLY [6 Moore's I. A., 232

1. ——— *Civil and criminal cases* —S 167 of the Evidence Act applies as well to criminal as to civil cases QUEEN *v* HURRIBOLE CHUNDER GHOSE [I. L. R., 1 Calc., 207: 25 W R, Cr., 36

2. ——— It applies to criminal trials by jury in the High Court. REG. *v* NAORAJI DADABHAI . . . 9 Bom, 358

3. ——— *Cases under cl 26 of the Letters Patent, High Court.*—The provisions of s 167 of the Evidence Act apply to cases heard by the High Court when exercising its powers under cl 26 of the Letters Patent QUEEN-EMPRESS *v* MCGUIRE [4 C W N, 433

4. ——— *Document improperly ad-*

GUNGA NARAIN CHOWDHRY 20 W. R., 385

5. ——— *Evidence improperly admit*

be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under

had the license been recalled by the Collector. Between the 1st January 1878 and the 8th January

ing the opinion expressed in *Empress v Seymour,*

EXAMINATION OF ACCUSED PERSON.

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R., 9 Mad., 224 [I. L. R., 17 Calc., 862 I. L. R., 18 Calc., 549 I. L. R., 21 Calc., 642 I. L. R., 21 Bom., 495 2 C. W. N., 702

See CRIMINAL PROCEDURE CODES s 342 [I. L. R., 10 Calc., 140 I. L. R., 13 All., 345 I. L. R., 14 All., 242 I. L. R., 16 Bom., 661

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

1. ——— Discretion of Magistrate in examining accused—*Evidence insufficient to found charge*—It is a matter of discretion for the Magistrate whether, during the enquiry before him, it is right and proper that the accused should be examined or not But it is undesirable that the accused should be examined by the Magistrate when he is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him IN THE MATTER OF SHAM SANKAR BISWAS . . 1 B L R, S N., 1[illegible]

2. ——— *Criminal Procedure Code, 1861, s 202*—The discretion of a Magistrate, under s 202 Code of Criminal Procedure to ask questions of an accused is entirely unfettered though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the accused that he is not bound to answer Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer QUEEN *v* DINOO ROY . . 16 W. R, Cr., 2[illegible]

3. ——— *Criminal Procedure Code, 1898, s 209—Examination of accused before committal—Discretion of Magistrate*—I[illegible] is the duty of a Magistrate, before [illegible] accused persons for trial, to examin[illegible] for the purpose of enabling them to [illegible] circum[illegible]

unexpired portion of the period named in the license. Where an order had been made for the sale of th[illegible]

accused, there was no reason why it should not be attached and sold. IN THE MATTER OF MADHO PERSHAD . . I. L. R., 22 All., 144

EXECUTION OF DECREE—*continued.*

1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*continued.*

under s. 270 of that Code, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by s. 295 of the new Code of 1877. NARANDAS *v.* BAI MANCHHA [I. L. R., 3 Bom., 217

6. ——— *Change of law—Effect on proceedings already commenced—Civil Procedure Code, Act VIII of 1859, s. 216, and Act X of 1877, s. 266, cl. (g)—Attachment—Political pension.*—On the 28th of September 1877, *i.e.*, three days before the new Code of Civil Procedure (Act X of 1877) came into operation, an application was made for the enforcement of a money-decree by attachment (*inter aliâ*) of a political pension enjoyed by the defendants. Under s. 216 of the former Code (Act VIII of 1859), a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed, at which date the new Code had come into force, and contended that under s. 266, cl. (*g*), of the new Code, the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act (Act I of 1868), s. 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877; and that a *bonâ fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. VIDYARAM *v.* CHANDRA SHEKHARAM [I. L. R., 4 Bom., 163

7. ——— **Civil Procedure Code Amendment Act (XII of 1879), s. 102—Effect of an application for execution pending at date of its enactment.**—Where an application to execute a decree was made under s. 234 of the Code of Civil Procedure, 1877, before Act XII of 1879 (to amend it) was passed, but the application was not disposed of until after s. 230 was altered by that Act,—*Held* that the rule in *Wright* v. *Hale, 6 H. and N., 227,* applied, and that the Act as amended was the law to be applied. BAPASASTRIAL *v.* ANUNTARAMA SASTRIAL [I. L. R., 3 Mad., 98

8. ——— **Security bond, Enforcement of, by execution**—*Security for costs—Civil Procedure Code (Act XIV of 1882), s. 549—Act VII of 1888, s. 46—General Clauses Act (I of 1868), s. 6.*—On the 9th June 1888, a decree-holder applied for leave to execute his decree (which was one for costs) against a person who had become security for the costs of an appeal which had been dismissed with costs; this application was refused on the ground that the law, as it then stood, did not authorize such an application, the remedy of the decree-holder being by regular suit against the surety. Subsequently to the passing of Act VII of 1888, the decree-holder made a fresh application for such execution under s. 46 of that Act. The Court, after referring to s. 6 of the General Clauses Act, rejected the application on the ground that proceedings against the surety had been commenced before Act VII of 1888 had come into force. *Held* on appeal that the application should have been allowed. ABDUL WAHAB *v.* FAREEDOONNISSA [I. L. R., 16 Calc., 323

9. ——— **Execution under Bengal Act VIII of 1869 and Act VIII of 1885**—*Right of procedure.*—Upon the death of the full owner, the mother took out probate of a will, in which she was appointed executrix. The will was afterwards disputed by the minor son of the testator, and probate was revoked; but, while the mother was in possession of the estate as executrix, she sued and obtained a decree for rent under Bengal Act VIII of 1869. Upon the application of the minor for the execution of the decree,—*Held* that the mode in which the decree was executed under the old Rent Act, Bengal Act VIII of 1869, was, in so far as it was a right at all that belonged to the judgment-creditor, not a private right, but a mere right of procedure, and the execution was therefore to be governed by Act VIII of 1885. UMASOONDURY DASSY *v.* BROJONATH BHUTTACHARJEE . . . I. L. R., 15 Calc., 347

10. ——— **Decree transferred to Collector for execution**—*Talukhdars Act (Bombay Act VI of 1888), s. 31, cl. 2—Construction of statute—Retrospective operation—Sanction to sale made necessary by new law.*—A decree upon a mortgage-bond passed against part of a talukhdar's estate on the 15th August 1887 was transferred, under s. 320 of the Civil Procedure Code (Act XIV of 1882), to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukhdars Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained. *Held* that the section was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend to interfere with that vested right. That presumption was not rebutted by any intention to interfere appearing in the Act itself. KALIAN MOTI *v.* PATHUBHAI FALJIBHAI . I. L. R., 17 Bom., 289

11. ——— **Act creating new rights, Effect of**—*Civil Procedure Code (1882), s. 310A—Civil Procedure Code Amendment Act (V of 1894), s. 2—Construction of statute—Sale in execution of decree held after Act V of 1894 came into operation, the execution proceedings being commenced before—Retrospective enactment when applicable to pending proceedings—General Clauses*

EXECUTION OF DECREE—*continued*

See CASES UNDER MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR

See CASES UNDER MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY.

See PARDA-NASHIN WOMEN
[1 B. L. R., F. B., 31
8 W. R., 282
I. L. R., 4 Calc., 583
I. L. R., 7 Calc., 19

See CASES UNDER PARTITION—MODE OF EFFECTING PARTITION

See CASES UNDER POSSESSION—NATURE OF POSSESSION

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON

See CASES UNDER RES JUDICATA—ORDERS IN EXECUTION OF DECREE

See CASES UNDER SALE IN EXECUTION OF DECREE

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—EXECUTION OF DECREE.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY . I. L. R., 4 Calc., 946
[10 B. L. R., 448
I. L. R., 26 Calc., 778
3 C. W. N., 590

See CASES UNDER SURETY

————Application for—

See CASES UNDER BENGAL RENT ACT, 1869, s. 58

See BENGAL TENANCY ACT, SCH. III, ART. 6 . I. L. R., 21 Calc., 387
[I. L. R., 22 Calc., 644

See CASES UNDER CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 230.

See CASES UNDER LIMITATION ACT, 1859, ss. 20 AND 21.

See CASES UNDER LIMITATION ACT, 1877, ART. 178.

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)

See PRACTICE—CIVIL CASES—EXECUTION OF DECREE, APPLICATION FOR.

See CASES UNDER SURETY—ENFORCEMENT OF SECURITY.

EXECUTION OF DECREE—*continued.*

————Dismissal of—

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
[I. L. R., 12 All., 539
I. L. R., 21 Calc., 784
L. R., 21 I. A., 89
I. L. R., 18 Mad., 131
I. L. R., 11 Bom., 537
I. L. R., 15 All., 49, 84

————Notice of—

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—NOTICE OF EXECUTION

————Obstruction to—

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

————of High Court on appeal from mofussil

See CASES UNDER LIMITATION ACT, 1877, ART. 180 (1859, s. 19)

————of Privy Council.

See LIMITATION ACT, 1877, ART. 180 (1859, s. 19) 4 W. R., Mis., 10
[B. L. R., Sup. Vol., 506
I. L. R., 8 Calc., 218
I. L. R., 20 Calc., 551

————Order passed in—

See CASES UNDER APPEAL—EXECUTION OF DECREES

See CASES UNDER APPEAL—ORDERS

See CASES UNDER RES JUDICATA—ORDERS IN EXECUTION OF DECREE

————Revival of—

See CASES UNDER EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES

See LIMITATION ACT, 1877, ART. 178
[I. L. R., 5 Bom., 29

————Stay of—

See CASES UNDER APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See BENGAL RENT ACT, 1869, s. 52
[10 B. L. R., Ap., 2
18 W. R., 412, 412 note
Marsh., 417
17 W. R., 462
22 W. R., 460
I. L. R., 5 Calc., 906
I. L. R., 7 Calc., 566

See CASES UNDER INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE

See CASES UNDER INJUNCTION—[illegible] CIVIL PROCEDURE CODE.

EXECUTION OF DECREE—*continued.*

1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*concluded.*

in execution in the present case, and in that view the Court below was bound, upon the application of the judgment-debtor, to set aside the sale, and, not having done so, it had failed to exercise jurisdiction within the meaning of s. 622 of the Code. The Court had power, therefore, to interfere under that section. JOGODANUND SINGH *v.* AMRITA LAL SIRCAR [I. L. R., 22 Calc., 767

13. ———— Sale in execution of decree, Application to set aside—*Civil Procedure Code (1882), s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Application of Act V of 1894 when proceedings in execution had commenced before its enactment.*—A house of the judgment-debtor, having long previously been attached in execution of a decree, was brought to sale on the 9th of March 1894, that is, shortly after the enactment of Act V of 1894. The judgment-debtor now applied under the Civil Procedure Code, s. 310A, that the sale be set aside. *Held* that the provisions of Act V of 1894, whereby the abovementioned section was added to the Civil Procedure Code, were applicable to the case. RANGASAMI NAIDU *v.* VIRASAMI CHETTI [I. L. R., 18 Mad., 477

14.———— Sale in execution of a decree upon a mortgage before the Act—*Gujarat Talukhdars Act (Bombay Act VI of 1888), s. 31—Necessity of sanction of the Governor in Council to the sale.*—Certain talukhdari estate was mortgaged under a sankhat executed before the Gujarat Talukhdars Act (Bombay Act VI of 1888) came into force. On the 22nd August 1889 (*i.e.*, subsequent to the Act coming into force), a decree was passed for sale of the mortgaged property. The decree was transferred for execution to the Collector, who refused to put up the property to sale without the previous sanction of Government, as required by s. 31 of the Talukhdari Act. *Held* that s. 31 of the Act had no application to the present case. The san-mortgage having been executed before the Act came into force, and left with its validity untouched by cl. (1) of s. 31, the ordinary remedy of the mortgagee to bring the property to sale was not taken away by that section. The sanction of the Governor in Council was therefore not necessary to the sale in execution of the decree on the mortgage. NAGAR PRAGJI *v.* JIVABHAI BAVAJI . . . . I. L. R., 19 Bom., 80

See DOSHI FULCHAND *v.* MALEK DAJIRAJ [I. L. R., 20 Bom., 565

in which the correctness of the above decision was doubted.

2. PROCEEDINGS IN EXECUTION.

15. ———— Proceeding in execution—*Civil Procedure Code, 1877, s. 244—Suit.—Semble*—A proceeding in execution is a proceeding which terminates in a decree as defined by s. 244 of the Civil Procedure Code (Act X of 1877), and is therefore a suit within the meaning of the Code. MANJUNATH BADRABHAT *v.* VENKATESH GOVIND [I. L. R., 6 Bom., 54

EXECUTION OF DECREE—*continued.*

2. PROCEEDINGS IN EXECUTION—*concluded.*

16. ———— *Semble*—A proceeding under s. 244 of the Civil Procedure Code is not a suit within the meaning of s. 12. VENKATA CHANDRAPPA NAYANIVARU *v.* VENKATARAMA REDDI [I. L. R., 22 Mad., 256

17. ———— *Conduct of proceedings in execution.*—Observations by STRAIGHT, *J.*, as to the necessity of conducting the proceedings in execution of decree with the same care, and, as far as practicable, in accordance with the same procedure as that adopted in regular suits. SETH CHAND MAL *v.* DURGA DEI . . I. L. R., 12 All., 313

FAKIRULLAH *v.* THAKUR PRASAD [I. L. R., 12 All., 179

18. ———— *Grounds for setting aside execution-proceedings.*—In execution-proceedings the Courts will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find it is substantially right. *Bissessur Lall Sahoo v. Luchmessur Singh, L. R., 6 I. A., 233: 5 C. L. R., 477,* followed. SHEO PERSHAD SINGH *v.* SAHEB LAL. RAJKUMAR LAL *v.* SAHEB LAL [I. L. R., 20 Calc., 453

19. ———— *Transfer of Property Act, ss. 88, 89—Application for order absolute for sale—Mortgage.*—The holder of a decree under s. 88 of the Transfer of Property Act (IV of 1882) applied for execution to the Court charged with execution of the decree. *Held* that this was a good application under s. 89 of the Act, and that it was not necessary that such application should be made to the Court which had passed the decree. An application for an order absolute for sale under s. 89 of the Transfer of Property Act is a proceeding in execution and subject to the rules of procedure governing such matters. OUDH BEHARI LAL *v.* NAGESHAR LAL . . I. L. R., 13 All., 278

See CHUNI LAL *v.* HARNAM DAS [I. L. R., 20 All., 302

and VENKATA KRISHNA AYYAR *v.* THIA GARAYA CHETTI . . . . I. L. R., 23 Mad., 521

20. ———— *Objection to application for execution of decree by person not party to decree—Practice.*—A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree. NATHUBHAI MULCHAND *v.* NANA BABU [I. L. R., 19 Bom., 544

21. ———— *Civil Procedure Code (1882), s. 43.*—S. 43 of the Civil Procedure Code (Act XIV of 1882) is not applicable to proceedings in execution of decree. So *held* by EDGE, C.J., and TYRRELL, KNOX, BLAIR, and BURKITT, JJ. SADHO SARAN *v.* HAWAL PANDE [I. L. R., 19 All., 98

EXECUTION OF DECREE—*continued*

1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*continued*

Consolidation Act (I of 1868), s 6 —On the 30th January 1894 an application was made for execution of a decree passed on the 5th of the same month, and certain property was thereafter duly attached On the 8th February 1894, the sale proclamation was published, and on the 26th March the sale was held On the 17th April 1894, the judgment debtor applied to the Court under the provisions of s 310A of the Code of Civil Procedure (which section was added to the Code by Act V of 1894, and which came into operation on the 2nd March 1894) to have the sale set aside on payment to the auction-purchaser of 5 per cent. on the purchase-money and to the decree-holder of the amount mentioned in the sale proclamation The auction-purchaser resisted the application on the ground that the section could not affect the sale in question *Held* (PETHERAM, C J., and O'KINEALY, J dissenting) that the section conferred a new and substantive right on the judgment debtor, and was not merely a matter of procedure, and that, as Act V of 1894 does not clearly indicate the intention of the

All that s 310A does, so far as the decree-holder and judgment debtor are concerned, is to extend the period during which the latter may discharge his liability by 30 days beyond the date of the sale, and is merely a modification of the way in which the

that the section should have a retrospective effect in the sense that it should take effect on sales held after the Act came into operation, though the execution procedings, of which the sale was a part, had been commenced before the Act came into operation *Per* O'KINEALY, J —Act XIV of 1882 is on the face of it an Act of procedure and nothing more, and what the Legislature intended to do by Act V of 1894 was to amend the rules of that Code with regard to the sale and delivery of property, and the section, both in form and substance, is merely a rule of procedure under which no party has a vested interest In addition, as under s 316 of the Code a purchaser has

Koeri, I. L. R, 15 Calc., 376, Uzir Ali v Ram Komal Shaha, I. L R, 15 Calc, 383, and *Debnarain Dutt v Norendra Krishna, I. L R, 16 Calc., 257,* referred to GRISH CHUNDRA BASU v APURBA KRISHNA DASS . **I. L. R., 21 Calc, 940**

EXECUTION OF DECREE—*continued*

1 EFFECT OF CHANGE OF LAW PENDING EXECUTION—*continued*

12. ———————— *Civil Procedure Code (1882), s 310A—Civil Procedure Code Amendment Act (V of 1894)—Construction of statute Sale in execution of decree held after Act V of 1894 came into operation, the execution-proceedings being commenced before—General Clauses*

against *A* and others in the Small Cause Court of Calcutta and was subsequently transferred to one *J*, who was substituted in the place of the original decree holder On the 26th July, *J* applied in the Small Cause Court for execution of the decree, and on the same date the decree was transferred for execution to the District Court of Bankura On the 3rd August, a writ of attachment issued, and on the 5th it was served Sale proclamation issued on the 11th, and was served on the 14th August, and on the 20th September the sale took place On the 27th September 1894 the judgment debtor applied under s 310A of the Code of Civil Procedure, which section became part of the Code under the provisions of Act V of 1894 passed on the 2nd March 1894, to have the sale set aside The District Judge, relying upon the case of *Grish Chundra Basu v Apurba Krishna Dass, I L. R, 21 Calc, 940,* together with the principle enunciated in the cases of

spective effect, and therefore s 310A was not appli

Mohun Mukerjee v Jogendra Chunder Roy, I L. R, 14 Calc, 636, so far as it holds that s 174 of the Bengal Tenancy Act creates a new right in a judgment debtor, and is therefore inapplicable to a case in which the decree was passed before that Act became law, is wrong The cases of *Uzir Ali v Ram Komal Shaha, I L R, 15 Calc, 383,* and *Grish Chundra Basu v Apurba Krishna Dass, I L R, 21 Calc, 940,* which are based upon the same principle, are also wrongly decided *Quære*—Whether the decision in *Lal Mohun Mukerjee v. Jogendra Chunder Roy, I L R, 14 Calc, 636,* was correct under s 6 of the General Clauses Act by

Act, as the change in the law was brought about not by the repeal of the old Act but by the addition to it of a new section (310A) *Held,* therefore, that s. 310A was applicable to the proceedings

EXECUTION OF DECREE—*continued.*

3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

declaration that the decree was binding against the heirs, who were not sirdars. *Held*, reversing the order, that the terms of the section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction. GAUSKHA *v.* ABDUL ROPKHA

[I. L. R., 17 Bom., 162

33. ——— *Application to execute decree for sale of immoveable property in possession of a third party under valid title—Civil Procedure Code, 1882, ss. 278, 287—Rules of Bombay High Court under s. 287—Practice.*—Under s. 287 of the Civil Procedure Code (Act XIV of 1882) and the Rules of the High Court made thereunder, a Court cannot refuse to execute its own decree ordering the sale of immoveable property in the possession of a third party under a valid title. Rule I of the High Court Rules under that section permits inquiry into the title of the judgment-debtor in respect of moveable property only. Nor can a claim set up in an investigation held under s. 287 be treated as a claim under s. 278, the latter section having reference to claims to, and objections to attachment of, property under attachment. BHIKU BAL PATIL *v.* KHEMCHAND KUBERSHET

[I. L. R., 14 Bom., 369

34. ——— **Amendment of application** *—Civil Procedure Code, 1877, s. 245—Time fixed by Court—Jurisdiction—Ultra vires.*—On the 9th of April 1880, *A* applied for execution of a decree, which he had obtained against *B*. On the 20th of April 1880, the Judge of the Court, under the provisions of s. 245 of the Code of Civil Procedure, ordered the application to be amended within seven days. This order was disobeyed, but no order rejecting the application was asked for or passed. On the 11th of May 1880, the applicant prayed for leave to make the amendment, which prayer was granted. *Held* that the order of the 11th of May 1880, granting leave to amend, was not *ultra vires* of the Judge under the provisions of s. 245 of the Code of Civil Procedure. KAMINY MOHUN SOMODDAR *v.* GOPAL

[I. L. R., 8 Calc., 479 : 10 C. L. R., 519

35. ——— **Practice in execution by High Court of decree of another Court.**—The functions of the High Court, in respect of the execution of decrees of other Courts, are limited to effecting execution, and to matters arising out of the proceedings in execution. Where a decree more than a year old had been duly sent to the High Court for execution, an application for a rule to show cause why execution should not issue was refused: such application should be made to the Court which passed the decree. JADU ROY *v.* FARRELL . 6 B. L. R., Ap., 66

36. ——— **Functions of Court executing decree.**—The functions of the Court executing a decree are judicial, and not merely ministerial. GOBIND HORI WALEKAR *v.* SHIDRAM BIN SHIDMURTI . . . . . 7 Bom., A. C., 37

EXECUTION OF DECREE—*continued.*

3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

37. ——— **Power of Court executing decree**—*Objection to validity of amendment.—Civil Procedure Code, s. 206.*—The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of R1,282. Subsequently, on application by the decree-holder and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree and made it for a sum of R1,460. The decree-holder took out execution, and the judgment-debtor objected that the decree was for R1,282 and had been improperly altered. The Court executing the decree disallowed the objection on the ground that it was not such as could be entertained in the execution department. *Held* that, when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and that the judgment-debtor in this case could raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed. ABDOOL HAYAI KHAN *v.* CHUNIA KUAR . I. L. R., 8 All., 377

38. ——— *Questioning validity of decree.*—In executing a decree of a Court of competent jurisdiction, the Court executing it cannot question the validity of any portion of it. Its duties are only of a ministerial character. AMBARAM HARIVALLABHDAS *v.* HIMAT SING KALIANJI

[2 Bom., 109 : 2nd Ed., 103

DABEE PERSHAD SING *v.* DELAWUR ALI

[13 W. R., 312

39. ——— *Authority to hear objections.*—When the execution of a decree is made over to a Munsif's Court other than that which passed the decree, the Court executing the decree has authority to hear all objections and to pass such orders as if it were executing its own decree; and an appeal will lie from any order so passed in the usual course to the Judge. MUNGLE PERSHAD *v.* GUDOOREE SINGH . . . . 2 W. R., Mis., 17

40. ——— *Adjustment of decree.*—A Court executing a decree is bound to have regard only to the decree and to any adjustment of such decree which the parties may agree to bring to its notice. JHUNDOO *v.* HIMMUT

[3 N. W., 81

41. ——— *Civil Procedure Code, 1877, ss. 211 and 212 (1859, ss. 196 and 197).*—The Court executing a decree is bound by the terms of the decree, and it is only in cases provided for by ss. 211 and 212 of Act X of 1877, corresponding with ss. 196 and 197 of Act VIII of 1859, that it is at liberty to determine the rights of the litigants in proceedings taken after decree. RAM LAPIT RAM *v.* CHOOARAM. CHOOARAM *v.* RAM LAPIT RAM . . . . . . 4 C. L. R., 97

EXECUTION OF DECREE—*continued*

3 APPLICATION FOR EXECUTION, AND POWERS OF COURT.

DAS NANCHAND . I. L R, 20 Bom., 188

23 ———— Decrees, Priority of.—A decree takes priority over other decrees in respect of the date on which it was passed, and not in respect of the priority of the debt which it enforces GHERAN v. KUNJ BEHARI . I. L R, 9 All, 413

plaintiff or his representatives PAUPAYYA v NARASANNAH I. L R., 2 Mad., 216

25. ———— Right to execute decree—*Assignment of decree—Civil Procedure Code (Act*

26 ———— Necessity for application for execution—*Civil Procedure Code, 1882, ss* 230, 235, 295, 490 —Under s 230 of the Civil Procedure Code, all decree holders if desirous of enforcing their decrees, are required to apply for execution There is no exception of cases arising under s 490 A decree holder who has attached be-

27. ———— Application for execution, Irregularity in—*Procedure—Notice of execu-*

14 B L R., Ap, 18: 11 W. R., 28

29. ———— Application for execution, Bar to—*Judgment of foreign Court—Merger—Civil Procedure Code, 1877, s. 12* —The judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original

EXECUTION OF DECREE—*continued*

3 APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued*

decree FAKURUDDIN MAHOMED ASSAN v OFFICIAL TRUSTEE OF BENGAL I. L R, 7 Calc, 82

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application to execute it) would have jurisdiction to try the suit. *Per* FIELD, J —A Court does not cease to be "the Court which passed the decree" merely by reason that the head quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered LACHMAN PUNDEH v MADDAN MOHUN SHYE [I. L R., 6 Calc, 513: 7 C L. R., 521

31. ———— *Transfer of Property Act (IV of 1882), s 93—Application for sale of mortgaged property on default of mortgagor to redeem* —In a suit for the redemption of mortgaged property, the District Munsif passed a decree, which was on appeal modified by the District

order that the mortgaged property might be sold *Held* that the application should have been made to the Court of the District Munsif *Oudh Behari Lal v. Nageshar Lal, I. L R, 13 All, 278*, referred to VENKATA KRISHNA AYYAR v THIAGARAYA CHETTI . I. L. R, 23 Mad., 521

32. ———— *Civil Procedure Code, s 649, para. 2—Decree against a sirdar—Political Agent's Court—Death of the sirdar—Application for execution against the heirs—*

Court of the also class Subordinate Judge of

ground that s 649, para 2, of the Civil Procedure Code (Act XIV of 1882) applies in cases where the territorial jurisdiction of the Court is changed, and where the status of the parties is changed, and that the decree-holder should obtain a

EXECUTION OF DECREE—*continued.*

3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

petitioned the lower Court that B might not be sold. *Held* it was open to that Court, as far as *H* was concerned, to investigate his objections in the execution department and pass such orders as he might think fit. LALLA HEERA LALL *v.* MONEE ROY [11 W. R., 202

51. ———— *Refusal of execution—Irregularity in instituting suit.*—It is not competent to a Court executing a decree to refuse execution in a case where no fraud is suggested, on the ground that the plaintiffs were allowed improperly to institute the suit. SUBRAMANIAN PATTAR *v.* PANJAMMA KUNJIAMMA I. L. R., 4 Mad., 324

52. ———— *Decree against minor—Question of minority—Review.*—In the execution of a decree passed against a minor the Court cannot enquire whether the minor was or was not properly represented in the suit in which the decree was given. It is bound to presume that the decree was rightly passed and to execute it according to its terms. The minor's remedy is either to apply for a review of judgment or to file a suit to procure an injunction to restrain the execution of the decree. MAHOMED NOOR-OOLLAH KHAN *v.* HARCHARAN RAI [6 N. W., 98

53. ———— *Costs.*—A Court executing a decree has no jurisdiction to order a judgment-debtor to pay as costs any sum not mentioned in the decree which is in course of execution or in any decree in force. NABU KRISTO MOOKERJEE *v.* PARBUTTY CHURN BHUTTACHARJEE [13 W. R., 23

NIL KOMUL ROY *v.* ROHINEE DOSSIA [13 W. R., 330

54. ———— *Objection to decree for costs.*—Where the lower Court has improperly awarded separate sets of costs to defendants, who have severed in their defence, the attention of the Appellate Court should be drawn to this circumstance before the decree in appeal is passed. It is too late to raise the objection when this latter decree is being executed. RAM CHUNDER SEN *v.* KOOMAR DOORGA NATH ROY . . . . 2 C. L. R., 152

55. ———— *Question of jurisdiction.*—It is competent to the Court charged with the execution of a decree to consider the question as to whether the Court which passed the decree had jurisdiction to pass it, unless the decree itself precludes that question. *Muhammad Sulaiman Khan* v. *Fatima, I. L. R., 11 All., 314,* and *Musa Haji Ahmed* v. *Purmanand Nursey, I. L. R., 15 Bom., 219,* referred to. IMDAD ALI *v.* JAGAN LAL [I. L. R., 17 All., 478

56. ———— *Procedure applicable to execution of decrees—Appeal, Right of—Review—Civil Procedure Code, s. 623—Limitation.*—It is the duty of a Court to which an application to execute a decree is presented to satisfy itself whether or no such application is barred by limitation. If the Court on such an application omits to decide the question of limitation or decides it against the judgment-debtor, and in his opinion wrongly, the judgment-debtor may either appeal or can apply under s. 623 of the Code of Civil Procedure for review of the Court's order, and this whether notice of the application for execution had been issued to him or not. A Court, in executing a decree, should look to the substance rather than to the form of applications presented to it. Where an application was made by a judgment-debtor objecting to the execution of a decree against him on the ground that it was barred by limitation, previous objections to execution having been disallowed, it was *held* that, the relief prayed for being one which could only be granted by way of review, the application should be treated as one for that purpose. RAMU RAI *v.* DAYAL SINGH . I. L. R., 16 All., 390

57. ———— *Jurisdiction of the Court to which a decree is sent for execution—Code of Civil Procedure (1882), ss. 223, 228, and 239—Question of limitation.*—The Court to which a decree is sent for execution under s. 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation. *Leake* v. *Daniel, B. L. R., Sup. Vol., 970 : 10 W. R., 10 (F. B.); Nursing Doyal* v. *Hurryhur Saha, I. L. R., 5 Calc., 897; Jassoda Koer* v. *Land Mortgage Bank of India, I. L. R., 8 Calc., 916; Srihary Mundal* v. *Murari Chowdhry, I. L. R., 13 Calc., 257,* referred to. *Soomut Dass* v. *Bhoobun Lall, 21 W. R., 292; Lutfullah* v. *Keerut Chand, 21 W. R., 330 : 13 B. L. R., Ap., 30,* and *Ramu Rai* v. *Dayal Singh, I. L. R., 16 All., 390,* dissented from. CHHOTAY LALL *v.* PURAN MULL [I. L. R., 23 Calc., 39

58. ———— *Civil Procedure Code, 1882, s. 373—Dismissal of application to execute without obtaining leave to make a fresh application—Limitation.*—S. 373 of the Civil Procedure Code does not apply to applications for execution of decrees. *Tarachand Magraj* v. *Kashi Nath Trimbak, I. L. R., 10 Bom., 62,* followed. *Radha Charan* v. *Man Singh, I. L. R., 12 All., 392,* dissented from. WAJIHAN *alias* ALIJAN *v.* BISHWANATH PERSHAD I. L. R., 18 Calc., 462

59. ———— *Civil Procedure Code (Act XIV of 1882), ss. 43, 373, 374—Separate applications to execute reliefs of a different character—Limitation.*—The Code of Civil Procedure does not prevent a person from making separate and successive applications for execution of a decree, giving relief of different characters in respect to each such relief. Ss. 43, 373, and 374 do not apply to proceedings for execution of decree. *Radha Charan* v. *Man Singh, I. L. R., 12 All., 392,* dissented from. *Wajihan* v. *Bishwanath Pershad, I. L. R., 18 Calc., 462,* followed. RADHA KISHEN LALL *v.* RADHA PERSHAD SINGH . . . . I. L. R., 18 Calc., 515

EXECUTION OF DECREE—*continued*

3 APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued*

42 ———————— *Uncertain decree —Power of Court of execution to take evidence to explain it* —When the terms of a decree are uncertain, it is not competent to the Court of execution to make any enquiries by taking oral or documentary evidence to ascertain the meaning of such terms NUDDYAR CHAND SHAHA *v* GOBIND CHUNDER GUHA **I. L R., 10 Calc, 1092**

43 ———————— *Evidence in execution—Evidence to ascertain subject of decree* —In the execution of a decree for possession of land it was held the evidence of witnesses could be taken to ascertain the boundaries KALEE DABEE *v* MODHOO SOODUN CHOWDHRY **16 W R., 171**

and to ascertain the subject on which the decree operates BHUGOBAT SINGH *v* RAMADHIN SINGH **[22 W R., 330**

44 ———————— *Uncertain decree —Evidence to explain decree* —When a decree is so uncertain that it is impossible to ascertain what is decreed a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes Evidence cannot be given in the execution department to amend any uncertainty in the decree The law allows certain matters to be ascertained in execution but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution without leaving it to the Court of execution to decide what the Judge intended to decree DWARKANATH HALDAR *v* KAMALAKANTH HALDAR **[3 B L R., Ap, 128 12 W R., 99**

45 ———————— *Decree not limiting amount of mesne profits* —A Court in execution proceedings cannot look behind the decree when the decree does not limit the amount of wasilat to be awarded JADOOMONEY DABEE *v* HAFEZ MAHOMED ALI KHAN **I. L R., 8 Calc, 295**

46 ———————— *Application for execution for sum larger than amount of claim—Consent of parties—Compromise* —The parties to a

Court's order was made but the plaintiff brought a suit to recover possession of the larger amount of land mentioned in the compromise *Held* that the order of the Court executing the decree was

IMAMI **I. L. R, 9 All, 229**

47 ———————— *Refusal to execute decree on equitable grounds—The Court exe*

holders the mesne profits claimed and then sued his

ceedings which followed it was decided that mesne profits were not recoverable under the decree After this *K's* representatives applied for execution of the decree of 1878 The lower Courts refused to execute the decree on the ground that as under the decree of 1866 on which the decree of 1878 was based mesne profits were not recoverable it would not be equitable to allow a decree for contribution passed on a contrary supposition to be executed *Held* that the lower Courts were not competent to go behind the decree of 1878 but must deal with it as it stood RAMPHAL RAI *v* RAM BARAN RAI **[I L R, 5 All., 53**

48 ———————— *Omission to specify mesne profits—Reference to plaint to see against whom relief can be given in execution* —Where in a suit for possession and mesne profits no specific mention as to mesne profits is made in the

49 ———————— *Civil Procedure Code, s 244—Execution proceedings—Revaluation of improvements allowed for in decree* —A mortgagor obtained a decree for redemption on payment

the mortgagee that the improvements ought to be re valued as they were at the time of execution of more value than at the date of the decree *Held* that the mortgagee was entitled to re valuation in the execution proceedings RAMUNNI *v* SHANKU **[I L R., 10 Mad., 387**

50 ———————— *Objections to sale of property* —The holder of a money decree which declared the liability of certain mortgaged properties

The Judge accordingly passed an order to that effect to which *H* was not a party Subsequently *H*

EXECUTION OF DECREE—*continued.*

3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

66. ———————— *Civil Procedure Code (Act XIV of 1882), s. 373—Redemption of mortgage on payment within six months—Non-payment, Effect of—Foreclosure for decree—Final decree—Time allowed for redemption, Computation of—Withdrawal of appeal, Effect of—Limitation—Review.*—The plaintiffs obtained a decree on 12th November 1886, allowing them to redeem on payment of R168-8-0 within six months. In default of payment within the prescribed time, they were to stand forever foreclosed. Against this decree the defendant appealed to the High Court. On the 10th September 1888, the High Court passed an order allowing the defendant to withdraw the appeal. On the 17th December 1888, plaintiffs applied for execution of the decree of the 12th November 1886. The lower Court, regarding the withdrawal of the second appeal as practically a confirmation of the decree of the 12th November 1886, computed the six months allowed for redemption from the date of the order of withdrawal (10th September 1888) and granted the plaintiffs' application. On appeal to the High Court, —*Held,* reversing the decision of the lower Court, that the application was time-barred, and that the plaintiff was foreclosed. The time allowed for redemption was to be computed, not from the date of the High Court's order permitting the withdrawal of the appeal, but from the date of the decree applied from (*i.e.,* 12th November 1886). The order of withdrawal was not a decree. The only decree which could be executed was that of the 12th November 1886. The redemption money not having been paid within six months from that date, the plaintiffs were foreclosed. The Court could not in execution-proceedings enlarge the time fixed for redemption. *Ishwargar* v. *Chudasama Manabhai, I. L. R., 13 Bom., 106,* followed. *Per* BIRDWOOD, J.—It was open to the plaintiffs to apply, if so advised, to the High Court for a review of the order of withdrawal of the 10th September 1888, with a view to the enlargement of the time of redemption as a condition which might equitably have been permitted when the defendant was allowed to withdraw the second appeal. PATLOJI *v.* GANU

[I. L. R., 15 Bom., 370

67. ———————— *Application for execution withdrawn by decree-holder—Civil Procedure Code, ss. 373, 647—"Suit"—"Appeal."*—S. 647 of the Civil Procedure Code makes s. 373 applicable to proceedings in execution of decree. The words "suit" and "appeal" in s. 647 apply to suits and appeals in the strict sense of those terms, and were not intended to cover proceedings for the enforcement of rights decreed in a suit or appeal. An application for execution of decree by arrest of the judgment-debtor was ordered by the Court to be struck off upon the statement of the decree-holder's pleader that the judgment-debtor was in hiding, and that the decree-holder did not desire to prosecute the application further. At that time an order for a warrant of arrest had been issued subject to the payment of fees, but those fees had not been paid, nor had the diet-money been deposited, and no steps were taken to proceed with the application. No permission was given to the decree-holder to withdraw the application with leave to take fresh proceedings. *Held* by the Full Bench that a subsequent application for execution of the decree was barred by s. 373 read with s. 647 of the Civil Procedure Code. *Sarju Prasad* v. *Sita Ram, I. L. R., 10 All., 71,* and *Fakirullah* v. *Thakur Prasad, I. L. R., 12 All., 179,* approved and followed. *Bijai Singh* v. *Haiyat Begum, All. Weekly Notes, 1889, p. 163,* distinguished. RADHA CHARAN *v.* MAN SINGH

[I. L. R., 12 All., 392

68. ———————— *Effect as regards limitation of striking off petition for execution of decree—Second application, without express leave granted when the first was struck off—Code of Civil Procedure (1882), ss. 373 and 647—Civil Procedure Code Amendment Act (VI of 1882), ss. 4 and 5—Limitation.*—It is clear, both form the Code of Civil Procedure itself and from the provisions of the Limitation Act of 1877, that a succession of applications for execution is contemplated. S.647 of the Code of Civil Procedure cannot, on its true construction, be applied to execution of decree, and was inapplicable to petitions for execution before, and independently of the passing of Act VI of 1892, ss. 4 and 5. A first application for execution of a decree having been, on the decree-holder's petition, struck off the list of cases pending for hearing, a second application was made within the period of limitation. *Held* that the first application, notwithstanding that the order striking it off had been made, was not annulled, but afforded a fresh starting point for limitation. *Held* also that, although the petition for execution had been withdrawn without leave to apply again having been expressly granted by the Court, the petitioner's right to renew his petition within due time remained. The provisions of s. 373, which could only have applied through the effect of s. 647, had not been rendered applicable thereby to petitions for execution. The judgment in *Sarju Prasad* v. *Sita Ram, I. L. R., 10 All., 71,* overruled; that in *Bunko Behary Gangopadhya* v. *Nill Madhub Chuttapadhya, I. L. R., 18 Calc., 635,* approved. THAKUR PRASAD *v.* FAKIR ULLAH . . **I. L. R., 17 All., 106**

[L. R., 22 I. A., 44

Reversing on appeal FAKIR-ULLAH *v.* THAKUR PRASAD . . . . **I. L. R., 12 All., 179**

69. ———————— *Power of Court to dismiss application for laches of applicant—Civil Procedure Code, 1882, Ch. VII (ss. 96-109) and Ch. XIII (ss. 156-158)—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Striking off execution-proceedings.*—Ch. VII (ss. 96-109, relating to appearance of parties and consequence of non-appearance) and XIII (ss. 156-158, relating to adjournments) of the Code of Civil Procedure cannot, in view of s. 4 of Act No. VI of 1892, be applied to proceedings in executions of decrees. But a Court has power inherent, if not conferred by statute, to

EXECUTION OF DECREE—*continued*

3 APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued*

60 ——————— *Civil Procedure Code, 1882 s 43—Successive applications for execution in respect of different reliefs granted by the same decree* —S 43 of the Code of Civil Procedure is not applicable to proceedings in execution of decree So *held* by EDGE C J and TYRRELL KNOX, BLAIR and BURKITT JJ Where a decree grants different reliefs as, for example possession of land and mesne profits it is competent to the decree holder to execute such decree by means of separate and successive applications in respect of each relief So *held* by EDGE C J, and TYRRELL KNOX, BLAIR and BURKITT, JJ *Ram Baksh Singh* v *Madat Ali 7 N W 95,* and *Radha Kishen Lall* v. *Radha Pershad Singh, I L R, 18 Calc 515* cited SADHO SARAN v HAWAL PANDE

[I L R., 19 All, 98

61 ——————— *Application for execution dismissed for default—Power of the* [illegible]

amended by Act VI of 1892 which authorizes a Court to apply to execution proceedings any of the procedure enacted in Ch VII of the Code Accordingly a Court cannot, under s 103, restore to the file an application for execution which has been dismissed for default Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings HAJRAT AKRAMNISSA BEGAM v VALIULNISSA BEGAM

[I L R., 18 Bom, 429

Where an application for execution has been dismissed for default a fresh application can be made HAJRAT AKRAMNISSA BEGAM v VALIULNISSA BEGAM **I L R., 18 Bom, 429**

TIRTHASAMI v ANNAPPAYYA

[I L R., 18 Mad, 131

62 ——————— *Civil Procedure Code (1882), ss 98, 248 and 647—Notice of execution—Dismissal of application on failure of both parties to appear on the appointed day*— A darkhast for the execution of a decree can be dismissed when on its presentation a notice is issued to the judgment debtor under s 348 of the Civil Procedure Code (Act XIV of 1882) and neither party appears on the day on which it is made returnable TUKARAM v KHANDU

[I L R., 20 Bom., 542

63 ——————— *Civil Procedure Code (Act XIV of 1882), ss 373 647*— S 647 of the Code of Civil Procedure does not operate to extend the rule laid down in respect of a suit in s. 373 to an application for execution of a decree *Radha Charan* v *Man Singh, I L R, 12 All, 392* not followed. BUNKO BEHARY GANGOPADHYA v NIL MADHUB CHUTTOPADHYA

[I L R., 18 Calc., 635

64 ——————— *Civil Procedure Code ss 373 647—Application for execution struck off for non payment of process fees*— [illegible]

apply again for execution of his decree *Radha Charan* v *Man Singh, I L R, 12 All, 392,* dissented from *Wajihan* v *Bishwanath Pershad, I L R 18 Calc, 462,* and *Shakkar Bisto Nadgir* v *Narsingrao Ramchandra, I L R, 11 Bom., 467* approved LAKSHMI NARASIMHA v ATCHANNA . **I L R., 15 Mad., 240**

65 ——————— *Application for execution withdrawn by decree-holder—Civil Procedure Code, ss 373, 647*—The ruling in *Surja Prasad* v *Sita Ram I L R, 10 All 71,* only decided that where the circumstances in regard to an application for execution of decree show that it was withdrawn at the instance of the pleader of the decree holder and that no sanction was given to its withdrawal with liberty to present a fresh application any subsequent application made by that decree holder for execution is prohibited by s 373 read with s 647 of the Civil Procedure Code But where a Court of its own motion, and without being moved either by the decree-holder or by his pleader, takes upon itself to strike off an application for execution for the mere purpose of clearing its file, that is not a proceeding under any provision of the Code which could bar a decree-holder from making a fresh application for execution A first application for execution of a decree was ordered by the Court to be struck off for want of prosecution, and upon the statement of the decree-holder's pleader "that at present the case may be struck [illegible]

[illegible] explained and followed. *Ram Rup* v *Lalji, All. Weekly Notes 1888 p 253 Mahtab Kuar* v *Sham Sundar Lal, All Weekly Notes, 1888 p 272;* and *Hira Singh* v *Jota Prasad, All Weekly Notes, [illegible], p 204* distinguished. Observations as to the necessity of conducting the proceedings in execution of decree with as much care and regularity as proceedings in suits. Under s 647 of the Civil Procedure Code, the provisions relating to proceedings in suits are to be followed and adopted in execution-proceedings, so far as they may be fairly and properly applicable thereto FAKIR-ULLAH v THAKUR PRASAD . . **I L R, 12 All., 170**

EXECUTION OF DECREE—*continued.*

3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

the Limitation Act, art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought. SAMIA PILLAI *v.* CHOCKALINGA CHETTIAR I. L. R., 17 Mad., 76

74. ———— *Application defective in form—Decree for performance of particular Acts—Civil Procedure Code (1882), ss. 235, 260, and 539.*—In a suit brought under s. 539 of the Code of Civil Procedure (Act XIV of 1882), a decree was passed appointing the defendants managing trustees of a Hindu temple and laying down certain rules for their guidance in future. The plaintiffs applied for execution of the decree. and filed a darkhast, praying that the defendants be ordered to act as directed by the decree, and that, if they failed to do so, steps be taken according to law. *Held* that the darkhast was not in accordance with s. 235, cl. (*j*), or s. 260 of the Code, as it did not specify the mode in which the assistance of the Court was sought. KARAMCHAND GOKALDAS *v.* GHELABHAI CHAKALDAS . . . I. L. R., 19 Bom., 34

75. ———— *Civil Procedure Code, s. 583—Claim for mesne profits on reversal of executed decree for possession of land.*—A decree for possession of immoveable property, having been executed, was reversed on appeal. The defendant applied under s. 58 of the Code of Civil Procedure for restitution of the mesne profits taken by the plaintiff. The lower Courts dismissed the application on the ground that the proper remedy was by suit. *Held* that the defendant was entitled to the relief claimed. KALIANASUNDRAM *v.* EGNAVEDESWARA . . . I. L. R., 11 Mad., 261

76. ———— *Civil Procedure Code, 1882, s. 583 - Execution, Power of Court to award restitution of benefits on reversal of decree in—Jurisdiction of Court not limited in execution.*—The procedure provided by s. 583 of the Civil Procedure Code (Act XIV of 1882) for obtaining any benefit (by way of restitution or otherwise) under a decree passed on appeal is not confined to cases where the restitution desired is provided for by the decree itself. The plaintiff brought a suit for the recovery of certain timber or damages for its removal, and got a decree. The defendant appealed, and was ultimately successful in getting the plaintiff's suit dismissed, but meanwhile the timber had been taken in execution of the decree and sold. The defendant applied to the original Subordinate Judge's Court in execution of the High Court decree for restitution of the timber or R13,325 damages. The plaintiff objected that the defendant must bring a suit, and could not make this claim in execution. The Subordinate Judge overruled this objection, but held that he was limited to a grant of R5,000, the pecuniary limit to his original jurisdiction, and awarded the defendant that sum for his timber. *Held* the matter was rightly dealt with in execution, and that the jurisdiction of the original Court in execution was neither ousted by the fact that the value of the property in dispute exceeded the pecuniary limits of the Court's jurisdiction, nor was such Court limited in its award to the sum of R5,000. BALVANTRAV OZE *v.* SADRUDIN I. L. R., 13 Bom., 485

77. ———— *Decree for enforcement of hypothecation—Objection by judgment-debtor that property ordered to be sold is not transferable under N.-W. P. Rent Act, s. 9—Such objection not entertainable in execution.*—In execution of a decree for enforcement of hypothecation by sale of specific property, an objection by the judgment-debtor that the property is not transferable with reference to s. 9 of the N.-W. P. Rent Act cannot be entertained. MADHO LAL *v.* KATWARI I. L. R., 10 All., 130

BISHESHER RAI *v.* SUKHDEO RAI I. L. R., 10 All., 132 note

78. ———— *Decree for redemption within a specified time—Appeal against decree—Power of Court in execution to extend time for redemption allowed by decree—Ground for enlarging time.*—The plaintiffs sued for the redemption of certain mortgaged property. On the 1st March 1886, a decree was passed declaring the plaintiffs entitled to redeem on payment by them to the defendants of R649-11-0 within three months from the date of the decree. Against this decree the defendants (the mortgagees) appealed on the ground that a much larger sum than R649-11-0 was due to them on the mortgage. The plaintiffs also filed objections to this decree under s. 561 of the Civil Procedure Code (XIV of 1882) on the ground that the mortgage-debt had been long ago paid off, and that now a large sum was due to them from the mortgagees who had been in receipt of the profits of the property. Under these circumstances, the plaintiffs did not pay the R649-11-0 within three months as ordered by the decree. On the 12th October 1886, they presented an application for execution, and paid into Court the R649-11-0. The lower Court granted their application, and ordered possession of the property to be given to them. The defendants appealed to the High Court. *Held,* reversing the order of the Court below, that the Court in executing the decree had no power to alter the language of the decree, which it would virtually do if it enlarged the time mentioned in it by accepting the R649-11-0 paid into Court by the plaintiffs on the 12th October 1886. *Held* also that, even if the Court had power to enlarge the time in the course of execution, the mere fact that the plaintiff had lodged an appeal would afford no special ground for enlarging the time. ISHWARGAR *v.* CHUDASAMA MANABHAI . . . I. L. R., 13 Bom., 106

4. ORDERS AND DECREES OF PRIVY COUNCIL.

79. ———— Powers of Legislature—*Limitation affecting Privy Council decrees.*—The Legislature of this country has no power to pass any law limiting the period during which decrees of Her

EXECUTION OF DECREE—*continued.*

3 APPLICATION FOR EXECUTION, AND POWERS OF COURT—*continued.*

dismiss an application for execution when the applicant fails through his own laches to put the Court in a position to proceed with his application Similarly, a Court has inherent power, if such power is not conferred upon it by statute, to proceed forth with to decide an application for execution of a decree on the materials before it when time has been granted to a party to perform any act necessary for the

right to get the decree executed is barred by limitation, or by any other rule of law, or on some similar ground on which the application has clearly been dismissed on the merits, whether the word "dismissed" or the words "struck off the file" or any other similar words have been used in the order the decree holder is not barred by the force of any such order from presenting and prosecuting a fresh application for the execution of his decree DHONKAL SINGH v PHAKKAR SINGH I. L R, 15 All, 84

70 ——— *Civil Procedure Code (Act XIV of 1882), ss 230, 235, 237, 245—Specification of property, Omission of—Application defective in form* —A decree was passed on the 6th September 1876, and on the 6th July 1888 an

6th July 1888 was one within the meaning of s 230 of the Code of Civil Procedure *Per* PRINSEP, PIGOT, and GHOSE, *JJ* —*Held* that the application was defective as not complying with the provisions of s 237, and as it was not amended within due time or under the provisions of s 245 the decree holder was barred *Per* PRINSEP and PIGOT, *JJ* —*Macgregor* v *Tarini Churn Sircar I L R, 14 Calc, 124*, should be overruled *Per* PETHERAM, *C J* —The application could not be carried out

an application may be amended after admission, and registration should be overruled. *Per* O'KINEALY, *J* —The original application was defective,

I. L. R., 17 Calc., 631

71 ——— *Civil Procedure Code (1882), s 235—Order absolute for sale, Application for—Verification of application—*

Limitation—Transfer of Property Act (IV of 1882), s 89 —An application for an order absolute for sale of mortgaged property under the provisions of s 89 of the Transfer of Property Act, 1882, is not an application for execution of a decree, and need not therefore be in the form prescribed by s 235 of the Code of Civil Procedure A decree was passed in

successive instalments, the whole amount was to become at once due and payable The mortgagor having defaulted in payment of the instalments due in the years 1297, 1298, and 1299 (1890, 1891, and 1892), the mortgagee, on the 18th February 1893, presented an application to the Court under s 89 of the Transfer of Property Act for an order absolute for sale That application was not verified by the mortgagee, and the mortgagor objected that, not being so verified as required by s 235 of the Code,

that the application did not require to be in the form provided by s 235, and consequently the non verification did not affect it, and that it was not barred by limitation AJUDHIA PERSHAD v BALDEO SINGH [I. L. R, 21 Calc, 818

72 ——— *Defective application for execution of decree—Civil Procedure Code (1882), ss 245 and 647—Amendment of execution petition—Limitation*—One, being entitled under a decree of 1809 to a share in the income of a zamindari, obtained a decree in a suit of 1887 against certain recent purchasers of the zamindari, declaring that he had a valid charge on the estate and awarding to him, besides his costs, the amount due in respect of one year He now applied in execution of the latter decree for payment of the amount due in respect of five years as well as his costs. An application to amend the petition for execution by inserting a reference to the former decree was made after the right of the petitioner in respect of some of the years in question had become barred by limitation. This application was refused by the Court of first instance. *Held* that, under the circumstances ... have bee... v. JOH...

73 ——— *Defect in application for execution—Step in aid of execution—Civil Procedure Code, s. 235* —Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of

EXECUTION OF DECREE—*continued.*

4. ORDERS AND DECREES OF PRIVY COUNCIL—*continued.*

lower Courts, and directed the High Court to give effect to its order and declaration in the case. No orders were made by the High Court to this end, and it became the duty of the lower Courts to frame the final decree. The Judge made an order for the restitution of the property, but not an order for repayment of the rents and profits derived therefrom by the plaintiff during his possession. *Held* that the Judge should have made this order also, and that interest should be paid on the mesne profits according to the rule that parties should be restored, as far as possible, to the same position as they were in when the Court by its erroneous action displaced them from it. HAMIDA *alias* KAJOO *v.* BHUDHAN 20 W. R., 238

88. ———— **Execution of order giving effect to judgment of Privy Council**—*Civil Procedure Code, ss. 211, 253, 318—Mesne profits—Cost of receiver and management—Interest on mesne profits—Sureties for execution of decree.*—Land was put up for sale and purchased in execution of a decree. The sale was confirmed and the purchaser was put into possession. On appeal against the order confirming the sale, the High Court held that the sale had been vitiated by certain irregularities and set it aside. The purchaser preferred an appeal to the Privy Council against the judgment of the High Court. While the appeal was pending, he was compelled to deliver up possession of the land, but security was furnished under an order of the Court by persons not being parties to the suit for its re-delivery to him and for the payment of mesne profits in the event of his appeal being successful. Meanwhile the land in question was placed in charge of a receiver on the motion of other persons holding decrees against the judgment-debtors. On appeal the Privy Council reversed the order of the High Court. The purchaser was accordingly replaced in possession of the land, and he applied for execution in respect of the mesne profits against the respondents in the Privy Council and the sureties. The Court of first instance dismissed the application as against the sureties, and limited the applicant's claim against the others to the net income of the land, less the cost of management by the receiver, and allowed him no interest. *Held* (1), although the appeals to the High Court and the Privy Council related to the order confirming the sale, and not to that by which possession was awarded, and the order in Council did not direct payment of mesne profits, yet such payment was within its purview as being a benefit by way of restitution fairly and reasonably consequential upon it—*Rodger* v. *Comptoir D'Escompte de Paris, L. R., 3 P. C., 465,* followed; (2) the application was rightly dismissed against the sureties; (3) the charges involved by the appointment of the receiver should not have been allowed against the petitioner, since they were not necessary in the ordinary course of prudent management; (4) interest at 6 per cent. should have been allowed to the petitioner on the mesne profits for each year from the end of the year to the date of payment. ARUNACHELLAM *v.* ARUNACHELLAM I. L. R., 15 Mad., 203

89. ———— **Decree of Privy Council for costs**—*Civil Procedure Code, s. 610—Execution for costs—Rate of exchange—Meaning of "for the time being."*—Under the last paragraph of s. 610 of the Civil Procedure Code, the amount payable must be estimated at the rate of exchange "for the time being fixed by the Secretary of State for India in Council," and the words "for the time being" mean the year in which the amount is realized or paid or execution taken out, and not the year in which the decree was passed. The decree-holders under a decree passed by Her Majesty in Council having taken out execution for a sum of £119-11 under s. 610 of the Civil Procedure Code,—*Held* that, the rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of exchange on the date of the application for execution was the proper rate of exchange the decree-holders were entitled to. PARAM SUKH *v.* RAM DAYAL . . I. L. R., 8 All., 650

90. ———— *Rate of exchange—Civil Procedure Code (1882), s. 610—Meaning of "for the time being."*—Under s. 610 of the Code of Civil Procedure, the amount payable must be calculated at the rate of exchange for the time being fixed by the Secretary of State for India in Council, and the words "for the time being" have reference only to the time at which the order of the Privy Council was passed, and not to the time at which execution was taken out. *Param Sukh* v. *Ram Dayal, I. L. R., 8 All., 650,* dissented from. Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any Court in this country. *Forester* v. *Secretary of State for India, I. L. R., 3 Calc., 161 : L. R., 4 I. A., 137,* referred to. DAKHINA MOHAN ROY CHOWDHRY *v.* SARODA MOHAN ROY CHOWDHRY . . . I. L. R., 23 Calc., 357

91. ———— **Reversal of decree by High Court and confirmation of original decree by Privy Council**—*Appeal by some only of defendants.*—On the 27th July 1864, a District Court gave the plaintiff a decree in a suit against all the defendants. All the defendants except one, *B*, appealed to the Sudder Court from that decree, and on the 6th March 1865 the Sudder Court set aside the decree and dismissed the suit; the plaintiff appealed to Her Majesty in Council, all the defendants except *B* being respondents. On the 17th March 1869, Her Majesty in Council reversed the Sudder Court's decree, and restored that of the District Court. *Held* that, notwithstanding *B* was not a party to the appeals to the Sudder Court and to Her Majesty in Council, the decree was a valid decree and could be executed against *B*. KISHEN SAHAI *v.* COLLECTOR OF ALLAHABAD . . . . . I. L. R., 4 All., 137

92. ———— **Transfer of decree for execution**—*Territorial jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 223, 610, 649.*—The effect of ss. 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has, territorial jurisdiction, ought, when the

EXECUTION OF DECREE—*continued*

4 ORDERS AND DECREES OF PRIVY COUNCIL—*continued*

Majesty in Council may be executed ANANDAMAYI DASI *v* PURNA CHANDRA RAI

[B L. R, Sup Vol, 506: 6 W. R, Mis, 69

80. ——— Order or declaration of Privy Council—*Mode of application for execution—Act II of 1863, s 14*—A party in a suit, desirous of executing an order or judgment of Her Majesty in Council ought to apply, in conformity with s 14, Act II of 1863 to the Court from which the appeal was finally brought to the Queen in Council, to enforce and execute the decree of Her Majesty in Council

mandatory order so expressed If any difficulty should arise in that form, or be sought to be produced from having recourse to that non-existent ground of objection, the Privy Council will not fail to recommend Her Majesty to deal with such obstructiveness in the most serious and strongest manner IN RE BARLOW *v* ORDE 13 W. R, 175

81. ——— Decree affirmed by Privy Council.—Decrees affirmed by an order of the Privy Council must be executed with the execution of that order, and not as separate decrees LETHBRIDGE *v* PROHLAD SEN 19 W. R, 301

82 ——— *Order of Privy Council—Civil Procedure Code, Act X of 1877,*

444 followed JUGGERNATH SAHOO *v* JUDOO ROY SINGH I. L. R, 5 Calc, 329: 4 C. L. R, 387

83 ——— Application for execution of decree of Privy Council—*Civil Procedure Code, Act X of 1887, s 610—Transmission for execution of order of Her Majesty in Council—Evidence of such order*—The provisions of Act X of 1877, s 610, are not to be construed as restricting the only admissible evidence of an order of Her Majesty in Council to a certified copy, on an application for execution made under that section They must be read as directory, having the object that proper information regarding the order shall be

copy, though not certified by him, might accompany a petition for execution under s 610 HURRISH CHUNDER CHOWDHRY *v* KALISUNDERI DEBI

[I. L. R., 9 Calc., 482: 12 C. L. R., 511

84 ——— *Application to*

85. ——— *Act VI of 1874, s 19*—Where application for execution of an order of Her Majesty in Council has been made elsewhere than in the High Court, the proceedings are invalid JOY NARAIN GIREE *v* GOLUCK CHUNDER MYTEE

[22 W. R., 102

86 ——— Order of Privy Council disturbing possession—*Decree of High Court—Final decree, Possession under*—On appeal by *U*, the High Court set aside a decree which the sons of *K* had obtained in the Court of first instance against *U* and certain other persons in a suit brought by them for possession of one-third of certain real property. At the same time, on appeal by two of the other persons aforesaid, it affirmed a decree which *U* had obtained against these persons and the sons of *K* for possession of two thirds of the same property, in a suit in which he had claimed possession of the

property Her Majesty in Council set aside this

Council, applied for possession of one-third of the property, *U* opposed the application on the ground that

Court Full

Bench Her

Majesty in Council must be executed, notwithstand-

87. ——— Privy Council decree reversing decrees of Courts below where property has been made over—*Restitution—Mesne profits—Interest*—A plaintiff, having sued for possession and obtained a decree which was affirmed in appeal, entered into possession The mesne

EXECUTION OF DECREE—*continued.*

5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued.*

that the objection that the decree-holder did not in his application expressly ask the Court to execute the decree of last instance was under the circumstances a mere technical objection, and there was no reason why the execution asked for should not be allowed. GOBARDHAN DAS *v.* GOPAL RAM

[I. L. R., 7 All., 366

100. ———— **Decree affirmed on appeal**—*Jurisdiction—Civil Procedure Code, ss. 206, 579.*—The effect of s. 579 of the Civil Procedure Code is to cause the decree of the Appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree, and does not reverse or modify it. Where a decree has been affirmed on appeal, the only decree which can be amended under s. 206 of the Code is the decree to be executed, and the decree to be executed is that of the Appellate Court and not the superseded decree of the first Court, though the latter may, if necessary, be referred to for the purpose of executing the appellate decree. The only Court which has jurisdiction to amend the appellate decree is the Court of appeal. So *held* by the Full Bench, MAHMOOD, *J.*, dissenting. *Shohrat Singh* v. *Bridgman, I. L. R., 4 All., 376,* explained and followed. *Kistokinkur Roy* v. *Raja Burrodacaunt Roy, 14 Moore's I. A., 465,* discussed. MUHAMMAD SULAIMAN KHAN *v.* MUHAMMAD YAR KHAN

[I. L. R., 11 All., 267

101. ———— *Amendment of decree by first Court after affirmance—Objection by judgment-debtor to execution of amended decree.*—The decree of a Court of first instance having on appeal been affirmed by the High Court, the first Court altered the decree which had been affirmed, intending to bring it into accordance with the judgment of the High Court. After the decree had been altered, application was made to execute it as altered, but this was opposed by the judgment-debtor on the ground that that was not the decree which could be executed. *Held* by the Full Bench that the objection must prevail on the grounds that the decree sought to be executed was not that of the Appellate Court, and that the decree had been altered by the first Court, which had no power to alter it. *Abdul Hayai Khan* v. *Chunia Kuar, I. L. R., 8 All., 377,* referred to. MUHAMMAD SULAIMAN KHAN *v.* FATIMA I. L. R., 11 All., 314

102. ———— **Confirmation by High Court of decree of lower Court**—*Former dismissal of application for execution of original decree—Effect of an application for execution of appellate decree—Res judicata—Limitation.*—Where the High Court confirms on appeal the decree of a subordinate Court, such confirmation has the same effect as an order of reversal would have had, in so far as it leaves the decree of the High Court as the only decree which exists for the purpose of execution, and the decree of the lower Court becomes incorporated with it. On 23rd July 1888, plaintiff obtained a decree for the redemption of certain lands on payment within three months of the amount due to the mortgagee, which was to be ascertained in execution proceedings. Against this decree the defendant appealed to the High Court. Pending the appeal, the plaintiff presented a darkhast for execution on the 4th October 1888. This darkhast was dismissed, as the plaintiff failed to produce a copy of the mortgage bond within the time allowed by the Court. The three months allowed by the decree for payment expired on the 23rd October 1888. On 11th February 1890, the High Court confirmed the decree, and on 11th April 1890 plaintiff presented a fresh darkhast for execution. Both the lower Courts dismissed this darkhast on the ground that the dismissal of the first darkhast operated as *res judicata. Held* that the plaintiff was entitled to execute the decree, and that his second darkhast was not barred either by limitation or on the principle of *res judicata.* NANCHAND *v.* VITHU

[I. L. R., 19 Bom., 258

103. ———— **Decree to be executed where there has been an appeal.**—Where the Appellate Court has modified the decree of the Court below, the decree of the Appellate Court supersedes entirely that of the lower Court, and is the only decree which can be executed. *Shohrat Singh* v. *Bridgman, I. L. R., 4 All., 376, Gobardhan Das* v. *Gopal Ram, I. L. R., 7 All., 366,* and *Muhammad Sulaiman Khan* v. *Muhammad Yar Khan, I. L. R., 11 All., 267,* referred to. NOURANG RAI *v.* LATIF CHAUDHRI . . . I. L. R., 13 All., 394

104. ———— **Appeal against part of decree—Decree affirmed in appeal**—*Period from which limitation runs after an appeal.*—In a suit for the value of goods and for damages, the Court allowed the claim with respect only to a portion of the plaintiffs' claim, and rejected the rest. The plaintiffs appealed against the latter part of the decree. The decree was confirmed in appeal. The plaintiffs applied for execution of the decree after the expiration of three years from the date of the original decree, but within three years from the date of the appellate decree. The lower Court rejected the application as time-barred, being of opinion that the original decree still existed, there having been no appeal against that part of the decree which allowed the claim. *Held,* discharging the order of rejection, that when the Appellate Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the Appellate Court, which is thenceforth the only decree to be executed. SAKHALCHAND RIKHAWDAS *v.* VELCHAND GUJAR . . . I. L. R., 18 Bom., 203

SHIVLAL KALIDAS *v.* JUMAKLAL NATHIJI DESAI

[I. L. R., 18 Bom., 542

HARKANT SEN *v.* BIRAJ MOHAN ROY

[I. L. R., 23 Calc., 876

105. ———— **Appeal against a decree for redemption**—*Transfer of Property Act, ss. 92, 93—Time fixed for redemption.*—A mortgagor

EXECUTION OF DECREE—*continued*

4 ORDERS AND DECREES OF PRIVY COUNCIL—*concluded*

motion of f the Civil execut on irsdiction ARI alc, 105

order Effect of

ation or amendment of decree—On rece i g and filing under s 610 of the Civil Procedure Code an order of Her Majesty in Council made on appeal from

however erroneous on the suit itself cannot be dis A receiver as a lien on *Bertrand* *ess 13 Moo* *Coal & Iron* *emble*—The proper course for the party aggrieved by the order is to apply to Her Majesty in Council to make the necessary alteration or modification in such order PREMLALL MULLICK v SUMBHOONATH ROY

I L R, 22 Calc, 960

94 ——— Order of Privy Council—Decree for costs—*Rate of Exchange*—In converting into Indian currency the amount of costs expressed in sterling in an order of Her Majesty in Council the rate of exchange is the rate which prevailed at the time when the order was made *oda Mohun* 7, followed

Calc, 283
2 C W N, 89

5 DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW

95 ——— Decree on appeal or review confirming former decree—Where in a review

[23 W R, 0l

96 ——— Decree appealed from

EXECUTION OF DECREE—*continued*

5 DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued*

only decree susceptible of execution, and the specifications of the decrees of the lower Court or Courts as such may not be referred to and applied by the Court executing such decree SHOHRAT SINGH v BRIDGMAN I L R, 4 All, 376

97 ——— Decree appealed from affirmed without stating amount of costs—

[I L R, 6 All, 000

98 ——— *Decree appealed from affirmed without stating amount of costs of lower Court*—The original decree in a suit dis specified On the original al dismissed respondent s cost in the Appellate Court which were specified The decree of the Appellate Court did not contain any specification of the costs of the original Court *Held* that the Court executing the appellate decree might execute it for the costs of the original Court looking to the decree of that Court to ascertain the amount thereof *Shohrat Singh* v *Bridgman I L R 4 All, 376*, referred to BEHARI LAL v KHUB CHAND I L R, 6 All, 48

99 ——— Decree affirming and adopting decree of lower Court—*Decree to be executed where there has been an appeal*—The effect of the decision of the Full Bench in *Shohrat Singh* v *I L R 4 All 376* is nothing more than

affirmed should be executed as though decree of the Appellate Court *Kristo Kinkur Roy* v *Burrodacaunt Roy 14 Moore s I A 465* referred to Where the first Court of appeal affirmed the decree of the Court of first instance and the High affirmed the decree of the lower Appellate

Appellate Court by carrying out the decree of the Court of first instance,—*Held*

EXECUTION OF DECREE—*continued.*

5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued.*

109. ———— **Execution where appeal is brought**—*Copy of decree.*—The application to execute the decree of an Appellate Court should be made to the Court which passed the first decree, upon or after the receipt by that Court of the copy of the decree certified by the Appellate Court; but *quære* whether execution should be allowed to issue upon a certified copy procured by the parties and presented to the Judge by petition. Where the decree to be executed is that of the Zillah Court, and that decree has been affirmed in appeal by the High Court, the party applying for execution should state whether or no a further appeal to the Privy Council has been preferred. TOONDUN SINGH *v.* POKH NARAIN SINGH . . . . **14 W. R., 205**

110. ———— **Agreement that evidence taken in one of analogous cases should be evidence in all**—*Appeal—Effect of reversal on those cases which were unappealable.*—When the first of twelve suits against the same defendants was filed in the Recorder's Court at Rangoon, it was agreed between the parties, by their advocates in open Court, that all legal evidence to be taken in the first suit should be evidence in the rest. When the case came on for hearing, the advocate for the plaintiffs consented that the other cases should follow the finding of the Court in the first case, but the advocate for the defendant refused assent. Judgment was given in favour of the plaintiffs, and was also entered up in all the remaining cases. Defendant appealed from these decisions to the High Court, which reversed the Recorder's decision in the first case, and subsequently, without hearing argument, reversed the decisions in such (seven) of the eleven as were appealable. *Held* that the decrees passed by the Recorder's Court in the four unappealed suits were good decrees, on which execution could be issued in the usual form, provided they were not altered on review. NGA BIKE *v.* SNADDEN . . . **9 W.R., 276**

111. ———— **Execution pending appeal**—*Landlord and tenant—Enhancement of rent—Decree for enhanced rent, and in default possession to be given—Possession taken pending appeal—Decree confirmed on appeal—Time for complying with decree—Application by defendants to be restored to possession on payment of amount ordered by appellate decree.*—On the 13th February 1889, the plaintiffs obtained in the District Court of Satara a decree, on appeal against the defendants, who were their tenants, ordering them to pay R34 as the rent of certain land for the year 1882-83; and R50 a year as rent from the 5th April 1883, on which date the plaintiffs had given them notice of enhancement. In default of payment by the defendants, the plaintiffs were to take possession of the land. The plaintiffs were to give the defendants credit for any sums which they had paid as rent since the year 1882-83. Both parties appealed to the High Court from this decree. While these appeals were still pending, the plaintiffs, on the 13th February 1890, applied for execution of the decree. They prayed for immediate possession and for R334 alleged to be the rent due under the decree, *viz.*, R34 for 1882-83, and R50 for each of the six years from 1883-84 to 1888-89 inclusive. The application was granted by the Subordinate Judge, and the plaintiffs obtained possession on the 19th February 1890. On the 20th March 1890, the defendants applied to be restored to possession, stating that they had appealed to the High Court against the decree of the District Court, which had fixed their rent at the enhanced rate of R50, and that their appeal was still pending; that the sum of R334 was not due to the plaintiffs, inasmuch as they (the defendants) had continued to pay the rent at the old rate (*viz.*, R34) to the village officers together with the local fund cess R2-2-0, being a total of R36-2-0 for each of the six years. They contended that the plaintiffs were thus entitled only to R83-4-0, and not R334, and they claimed to get back the land on the ground that the plaintiffs had obtained possession on an illegal application. While this application of the 20th March 1890 was still pending, the appeals against the District Court's decree of the 13th February 1889 came on for hearing before the High Court, which confirmed that decree on the 17th July 1890. Thereupon the defendants, on the 1st August 1890, brought into Court R98 (being the difference between the old rent which they had paid and the enhanced rent payable under the confirmed decree), and applied to be restored to possession. On the 6th February 1891, the defendants' application of the 20th March 1890 came on for hearing, and was rejected by the Subordinate Judge on the ground that the defendants had not obeyed the District Court's decree. The defendants thereupon appealed to the District Court, which reversed that decision, and ordered that possession should be given to the defendants on the ground that the time for payment of the amount due under the decree should be reckoned from the date of the confirmation of the decree by the High Court, *viz.*, 17th July 1890, and that by their payments made to the village officers and their payment into Court on the 1st August 1890 the defendants had obeyed the decree, and were entitled to be put back into possession. The plaintiffs appealed to the High Court. *Held* (reversing the order of the District Court and restoring that of the Subordinate Judge) that the defendants could not recover possession. The fact that they had appealed to the High Court could not prevent the decree of the District Court from being executed, or enlarge the time for payment of the rent as decreed by that Court. No stay of execution was asked for, and all that the Subordinate Judge had to see in February 1890 was whether payment of rent had been made in accordance with the terms of the decree of the District Court made on the 13th February 1889. The defendants had not paid that rent when the plaintiffs executed the decree on the 19th February 1890. The decree was legally executed before the High Court's decree was passed on the 17th July 1890, and that execution could not be afterwards cancelled, because of the High Court's decree. When the decree of the District Court was passed, the defendants should at once have paid to

EXECUTION OF DECREE—*continued*

5 DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued*

obtained a decree for redemption of his mortgage "within six months from the date of this decree" The mortgagee appealed but the Appellate Court confirmed the decree The mortgagor sought to redeem within six months from the date of the appellate decree, but more than six months from the date of the original decree *Held* that, though the decree of the Appellate Court became the final decree in the suit, and the only one capable of execution, yet *unless the time for payment of the redemption money* has been postponed under s 93 of the Transfer of Property Act or the decree of the original Court has been modified by an order on the appeal that the redemption money should be paid within six months of the date of the Appellate Court decree, the mortgagor may lose his right of redemption, the Court, therefore, to which application for execution was made should, before passing orders on the application have given the plaintiff time to apply to the District Court to amend the decree under Transfer of Property Act, s 92 MANAVIKRAMAN *v* UNNIAPPAN

[I. L R, 15 Mad, 170

106 ———— **Decree for redemption of mortgage**—*Payment of the mortgage amount within three months—Absence of foreclosure clause —Appeal by mortgagee—Payment by mortgagor of the decretal amount after the expiration of three months—Withdrawal of the appeal by mortgagee—Computation of time for execution*—In a redemption suit filed by the plaintiffs (the mortgagors), they obtained a decree on the 1st March 1886, whereby they were directed to pay the defendant (the mortgagee) the sum of R649 11 0 within three months whereupon they were to get possession of the mortgaged property The decree contained no clause of foreclosure in the event of non payment On the 19th April 1886, the defendants appealed to the High Court against the decree On the 12th October 1886, long after the expiration of the three months prescribed by the decree, the plaintiff paid R649 11 0 into the lower Court, and applied for execution of the decree The Court made an order allowing the payment and granted execution, holding that it had power to extend the time for payment, and

decree At the date of this application the money which the plaintiff had paid on the 12th October 1886 was still in Court *Held* that the withdrawal of the appeal would not afford a fresh starting point, as the withdrawal rendered it unnecessary for any decree to be drawn up, and the only decree which could be executed was that which was passed by the original Court in March 1886 CHUDASAMA MANABHAI MADARSANG *v* ISHWARGAR BUDHAGAR

[I L R, 16 Bom., 243

107. ———— **Conditional decree**—*Civil Procedure Code, s 214—Pre emption—Deposit of purchase money—Computation of time allowed for payment*—In a suit for pre emption, the decree of the Court of first instance was conditional upon payment of the purchase money within one month from its date After this period had expired without payment, the defendants appealed from the decree The appeal was dismissed and the decree affirmed, and no fresh period for payment was expressly allowed by the decree of the Appellate Court *Held* that the decree of the Appellate Court must be taken to have incorporated the terms of the decree of the Court of first instance, that the period of one month allowed for payment of the purchase money must be calculated from the date of the Appellate Court's decree, and that payment by the decree-holder within one month from that date was in time

R, 4 All, 376,

rosad Singh, I

v Gopal Ram,

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Meah, I L R, 13 Calc, 13, and *Daulat v Bhukandas Manekchand, I L R, 11 Bom, 172,* referred to. RUP CHAND *v* SHAMSHUL JEHAN

[I. L R, 11 All., 346

108 ———— **Decree of Appellate Court** —*Execution of decree for rent and cancelment of lease—Computation of time for payment from "date of decree" under Chota Nagpur Landlord and Tenant Act (Bengal Act I of 1879), s 88*—A decree under s 88 of the Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879) provided that, on failure of the defendant (tenant) to pay the amount due under the decree within fifteen

decree of the original Court was not executed pending the appeal to the higher Court, the words "date of the decree" in the latter part of s 88 of Act I of 1879 ought to be read as the date of the final decree, that the decree of the Appellate Court was the final decree and the only decree capable of

v LALA ROGHUNATH SAHAI

[I. L R., 22 Calc, 467

EXECUTION OF DECREE—*continued.*

6. DECREES UNDER RENT LAW—*continued.*

8 *Calc.*, 675 : 10 *C. L. R.*, 399, followed. *Per* MITTER, *J.*—*Quære* whether, having regard to the provisions of s. 22, Act VIII of 1869, which is not controlled or modified by any subsequent section of the Act, all raiyats, whether they have a right of occupancy or not, and whether such right of occupancy be saleable by the custom of the country or not, are not liable to ejectment if an arrear of rent remains due at the end of the year. FAKIR CHAND *v.* FOUZDAR MISSER . . I. L. R., 10 Calc., 547

120. ———— *Sale for arrears of rent—Under-tenure—Bengal Act VIII of 1896, ss. 34, 59-61, and 65—Sale of property other than under-tenure.*—Where a decree had been obtained for arrears of rent of an under-tenure and in execution thereof application was made for the attachment and sale of a certain property of the judgment-debtor, other than the tenure for which the arrears were due, objection was taken that the kabuliat stipulated that the tenure itself should be first sold in execution of the decree. *Held* that, the kabuliat not being referred to or incorporated with the terms of the decree, it was not open to the judgment-debtor to go behind the decree as to the mode in which it was to be executed. But *held,* on the construction of Bengal Act VIII of 1869, ss. 59-61 and 65, that the under-tenure should first be sold before any other immoveable property should be made available. S. 34 of that Act (introducing the procedure laid down in the Civil Procedure Code into rent-suits, "save as in Act VIII of 1869 otherwise provided") made no alteration in this respect, ss. 59-61 and s. 65 specially providing for such mode of execution. LALIT MOHUN ROY *v.* BINODAI DABEE

[I. L. R., 14 Calc., 14

121. ———— *Decree for arrears of rent—Under-tenure—Sale of property other than under-tenure—Arrest of judgment-debtor—"Charge"—Bengal Tenancy Act (VIII of 1885), s. 65—Transfer of Property Act (IV of 1882), ss. 68, 100.*—A landlord who has obtained a decree for arrears of rent of an under-tenure is not restricted by the provisions of the Bengal Tenancy Act (Act VIII of 1885) to executing such decree in the first instance by sale of the under-tenure, but is at liberty to execute in the ordinary manner against the person or other property, whether moveable or immoveable, of his judgment-debtor. The provisions of s. 68 of Transfer of Property Act are not amongst those made applicable by s. 100 of that Act to a person having a charge within the meaning of the latter section. *Semble*—The "charge" referred to in s. 65 of the Bengal Tenancy Act (VIII of 1885) is not such a "charge" as that defined by s. 100 of the Transfer of Property Act. *Lalit Mohun Roy* v. *Binodai Dabee, I. L. R., 14 Calc., 14,* explained. FOTICK CHUNDER DEY SIRCAR *v.* FOLEY

[I. L. R., 15 Calc., 492

122. ———— *Execution of rent-decree obtained against a patnidar—Property other than the tenure proceeded against—Bengal Tenancy Act (VIII of 1885), s. 65.*—Where a landlord obtains a decree for rent against his tenant, which is on the face of it a decree for a sum of money without creating a charge upon the tenure, he is at liberty in execution to bring to sale property of his judgment-debtor other than the tenure itself. S. 65 of the Bengal Tenancy Acts creates a first charge upon the tenure for its rent, and puts the landlord in the position of a first mortgagee so far as the rent is concerned, but the tenant remains personally liable for the rent, so that the landlord has a charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt to him, and he has therefore a right to avail himself of either of these remedies. TARINIPROSAD ROY *v.* NARAYAN KUMARI DEBI

[I. L. R., 17 Cal., 301

See also SOURENDRA MOHAN TAGORE *v.* SURNOMOYI . . I. L. R., 26 Calc., 103

123. ———— **Effect of partial execution.**—Where a decree under ss. 22 and 78, Act X of 1859, for the ejectment of a raiyat from three plots of land was executed against two of the plots,—*Held* that the pottah was not in force as regards the third plot also. KALEE CHURN BANERJEE *v.* MAHOMED HASHEM . . . . . . 7 W. R., 8

124. ———— **Subsequent execution against same property in hands of purchaser**—*Beng. Act VIII of 1869, s. 61.*—*A*, a judgment-creditor, having obtained two decrees, one for money, the other for the rent of certain tenures, sold his debtor's right and interest in the tenures in execution of his money-decree, and afterwards in execution of his decree for rent again put up for sale the same tenures. At the second sale, *B* became the purchaser of whatever could pass under such sale. *A* subsequently sued and obtained a decree against *B* for arrears of rent that had become due in respect of the said tenure since the last supposed sale to him, and in execution of such last-mentioned decree again attached the tenures. On the intervention of third parties, the tenures were released from attachment. *A* having applied to levy execution on other immoveable properties of *B*,—*Held* that, the tenures having been released from attachment, *A* was not entitled, under s. 61 of Bengal Act VIII of 1869, to proceed against the other immoveable property of *B*, it being open to him to show by a regular suit that the tenures were liable to be sold in execution of his decree; and, further, that upon the facts of the case he had disentitled himself to any equitable relief. HURRISH CHUNDER ROY *v.* COLLECTOR OF JESSORE

[I. L. R., 3 Calc., 712

125. ———— **Decree for measurement of land**—*Beng. Act VIII of 1869, s. 37.*—A decree under s. 37 of Bengal Act VIII of 1869, declaring the plaintiff's right to measure the lands of his tenants, is not capable of execution by a Civil Court, but entitles the plaintiff himself to proceed with the measurement, and, in the event of his being opposed

EXECUTION OF DECREE—*continued*

5 DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*concluded*

the village officers the balance of the rent due according to that decree, or, on the second appeal to the High Court being made, they should have applied for stay of execution They followed neither course, and the decree was legally executed The claim in the plaintiffs' application for execution may have been excessive, but the defendants had never attempted to pay anything beyond the old rent. AMINABI v. SIDU **I. L. R., 17 Bom., 547**

112. ———— **Execution of High Court's order for costs**—*Procedure applicable to High Court's order in revisional jurisdiction—Civil Procedure Code, 1882, s 647* —The same procedure that

execute the latter must be made to the Court which passed the decree against which the revisional application was preferred, and that Court must proceed to execute the decree or order passed on revision, according to the rules prescribed for the execution of its own decrees GOLD v GOLDENBERG **[I. L. R, 16 Bom, 550**

6 DECREES UNDER RENT LAW

113. ———— **Mode of execution**—*Sale of property other than that on which arrears are due* —A Collector was held to have acted without jurisdiction in ordering the sale of an estate in execution of a decree before proceeding against the tenure upon which the arrear accrued JOKEE LAL v NUR SING NARAIN SINGH **4 W. R., Act X, 5**

114. ———————— *Decrees under Act X of 1859—Powers of Collector* —A Collector had power, under Act X of 1859, to sell in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable under-tenure, only such moveable property as was capable of being manually seized and he could issue process against immoveable property only when recourse could not be had to the person or to the moveable property capable of being manually seized CHANDRA KANT BHATTACHARJEE v JADUPATI CHATTERJEE **[1 B. L. R., A C, 177 : 10 W. R., 224**

115. ———————— *Power of Collector.—A* obtained a decree against *B* for arrears

to be attached On an application by *B* to the High Court to set aside the attachment,—*Held* that the Collector had no jurisdiction to attach the property. The decree could not be executed by the attachment of any immoveable property, except the tenure, before it was shown that satisfaction of the decree could not be

EXECUTION OF DECREE—*continued*

6 DECREES UNDER RENT LAW—*continued*

obtained by execution against the person or moveable property of the debtor DESARATULLA v NAZIR ALI KHAN **1 B. L. R., A. C., 216**

DEANUTOOLLAH v SIDHEE NAZIR ALI KHAN **[10 W. R., 341**

116 ———————— *Collector, Power of—Act X of 1859* —*A* obtained a decree against *B* for arrears of rent *C* was an under tenant of *B*

und

B,

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Act X of 1859 rent is moveable property, and that the Collector, therefore, was competent to sell it in execution of the decree, and to effect the sale to *A* MAHES CHANDRA CHATTAPADHYA v GURUPRASAD ROY **5 B L R, 115 : 13 W. R., 401**

117. ———————— *Sale of under-tenure—Sale of other immoveable property of judgment debtor—Beng Act VIII of 1859, s 34 and ss 59 61* —A judgment creditor, who has obtained a decree for arrears of rent due in respect of an under-tenure transferable by its own title-deeds or by the custom of the country, is not bound to bring that under tenure to sale in execution before he can pro

NOKEE NATH ROY **[I. L. R, 7 Calc, 748 : 9 C. L. R., 324**

118 ———————— *Bengal Rent Act, 1869, s 59—Landlord and tenant—Suit for arrears of rent—Ejectment* —The term "under tenure," as

TENDRA ROY v AENA BEWA **[I L. R., 8 Calc, 675 : 10 C. L. R, 399**

119. ———————— *Suit for arrears of rent—Ejectment—Transferable tenure—Beng Act VIII of 1869, ss. 22, 59* —In a suit for arrears of rent and for ejectment by a landlord against a tenant who had a right of occupancy in the holding transferable by sale,—*Held* (MITTER, J, doubting) that the tenant was not liable to ejectment, and that the landlord's only remedy was to sell the holding under the provisions of s. 59, Act VIII (B C of 1869 *Krishtendra Roy v. Aena Bewa, I*

EXECUTION OF DECREE—*continued.*

7. NOTICE OF EXECUTION—*concluded.*

to apply under s. 212 of Act VIII of 1859. PURNA CHUNDRA MOOKERJEE *v.* SARADA CHURN ROY [3 B. L. R., Ap., 21 : 11 W. R., 241

132. ——— **Presumption of service of notice of execution** — *Civil Procedure Code, 1859, s. 216—Omnia præsumuntur rite esse acta.*—A notice under s. 216 stands upon a different footing from a summons or other notice which a party is bound to serve, and it must be presumed that a Court, until the contrary is proved, has duly issued such notice where required by law to do so. BIMOLA SOONDUREE DASSEE *v.* KALEE KISHEN MOJOOMDAR [22 W. R., 5

133. ——— **Objection to sufficiency of notice of execution**—*Time for taking objection.*—An objection to the sufficiency of the notice of execution should be taken at the earliest opportunity. REWUT KONWUR *v.* OMRAO BAHADOOR SINGH [21 W. R., 148

134. ——— **"Order passed on previous application for execution"**—*Civil Procedure Code, 1859, s. 216—Previous proceedings for execution—Interlocutory suit.*—A suit brought by a judgment-creditor against his judgment-debtors and a third party may be of such a nature as to count as previous proceedings in execution for the purpose of saving time in regard to the operation of the statute of limitation; but it cannot in any sense be considered as an "order passed on a previous application for execution" within the meaning of Act VIII of 1859, s. 216. PEAREE SOONDUREE DEBIA *v.* BHUDO SOONDUREE DEBIA . 23 W. R., 32

135. ——— **Service of notice of execution**—*Civil Procedure Code, 1859, s. 216—Limitation—Act XIV of 1859, s. 20—Proceeding to enforce decree.*—The service of a notice under s. 216 of Act VIII of 1859, if made *bonâ fide* with a view to take further proceedings, is sufficient to keep a decree alive. DHIRAJ MAHTAB CHAND BAHADOOR *v.* LAKHI BIBEE . 6 B. L. R., Ap., 146

Also under the Limitation Act, 1871. *See* KOONJ BEHAREE LAL *v.* GIRDHARI LAL . 22 W. R., 484

136. ——— **Service of notice of application for execution.**—Service of notice of application for execution of decree by affixing a copy of it on the wall of the house where defendant was residing is sufficient. CHILICANY BHASKARARAYENIN GARU *v.* PILLARY SETTY RAGAVALU NAIDU [5 Mad., 100

See MAKOONDONATH BHADOORY *v.* SHIB CHUNDER BHADOORY . . . 19 W. R., 102

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

137. ——— **Meaning of the words "a copy of any order for the execution of the decree"**—*Civil Procedure Code, 1882, s. 224, cl. (c).*—The words "a copy of any order for the execution of a decree" in s. 224, cl. (c), of the Code of Civil Procedure (Act XIV of 1882) mean a copy of any subsisting order. HATHIBHAI NAHANSA *v.* PATEL BECHAR PRAGJI . I. L. R., 13 Bom., 371

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*continued.*

138. ——— **British Courts in India, Power of, to send their decrees for execution to Courts not in British India**—*Practice.*—The Courts of British India have no authority to send their decrees for execution to Courts not in British India. KASTURCHAND GUJAR *v.* PARSHA MAHAR . . . I. L. R., 12 Bom., 230

139. ——— **Transfer of decree for execution**—*Effect of transfer on decree.*—A decree transmitted to a Court for execution is to be regarded as a decree of that Court for purposes of execution. MOBARUCK ALI *v.* SOOMEE KUNJA CHAREE [3 N. W., 168

140. ——— *Separate application to execute same decree.*—Separate applications to execute the same decree do not constitute separate causes or suits. Thus, when a Judge, *ex necessitate rei*, executes a decree of a Principal Sudder Ameen, he is at liberty to carry out that execution to whatever extent may be necessary. SHARODA MOYEE BURMONEE *v.* WOOMA MOYEE BURMONEE [8 W. R., 9

141. ——— *Power of Court to which decree is transferred—Notice under s. 216, Civil Procedure Code.*—The Court to which a decree is sent for execution by another Court has the power to take the same steps, including the issue of a notice under s. 216 of the Code of Civil Procedure, which it could take in execution of its own decree. CHHAGAN LALL NARBHERAM *v.* JAMNADAS MANCHARAM . . . . 11 Bom., 19

142. ——— *Transmission of record.*—Where a Subordinate Judge's Court in one district executes the decree of a Subordinate Judge's Court of another district, it is bound by s. 292, Act VIII of 1859, to comply with a requisition from the latter Court to transmit to it the record of the case. INDUR CHUNDER DOOGAR *v.* GOPAL CHAND SATIA [11 W. R., 230

143. ——— *Order transferring decree for execution—Code of Civil Procedure (1882), ss. 224 and 226—Whether an order forwarding a decree by a District Judge to a Subordinate Judge for execution requires his signature.*—An order forwarding a decree for execution to a subordinate Court by the Court of the District Judge, where the decree has been transmitted under s. 226 of the Code of Civil Procedure, need not be signed by the District Judge himself. If the order is issued under his authority, the absence of his signature does not vitiate the proceeding. JOGENDRA CHANDRA GHOSE *v.* MAHESH CHANDRA DUTTA [I. L. R., 23 Calc., 480

EXECUTION OF DECREE—*continued*

6. DECREES UNDER RENT LAW—*concluded*

by the tenants, to invoke the aid of the authorities to assist him HAZARI KHAN *v* RAMDHONE CHAKI [7 C L R., 345

126 ——— Charge created by pay-

by a lambardar under s 93 (*g*) of the North Western Provinces Rent Act, the decree holder caused to be attached a certain share upon which the arrears of Government revenue which he had satisfied had accrued In defence to a suit brought by certain purchasers of the same property from the judgment debtors to have it declared that the property
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pleaded that
of revenue
vendors he had obtained a charge on it, and could bring it to sale to satisfy the decree *Held* that a charge of this nature could not be enforced in execution of a decree, which was merely a personal one for arrears of Government revenue against persons against whom it was passed by a Revenue Court not competent to establish or enforce a charge on property or to do more than pass a personal decree, and whose powers in execution were confined

7. NOTICE OF EXECUTION

127. ——— Decree more than a year old—*Civil Procedure Code 1859, s 216* —A Court

SHAHA 13 W. R., 400

128 ——— Execution of decree against legal representative—*Civil Procedure Code, s 248—Condition precedent* —The issuing of the notice required by s 248 of the Code of Civil Procedure is a condition precedent to the execution of a decree against the legal representative of a deceased judgment debtor GOPAL CHUNDER CHATTERJEE *v* GUNAMONI DASI [I L. R, 20 Calc, 370

129 ——— Omission to give notice of execution—*Civil Procedure Code, 1877, s 248—Death of judgment debtor after decree—Execution against legal representative* —When a judgment-debtor has died after decree, but before application

the execution is applied for to show cause why the decree should not be executed against him, and

EXECUTION OF DECREE—*continued*

7 NOTICE OF EXECUTION—*continued*

its omission to do so will invalidate the entire subsequent proceedings A judgment having been obtained by *A* against *B* and *B* having died before application was made for execution, *A* applied for execution of his decree upon a tabular statement in which the judgment debtor was stated to be *C*, widow of *B* and *C* was also described as the person against whom execution was sought Upon this application the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution and purchased by *A* No notice under s 248 of the Civil Procedure Code had been served upon *C* before issue of execution. *Held* that the application was improper that the order for attachment and sale should not have been made,

fact of there being in the Code of Civil Procedure no section expressly authorizing a Court to set aside its proceedings is immaterial as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of

unless an order had been made and the property

Court has already ordered execution to issue against him on a previous application IN THE MATTER OF THE PETITION OF RAMESUREE DASSEE *v* DOORGADASS CHATTERJI [I. L. R, 6 Calc, 103. 7 C. L R, 85

IMAMUNNISSA BIBI *v* LIAKAT HUSSAIN [I. L R, 3 All., 424

130 ——— Civil Procedure Code (Act XIV of 1882), s 248—Auction purchaser —Where in execution of a decree, for the execution of which a notice to the judgment debtor was necessary under s. 248 of the Civil Procedure Code, certain moveable property was attached and sold without any such notice having been given,—*Held* that the proceedings in execution were void and of no effect, and it made no difference that the auction purchaser was a third party and not the dec
Hussain
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103,
GYAWAI

131. ——— Application for notice of execution—*Power to proceed in execution on application for notice—Civil Procedure Code, 1859, s 212* —Although a Judge should when necessary, direct notices to be served on judgment debtors he cannot proceed in execution on a mere application to issue such notices over the parties who are bound

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued.*

directing a notice to issue, calling on the defendant to show cause why the decree should not be executed by the High Court. On appeal the order was upheld. RAMDOSS *v.* LALLAH NUNDOCOOMAR [1 Ind. Jur., N. S., 189

KHODA BUKSH *v.* HURREE RAM 2 N. W., 399

153. ———— *Civil Procedure Code, 1859, s. 287.*—When a copy of a decree or order for execution is transmitted by the Judge of one district A to the Judge of another B for the purpose specified in Act VIII of 1859, s. 287, the Judge of B has no authority to transfer it to a third district. If complete execution cannot be had in district B, it is the business of the decree-holder to have his decree re-transmitted to the Court whose duty it is to execute it and there to obtain a fresh certificate for transmission to any other district where execution may be practicable. DHUNPUT SINGH *v.* WOOMA SUNKUREE GOOPTA . 21 W. R., 337

154. ———— *Power of Court to which decree has been transferred—Civil Procedure Code, 1859, ss. 285, 286, Certificate under.*—The jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under ss. 285, 286 of Act VIII of 1859, transferring the decree already transferred to it to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. SHIB NARAIN SHAHA *v.* BIPIN BEHARY BISWAS . I. L. R., 3 Calc., 512 [1 C. L. R., 539

155. ———— *Order passed in Court to which proceedings are transferred—Civil Procedure Code, 1877, s. 239.*—Under s. 239 of Act X of 1877, a Court to which a decree has been transferred may refer the objector to the Court which passed the decree. JASSODA KOER *v.* LAND MORTGAGE BANK OF INDIA [I. L. R., 9 Calc., 916 : 11 C. L. R., 348

156. ———— *Jurisdiction of Court executing such decree—Code of Civil Procedure (Act X of 1877), s. 239.*—Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. BEERCHUNDER MANIKYA *v.* MYMANA BIBEE . . . . . I. L. R., 5 Calc., 736

RAM CHUNDER *v.* MOHENDRO NATH BOSE [21 W. R., 141

DHUNESH KOEREE *v.* OOLFUT HOSSEIN [21 W. R., 219

157. ———— *Civil Procedure Code (1882), ss. 223 and 239—Power of Court executing a decree sent for execution to question propriety of order transferring it.*—Where a decree is passed by one Court and sent to another Court for execution, the Court executing the decree cannot question the propriety of the order transferring the decree to such Court for execution. MULLA ABDUL HUSSEIN *v.* SAKHINABOO . I. L. R., 21 Bom., 456

158. ———— *Duty of a Court to which a decree is transferred for execution.*—A Court to which a decree has been sent for execution cannot refuse execution on the ground that questions are raised between the parties that cannot properly be dealt with in execution. RAJEBAY CHANDRARAO *v.* NANABAY KRISHNA JAHAGIRDAR [I. L. R., 11 Bom., 528

159. ———— *Civil Procedure Code, 1877, s. 298—Procedure.*—Where, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 239 of the Code of Civil Procedure. BEERCHUNDER MANIKYA *v.* MYMANA BIBEE . . . . I. L. R., 5 Calc., 736

160. ———— *Jurisdiction of Court transferring decree—Question of jurisdiction.*—Where a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution-proceedings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn. CHOGALAL *v.* TRUEMAN [I. L. R., 7 Bom., 481

161. ———— *Procedure in execution of decree of High Court on appeal from mofussil.*—Where the High Court passes a decree on appeal from a mofussil Court, the Court which has to execute the decree of the High Court is governed by the rules which govern the execution of its own decrees. KISTO KINKUR GHOSE ROY *v.* BURODAKANT SINGH ROY . . . . . 10 B. L. R., 101 [17 W. R., 292 : 14 Moore's I. A., 465

S. C. in High Court. KISHEN KINKUR GHOSE *v.* BURODAKANT ROY . . . . 8 W. R., 470

162. ———— *Law governing transferred case—Limitation.*—Execution is a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Such being the case, the law of limitation prevailing at the time of the application must govern it. PASUPATI LUTCHMIA *v.* PASUPATI MUTHAMBHATLU [I. L. R., 1 Mad., 52

EXECUTION OF DECREE—*continued*

8. TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*continued*

144 ———— *Civil Procedure C. P. (1882), s. 223 and 226* [illegible]

[illegible] sent for execution to the Court of a Munsif in another district and not to the District Court as provided for in s 223 of the Civil Procedure Code *Held* that the Munsif s Court to which the decree was sent for execution, had no jurisdiction to execute it without an express order of the District Judge under s 226 DEBI DIAL SAHU *v* MOHARAJ SINGH

[I L R, 22 Calc, 764

145 ———— *Striking off case for default—Procedure* —When a case is transferred by the Court which passed the original decree to another Court in order that the decree may be executed, and the proceedings on the application for execution have been struck off the file for default the proper Court to apply to for a fresh issue of execution is the Court which passed the original decree, and not the Court to which the case was transferred to be executed BHOOP SINGH *v* SUNKER DUTT JHA . 8 W R, Mis, 47

146 ———— *Power of the Court in executing transmitted decree* —Where a decree was sent to a Court for execution and was subsequently transferred by assignment and the transferee applied for the execution of the decree to the Court to which the decree was sent for execution —*Held* that such application should be made not to such Court but to the Court which passed the decree KADIR BUKSH *v* ILAHI BUKSH

[I L R, 2 All, 283

147. ———— *Civil Procedure Code, 1882 ss 232 and 578—Jurisdiction of a Court where a decree has been transferred for execution to substitute the name of the transferee of the decree—Whether an order passed without jurisdiction can be cured by the provisions of s 578 of the Civil Procedure Code* —An application by the transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed the decree, and the Court to which the decree has been transferred has no jurisdiction to entertain it *Sheo Narayan Singh* v *Harbans Lall, 5 B L R 49 14 W R 65 Ismail* v *Kassam, 9 Bom H C 46* and *Kadir Bakhsh* v *Ilahi Bakhsh, I L R, 2 All 283,* referred to In a case where a decree has been transferred to another Court for execution and that [illegible]

[illegible] sions of s 578 of the Civil Procedure Code *Sham Lal Pal* v *Modhu Sudan Sircar, I L R 22 Calc 558* distinguished AMAR CHUNDRA BANERJEE *v* GURU PROSUNNO MUKERJEE

[I. L. R., 27 Calc, 488

148 ———— *Powers of Assistant Judge where case is sent to District Judge* —When an Assistant Judge is invested with all the powers of a District Judge within any part of the district of such Judge the Court of the Assistant Judge must be considered equally with the Court of the District Judge the principal Civil Court of original jurisdiction and a decree sent for execution in such part of the district is properly executed by or under the directions of such Assistant Judge GOBIND HARI WALEKAR *v* SHIDRAM BIN SHIDMURTI

[7 Bom, A C, 37

149 ———— *Power of Court* [illegible] *1859 s 284* — [illegible] transmitted to [illegible] of Act VIII [illegible] to entertain [illegible] for striking off the case, whatever striking off amounts to BAGRAM *v* WISE

[1 B L R, F. B, 91. 10 W R, F B, 46

150 ———— *Power of Court executing decree to strike off the* [illegible] *execution* [illegible] *1882), s* [illegible] for executi[illegible] decree until the execution has been withdrawn from it or until it has fully executed the decree and has certified that fact to the Court which sent [illegible]

[illegible] application does not terminate the jurisdiction of the Court to execute the decree, nor render it necessary for the Court to send any certificate to the Court which forwarded the decree for execution *Bagram* v *Wise, 1 B L R F B, 91* followed. ABDA BEGAM *v* MUZAFFAR HUSEN KHAN

[I. L R, 20 All, 129

151 ———— *Power of Court to alter decree* —Where a decree is transmitted by one Court to another for the purpose of execution, [illegible]

NUFFER CHUNDER PAUL *v* NADOOROONISSA BEEBEE . 9 W R., 387

TEJA SINGH *v* POKHAN SINGH 10 W R., 95

[1 B L R, A. C, 62

152 ———— *Notice of execution—Civil Procedure Code 1859 s 285* —Where a decree had been obtained in a Zillah Court and sent to Calcutta for execution the Court made an order

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*continued.*

extended to the Chittagong Hill Tracts. *Held* that, as at the time the decree was passed and sent to the Munsif for execution Act VIII of 1859 was in force, and by s. 284 of that Act the [illegible] had a right to have his decree sent [illegible] for execution, he was entitled now to have it executed, as neither Act X of 1877 or XIV of 1882 by express words or implication deprived him of that right. *Held*, further, that the intention of the Legislature was, with regard to decrees obtained in scheduled districts after the Code of 1877 came into force, that such decrees should not be executed by Courts in British India unless and until, under the provisions of s. 5 of the Scheduled Districts Act (XIV of 1874), the Government had issued the notification therein referred to applying to the scheduled districts such portion of the Code of Civil Procedure as they thought proper to apply. *Quære*—Whether a decree passed by a Court in a scheduled district and sent for execution to a Court in a regulation district after Act X of 1877 came into force can be executed by the latter Court in the absence of such a notification extending the provisions of the Code of Civil Procedure to the scheduled districts. KASHI MOHUN BORUA *v.* BISHNOO PRIA **I. L. R., 15 Calc., 365**

182. ——— *Jurisdiction of Court executing a decree—Jurisdiction as between District Judge and Subordinate Judge of a Court making a decree to execute it notwithstanding certain special matters.*—The sale of mortgaged property was decreed by a Subordinate Judge. Before the sale another suit, instituted in the same Court for the purpose of having other property substituted in lieu of part of that mortgaged, was transferred to the Court of the District Judge, who decreed, upon consent, that the substituted property should be sold, and that, for the purpose of this sale, this suit should be taken as supplemental to the former one. On the petition of the mortgagee for execution of the decrees, in both suits, in the District Court, it was objected that execution could not proceed therein, on the ground that the decree for sale was that of the Subordinate Court. *Held* that the decree (which affected the whole property mortgaged) was that of the District Court, which accordingly had jurisdiction to execute it. To have enabled the Subordinate Court so to do, an order by the District Court would have been necessary. Matter which had no bearing on the question raised on this appeal having been introduced into the record, it was ordered that all such costs as might have been so occasioned should be disallowed by the Registrar, on the taxation of costs. BISHENMUN SINGH *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 11 Calc., 244 : L. R., 12 I. A., 7

183. ——— *Power of transfer—Civil Procedure Code, 1859, s. 362.*—A Zillah Judge must execute his own decrees, and had no power to direct the Principal Sudder Ameen to take up and dispose of an application for execution. RAJEEB RAM DASS *v.* MAHOMED HOSSEIN

[6 W. R., Mis., 51

This ruling refers entirely to execution under Act VIII of 1859, but not to proceedings before that year, when Judges were competent to refer cases of execution to the Principal Sudder Ameen. NIL KOMUL GHOSE *v.* NOBIN CHUNDER BOSE

[9 W. R., 463

184. ——— *Civil Procedure Code, 1859, s. 6—Act XXIII of 1861, s. 38.*—A District Court is competent, under s. 6 of Act VIII of 1859 and s. 38 of Act XXIII of 1861, to transfer to its own file proceedings in execution of decree pending in a Court subordinate to it. GAYA PARSHAD *v.* BHUP SINGH . . **I. L. R., 1 All., 180**

185. ——— *Power of the District Court to withdraw applications for execution—Mofussil Courts of Small Causes—Jurisdiction—Civil Procedure Code (Act X of 1877), ss. 25 and 647, sch. II.*—Ss. 25 and 647 of the Civil Procedure Code, Act X of 1877, are both applicable to Courts of Small Causes in the mofussil, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the *Civil Procedure Code, Act X of 1877, the District* Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mofussil Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. BALAJI RANCHODDAS *v.* MOHANLAL DALSUKRAM

[I. L. R., 5 Bom., 680

186. ——— *Civil Procedure Code, 1882, s. 223 (d).*—Under s. 223 (*d*) of the Civil Procedure Code, in the case of a Subordinate Judge exercising Small Cause Court powers, the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under s. 20 of Act XI of 1865. For this purpose the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts. BHAGVAN DAYALJI *v.* BALU

[I. L. R., 8 Bom., 230

187. ——— *Civil Procedure Code, 1882, s. 223—Madras Civil Court Act (III of 1873)—Jurisdiction of Munsif's Court—Execution of decree of superior Court.*—Although by the Madras Civil Courts Act, 1871, the ordinary jurisdiction of Munsifs is limited in suits and applications of a civil nature to those in which the subject-matter does not exceed in value R2,500, s. 223 of the Code of Civil Procedure gives jurisdiction to a Munsif's Court to execute a decree in a suit beyond its jurisdiction which has been transferred to it for execution

EXECUTION OF DECREE—*continued*

8 TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued*

163 ———— *Act VIII of 1859 s 284—Question of limitation*—When a decree has been transmitted by the Court which passed it to another Court for execution the latter Court has jurisdiction to try whether or not execution of the decree is barred by the law of limitation *Per* PEACOCK, *C J*—When there are different laws of limitation in force in the two Courts the law applicable to the proceedings in execution of the decree should be the law of the Court to which the decree is transmitted for execution LEAKE *v* DANIEL

[B L R, Sup Vol, 970 10 W R, F B, 10

BUZUR BIBEE *v* JACKSON 5 W R., Mis, 14

CHOTI LAL *v* MANICK CHUND 7 N W, 115

BYKUNTNATH MULLICK *v* JOYGOPAL CHATTERJEE [7 W R, 19

164 ———— *Power of Court—Question of limitation*—The Court to which a decree has been transferred can take cognizance of a question of limitation but the question must be one arising from facts which are legitimately before the Court in the course of execution and not a matter of limitation arising antecedent to transfer IN THE MATTER OF THE PETITION OF SUMAT DAS

[13 B L R, Ap, 27

SOOMUT DAS *v* BHOOBUN LALL 21 W R, 292

165 ———— *Power of Court—Question of limitation—Civil Procedure Code 1859 s 284*—The transfer of a decree from one Court to another under s 284 and the following sections of the Civil Procedure Code does not give the latter Court a jurisdiction to entertain and determine any question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer LUTFULLAH *v* KIRAT CHAND

[13 B L R., Ap, 30
21 W R, 330

166 ———— *Power of Court to deci* [illegible] *itation —Ques* [illegible] *Code (Act X* [illegible] Court makes [illegible] transmits the decree for execution to another Court the latter Court has no power to determine whether execution is barred by limitation The order for execution made by the transmitting Court is binding on the parties until reversed on appeal It is otherwise, however where the transmitting Court has made no order for execution but has merely transmitted the decree and the certificate of non satisfaction HUSEIN AHMAD KAKA *v* SAJU MAHAMAD SAHID

[I L R, 15 Bom, 28

167. ———— *Agreement for satisfaction of judgment-debt by instalments—Civil Procedure Code ss 210 230, 257A—Act XV of 1877 (Limitation Act), sch ii art 179*—A simple money decree was passed in 1871, and was transferred to another Court for execution and in June 1882 an application was made for execution, and shortly afterwards the Court to which the decree had been transferred sanctioned an agreement between the parties for satisfaction of the decree by instal

[illegible]

made and it was granted A further application for execution for the remaining instalments was made in April 1888 *Held* by EDGE *C J* that the Court to which the decree was transferred had no power in 1882 to sanction the agreement under s 257A of the Civil Procedure Code that if the order in June 1885 of the Court passing the decree were regarded as a sanction (which it would be very difficult to hold) that order nevertheless could not

[illegible]

decree was dead as well under s 230 of the Code as under art 179 sch ii of the Limitation Act (XV of 1877) *Held* by STRAIGHT *J* that the order of June 1885 was not and could not be an order sanctioning the agreement of June 1882 and the decree consequently stood unaltered and an application to execute it having been made and granted since Act XIV of 1882 came into operation the decree was

[illegible]

decree by instalments but such sanction can be given only by the Court which passed the decree An

[illegible]

cuted is the decree as originally passed or as altered by a proper order for that purpose as *e g* by an order under s 210 GANDHARAP SINGH *v* SHEODARSHAN SINGH I. L. R., 12 All, 571

168 ———— *Power of Court which passed decree—Release of judgment debtor*—A Judge has no jurisdiction to entertain a petition from and order the release of a judgment debtor imprisoned in execution of a decree while the execution proceedings are before the Subordinate Judge MODHOOSUDUN GHOSE *v* ROMANATH GHOSE

[12 W R., 65

169 ———— *Reasons for transfer*—Every Court is bound to execute its own decree if it can by process (when necessary) issued against the property or person of the judgment debtor it is only when the decree cannot be executed

EXECUTION OF DECREE—*continued*.

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*continued*.

195. ——— *Decree of Small Cause Court—Civil Procedure Code, 1859, s. 287—Act IX of 1850, s. 78.*—Although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under s. 287 of that Code, enforce it against immoveable property also. *Quære*—Whether a Court executing the decree of a Small Cause Court under s. 78 of Act IX of 1850 could enforce it against immoveable property. IN RE JAGJIVAN NANABHAI . **I. L. R., 1 Bom., 82**

196. ——— *Decree of Small Cause Court—Act XI of 1865, s. 20.*—Under s. 20 of Act XI of 1865, a Court of Small Causes may transfer a decree for execution to another Court not only when there has been a sale of such moveables of the debtor as the judgment-creditor has been able to discover, and the proceeds of such sale have not been sufficient to satisfy the decree, but also when no sale has taken place at all and the decree remains unsatisfied by reason of there being no moveable property of the judgment-debtor which can be found within the jurisdiction capable of being sold. IN THE MATTER OF CHANDRA KANTO BISWAS . **3 C. L. R., 558**

197. ——— *Jurisdiction of Small Cause Court—Act XI of 1865, s. 20.*—Except in the manner allowed by s. 20, Act XI of 1865, the Judge of a Small Cause Court could not send a decree of his own Court for execution by another Court, nor could he issue an order under s. 268, Act X of 1877, out of his own jurisdiction. HOSSEIN ALY *v.* ASHOTOSH GANGOOLY . . . . **3 C. L. R., 30**

PARBATI CHARAN *v.* PANCHANAND **[I. L. R., 6 All., 243**

198. ——— *Change of jurisdiction in districts—Held* that after the orders of Government of 1867, dividing the whole of the jurisdiction of the Principal Sudder Ameen of Rajshahye into two portions, the Small Cause Court Judge of Pubna alone had jurisdiction to perform in the district of Pubna the duties which, but for those orders, would have been performed by the Principal Sudder Ameen of Rajshahye. SHAMASOONDUREE DEBIA *v.* BINODE LALL PAKRASHEE . . . **14 W. R., 396**

199. ——— *Code of Civil Procedure (Act XIV of 1882), ss. 223 and 649—Bengal, N.-W.P., and Assam Civil Courts Act (XII of 1887), s. 13—Re-distribution of local areas, Effect of—Jurisdiction of Munsif.*—*A* obtained a decree against *B* in the Court of the First Munsif of Howrah. After the decree, the local area, within which the cause of action arose and the judgment-debtor resided, was transferred from the First to the Second Munsif. On an application by *A* for the execution of his decree in the Court of the Second Munsif, which allowed execution,—*Held* that the Second Munsif had no jurisdiction to entertain the application and allow execution, and that the application ought to have been made in the Court of the First Munsif which passed the decree. KALIPADO MUKERJEE *v.* DINO NATH MUKERJEE **[I. L. R., 25 Calc., 315**

200. ——— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 13, cl. 2—Transfer of Property Act (IV of 1882), ss. 88, 90—Sale in execution of mortgage decree—Execution of decree.*—When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole of a district, the District Judge is not competent, under s. 13 (2) of the Bengal, N.-W. P., and Assam Civil Courts Act, to assign to them different areas so as to limit or define their respective jurisdictions. The Court of such a Subordinate Judge which passed a mortgage-decree is therefore the only Court competent to entertain an application for the execution of the decree and to make an order in furtherance thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the district, but outside the area assigned to it by the District Judge. BACHU KOER *v.* GOLAB CHAND **[I. L. R., 27 Calc., 272**

201. ——— *Power of Court executing decree—Procedure—Decree of Small Cause Court sent for execution to Court of Subordinate Judge—Mofussil Small Cause Court Act, XI of 1865, s. 20, Certificate under—Civil Procedure Code (Act XIV of 1882), s. 239—Stay of execution.*—The plaintiff, having obtained a decree against the defendant in the Court of Small Causes at Poona, applied, under s. 20 of Act XI of 1865, to the Court of the Subordinate Judge at the same place for execution against the immoveable property of the defendant. Notice having been issued to the defendant under s. 248 of the Civil Procedure Code (Act XIV of 1882) calling upon him to show cause why execution should not issue against him, he appeared and applied to be allowed to pay the judgment-debt by instalments, alleging that he was an agriculturist, and pleading his inability to pay in a lump sum. The plaintiff denied that the defendant was an agriculturist. The Subordinate Judge raised an issue as to whether the defendant was an agriculturist, and, having after enquiry found the issue in the affirmative, was of opinion that the decree should be considered a nullity and should not be executed, inasmuch as, the defendant being an agriculturist, the Court of Small Causes had no jurisdiction to pass it. On reference to the High Court,—*Held* that the Subordinate Judge was not competent to question the validity of the Small Cause Court decree, his duty being confined to enforcing it, on the "presentation of a copy of it and certificate," as provided by s. 20 of Act XI of 1865. Nor could he take any notice of the status of the defendant as an agriculturist. The only course open to the defendant was to apply to the Small Cause Court for a review

EXECUTION OF DECREE—*continued*

8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued*

by a District Court NARASAYYA *v* VENKATA KRISHNAYYA I L R., 7 Mad , 397

188 ———— *Power of District Judge to transfer execution proceedings to another Court—Civil Procedure Code ss 25 6 7* —A District Judge has no power to transfer execution proceedings to a subordinate Court *In the matter of Balaji Ranchoddas, I L R, 5 Bom, 680,* and *Gaya Pershad v Bhup Singh, I L R, 1 All, 180,* dissented from KISHORI MOHUN SETT *v* GUL MOHAMED SHAHA [I. L R., 15 Calc, 177

189 ———— *Jurisdiction—Civil Procedure Code (Act XIV of 1882), ss 6 and 223.*—Having regard to the provisions of s 6 of the Code of Civil Procedure a Civil Court has no jurisdiction to execute a decree sent to it for that purpose under s 223 of the Code, when the decree has been passed in a suit the value of subject matter of which is in excess of the pecuniary limits of its ordinary jurisdiction *Narasayya v. Venkata Krishnayya, I L R 7 Mad, 397,* dissented from *Sidheshwar Pandit v Harihar Pandit, I L R, 12 Bom 155, Balaji Ranchoddas v Mohanlal Dulsukram, I L R 5 Bom 680* and *Mungul Pershad Dichit v Grija Kant Lahiri, I L R, 8 Calc, 51,* referred to GOKUL KRISTO CHUNDER *v* AUKHIL CHUNDER CHATTERJEE IN THE MATTER OF THE PETITION OF ISHAN CHUNDER DAS RASHARAJ BOSE *v* GOVINDA RANI CHOWDHRANI MOOLA KUMARI BIBEE *v* MOOL CHAND DHAMANT BEESUN CHAND DOODHURIA *v* MOOL CHAND DHAMANT I. L. R, 16 Calc, 457

190 ———— *Civil Procedure Code 1882 s 223—Jurisdiction* —S 223 of the Code of Civil Procedure, which declares that the Court which passes a decree may on the application of the decree holder, send it for execution to another Court, should be interpreted to mean another Court, having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject matter of its ordinary jurisdiction *Narasayya v Venkata Krishnayya I L R, 7 Mad, 397* dissented from DURGA CHARAN MOJUMDAR *v* UMATARA GUPTA I. L R., 16 Calc, 465

191 ———— *Civil Procedure Code, s 223—Transfer not through District Court* —Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a subordinate Court in the same District, respectively The holder of th decree in the Small Cause suit attached and brought to sale

the decree of the District Munsif was not illegal, (2) that the Subordinate Judge had inherent jurisdiction to execute the decree of the District Munsif. KELU *v* VIKRISHA I L R, 15 Mad, 345

192. ———— *Civil Procedure Code (1882), ss 25 223—Madras Civil Courts Act, s 12—Jurisdiction of Munsif's Court—Execution of decree of superior Court* —As in suits so in execution proceedings the competent forum is ordinarily that indicated by s 12 of the Civil Courts Act but in the five cases mentioned in s 223 of the Civil Procedure Code special reasons exist for departing from that rule and creating a special or extraordinary jurisdiction, the object whereof is to secure to judgment-creditors in certain cases a special facility or convenience. The condition as to the jurisdiction of the subordinate Court to which a suit can be transferred under s. 25 of the Code of Civil Procedure is not laid down in s 223 of the Code, which relates to transfers of applications for execution of decrees, and was omitted therefrom for the special reasons mentioned therein *Narasayya v Venkatakrishnayya, I L R, 7 Mad, 397,* followed *Gokul Kristo Chunder v Aukhil Chunder Chatterjee, I L R, 16 Calc, 457,* and *Durga Charan Mojumdar v Umatara Gupta, I. L R, 16 Calc, 465,* dissented from SHANMUGA PILLAI *v* RAMANATHAN CHETTI [I L. R., 17 Mad., 309

193. ———— *Decree of Small Cause Court—Documents to be transmitted with decree—Civil Procedure Code, 1859, ss 286, 287* —Process of execution against the person or personal property of a judgment debtor may be issued on the decree of a Court of Small Causes by a Court in another district Before issuing such process of execution the Court receiving the decree is bound to see that the provisions in ss 286 and 287 of the Civil Procedure Code have been strictly complied with The documents required to be transmitted for the purpose of obtaining execution are a copy of the de-

194. ———— *Officer with jurisdiction both of Munsif and Small Cause Court* —A certificate of non satisfaction under Act [illegible]

limitation *Held* that though the Munsif was not competent to adjudicate upon the question of limitation as a Munsif, yet, as a successor in power of the abolished Court of Small Causes at Arrah (whose jurisdiction was transferred to the Munsif's Court), he had jurisdiction to decide the objection SOOMUT DOSS *v* BHOOBUN LALL 24 W. R., 151

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued.*

Judge rejected this application on the ground that execution had been going on for several years contrary to the ruling in *Khusaldas* v. *Sakharam Ramchandra, 12 Bom., 212,* which laid down that the Agent's decree could not be executed by a mere transfer to an ordinary Court, the remedy in such cases being by a suit on the decree. On this ground also he refused to recognize the transfer of the decree. *Held* that, though the execution-proceedings in this case had been for many years irregularly conducted by a mere transfer of the Agent's decree to an ordinary Civil Court, still, as the Court which carried on the execution had jurisdiction to grant the same relief if a suit had been brought upon the decree, the irregularity, having been acquiesced in, did not vitiate the former proceedings in execution. VISHNU SAKHARAM NAGARKAR *v.* KRISHNARAO MALHAR . . . **I. L. R., 11 Bom., 153**

NARO HARI *v.* ANPURNABAI
[I. L. R., 11 Bom., 160 note

208. ——— *Assessment of decree after transfer, and irregular payments made under it to purchaser.*—Where a decree-holder, who had obtained a decree in the Civil Court of Loodhiana, which had been transmitted to Saharunpore for execution, assigned his decree before the Saharunpore Court to a third party, without the knowledge or consent of the Loodhiana Court, and moneys were paid to the purchaser by the judgment-debtor on such assignment, and the assignment was subsequently, on objection being taken, sanctioned by the Civil Court of Loodhiana,—*Held,* on a suit for the refund of such moneys, that, although they were paid under an irregular sanction of the Saharunpore Court, yet, as at the time of payment the purchaser was undoubtedly entitled to receive them, and the irregularity of the procedure of the Saharunpore Court had since been cured, and the purchaser was now in a position to execute the decree, that it would be clearly inequitable to order the refund of the money on the score of irregularities. MOHUN LALL *v.* BAROO MULL . . . . **6 N. W., 69**

209. ——— *Concurrent orders for execution in different districts—Power of Court.*—A Court has power to send its decree for concurrent execution into several places, although in its discretion it may refuse to exercise such power. SARODA PRASAD MULLICK *v.* LUCHMIPUT SINGH DOOGUR . **10 B. L. R., 214 : 17 W. R., 289**
[14 Moore's I. A., 529

210. ——— *Execution simultaneously in two or more districts.*—A decree may be executed simultaneously in two or more districts. *Saroda Prasad Mullick* v. *Luchmiput Singh Doogur, 10 B. L. R., 214,* followed. KRISTO KISHORE DUTT *v.* ROOPLALL DASS
[I. L. R., 8 Calc., 687 : 10 C. L. R., 609

211. ——— *Simultaneous attachments under same decree.*—Two executions of the same decree, so far as attachment of different properties of the judgment-debtor is concerned, may proceed simultaneously, though ordinarily the sales in execution should not take place simultaneously. AHMED CHOWDHRY *v.* KHATOON **7 C. L. R., 537**

212. ——— *Simultaneous execution of decree by rival decree-holders.*—The rights of rival decree-holders taking out execution against the same judgment-debtor considered. LALU MULJI THAKAR *v.* KASHIBAI
[I. L. R., 10 Bom., 400

213. ——— **Power of Court as to execution out of its jurisdiction**—*Execution of decree of Revenue Court by Civil Court.*—Where execution was sought of a decree which was passed in 1850, and which could not be executed by the revenue authorities in consequence of the transfer of its jurisdiction in such matters to the Civil Courts,—*Held* that the Civil Courts had jurisdiction to entertain the application. LUCHMEE KANT GHOSE *v.* BAMUN DASS MOOKERJEE . . **17 W. R., 472**

214. ——— *Purchase of decree obtained by judgment-debtor—Act VIII of 1859, s. 288.*—*A* obtained a decree in the Nuddea Court against *B,* who had obtained a decree against *C* in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to *A* in execution of his decree. *A* then petitioned the Beerbhoom Court for execution against *C. Held* that the Nuddea Court had jurisdiction to attach and sell *B*'s decree against *C,* and *A* had a right to apply to the Beerbhoom Court for execution thereof. RAMBAKSH CHETLANGI *v.* BANWARI GOBIND BAHADUR
[2 B. L. R., A. C., 65 : 10 W. R., 357

215. ——— *Ground of transfer for execution.*—A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property then obtained from the former Court an order on the second Court to send the record back again to Moorshedabad, for the purpose of executing the decree there, on the ground that the judgment-debtor had property in that district; and also on the allegation, unsupported by oath, that the property sought to be attached in Rajshahye was his. *Held* that the Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution. *Held* also that the claimant had no *locus standi* in the Moorshedabad Court to make such application. INDRA CHAND DUGAR *v.* GOPAL CHANDRA SHETIA
[3 B. L. R., A. C., 181 : 11 W. R., 557

216. ——— *Sale of estate partly within and partly without the jurisdiction —Civil Procedure Code, ss. 249, 284, 285, and 286*

EXECUTION OF DECREE—*continued*

8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued*

of its judgment for which purpose the Subordinate Judge might stay the execution of the decree as provided by *s.* 239 of the Civil Procedure Code (Act XIV of 1882) KASTURSHET JAVERSHET *v* RAMA KANHOJI . . I L R., 10 Bom, 65

202 ——— *Transfer of execution-proceedings by District Judge from one Small Cause Court to subordinate Court—Civil*

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that *these sections apply to execution proceedings* in Small Cause Courts, is not affected by the explanation to s 4 of Act VI of 1892 Execution proceedings under a decree against *A* in a Small Cause Court were transferred by a District Judge to a Subordinate Judge's Court where execution was proceeding against *A* under another decree, and it was objected that, as by the concluding paragraph of s 25 of the Civil Procedure Code the attachments under the two decrees would be in different Courts, s 295 of the Code would not apply, and rateable distribution could not be granted *Held*

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Whether a Subordinate Judge, under cl (*d*) of s 223 of the Civil Procedure Code (XIV of 1882), can transfer a decree for execution to a Court of Small Causes *when the property attached is situate within* the local jurisdiction of the Subordinate Judge KRISHNA VELJI MARWADI *v* BHAU MANSARAM [I. L R., 18 Bom, 61

203. ——— *Court abolished after passing decree*—The Court of the Principal Sudder Ameen at *K* having been abolished after a decree was passed by it, and the case having been transferred to the Court of the Judge of the Zillah ... —*Held* that ... entertain a ... hough made ... ipal Sudder ... BARMONEA *v* WOOMA MOYEE BARMONEA . . 7 W. R., 124

204. ——— *District of North Canara—Decree passed by Principal Sudder Ameen*—A decree passed by a Principal Sudder Ameen of the district of North Canara before that district was transferred to the Bombay Presidency should be executed by the first class Subordinate Judge who has succeeded to the Court and functions of such Principal Sudder Ameen, and cannot by him be delegated *for execution by a second class Subordinate Judge*, though the amount of such decree be less than R5 000 The provision in the Bombay Courts Act (XIV of 1869) that in suits under R5 000 the second class Subordinate Judges only shall have jurisdiction does not affect the execution of decrees passed before that Act came into force PIRJADA NASARUDIN *v* VENKAT PRABHU . 9 Bom., 113

205. ——— *Civil Procedure Code, 1859, s 286—Certificate of right to execution.*—A certificate under s 286 was given to a decree-holder by a District Court for possession and mesne profits, under which he got possession, after which the case was struck off on account of his delay He appealed to the Privy Council and was successful and applied within three years of the Privy Council decree to complete the execution. *Held,*

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206. ——— *Civil Procedure Code, 1859 s 284—Court of Agent for Sirdars—Decree against Sirdar's son*—Under the authority of s 284 *et seq* the Court of the Agent for Sirdars, not having jurisdiction over a Sirdar's son who is not himself a Sirdar, cannot transfer a ... Court for ... rcement ... against ... in the ordinary Civil Court on his decree KHUSALDAS *v* SAKHARAM RAMCHANDRA DIKSHIT [12 Bom, 212

207. ——— *Execution of a decree of the Agent for Sirdars—Rights of transferee of a decree—Jurisdiction*—*A* in 1839 ... the Court ... executed ... 868. *B's* ... jurisdiction

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up twice to the High Court, under whose orders the execution was for several years continued in favour of *A's* representatives against the estate of *B's* sons In 1885, one of *A's* representatives assigned his interest under the decree to *C* and *D* Thereupon the transferees, *C* and *D*, applied to the first class Subordinate Judge at Ahmednagar to have their names substituted in the place of the transferor in the execution-proceedings. The Subordinate

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued.*

223. ——— *Mortgage-decree for sale of properties in different districts and jurisdictions—Civil Procedure Code (Act XIV of 1882), ss. 19, 223 (c), sch. IV, form 128—Jurisdiction.*—A decree obtained in a suit brought under the provision of s. 19 of the Code of Civil Procedure in the Court of the Subordinate Judge of Rajshahye on a mortgage of certain properties situated in the districts and jurisdictions of Rajshahye and Nyadumka directed that the properties mentioned in the mortgage should be sold and the proceeds applied in payment of the mortgage-debt. The properties were sold by the Court of Rajshahye. *Held* that the authority given by s. 19 of the Code included an authority to make the order for the sale of the properties, and that the Rajshahye Court was within its [illegible] ecting and carrying out the sale. [illegible] where a sale takes place under a money-decree of property partly within the local limits of the Court whose decree is being executed, and partly without that Court's jurisdiction, the sale of the property without the jurisdiction would be valid and binding in consequence of the provisions of ss. 19 and 223 of the Code of Civil Procedure. *Per* GHOSE, *J.*—S. 223 of the Code of Civil Procedure merely provides that, when it may be necessary for a Court to send a decree for execution to another Court by reason of the property being situate beyond its local jurisdiction, it ought to do so; and the words of sub-s. (*c*), "sale of immoveable property situate without the local limits of the jurisdiction of the Court which passed it," contemplate a case where the whole of the property, and not any portion of it, is situate beyond the local limits of the Court which passes the decree. MASEYK *v.* STEEL & CO. **I. L. R., 14 Calc., 661**

224. ——— *Sale of property covered by decree by Court which passed decree when property is situate outside its local jurisdiction at time of application—Civil Procedure Code (Act XIV of 1882), s. 223 (c)—Jurisdiction.*—A mortgage-decree was passed directing the sale of certain property wholly situate within the local limits of the jurisdiction of the Court which passed the decree. After the decree, the district within which the property was situate was transferred and placed under the local jurisdiction of another Court. The judgment-debtor then applied to the first Court for execution of the decree, and thereupon the judgment-debtor objected that that Court had no jurisdiction to entertain the application or to direct the sale of the property. *Held* that that Court had authority to execute its own decree and bring the property to sale. *Held,* further, that s. 223 (*c*) of the Code of Civil Procedure does not curtail the power of a Court to execute its own decree, but gives it a discretion either to execute the decree itself or, on the application of the decree-holder, to send it to another Court for execution, and thereby

EXECUTION OF DECREE—*continued.*

8. TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*concluded.*

extends, rather than limits, the Court's power. KARTICK NATH PANDEY *v.* TILUKDHARI LALL **[I. L. R., 15 Calc., 667**

225. ——— *Power of Court passing decree to execute it—Portion of property out of jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 223.*—The Court that has the power to pass a decree for sale of a property has also power to carry out its decree by selling that property, whether any portion of that property be within the local limits of its jurisdiction or not. *Per* GHOSE, *J.*—S. 223, cl. (*c*), of the Civil Procedure Code leaves it to the discretion of the Court to send the decree for execution to the Court having local jurisdiction. *Maseyk* v. *Steel & Co., I. L. R., 14 Calc., 661,* commented on. GOPI MOHAN ROY *v.* DOYBAKI NUNDUN SEN . . . **I. L. R., 19 Calc., 13**

226. ——— *Property outside jurisdiction of Court—Mortgage-decree—Civil Procedure Code (1882), ss. 19 and 223.*—A Court that has jurisdiction to pass a decree for the sale of property comprised in a mortgage has also power to carry out its decree by selling the property, even though a portion of the property be situate outside the local limits of its jurisdiction. *Gopi Mohan Roy* v. *Doybaki Nundun Sen, I. L. R., 13 Calc., 13,* followed. *Prem Chand Dey* v. *Mokhoda Debi, I. L. R., 17 Calc., 699,* distinguished. TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY **[I. L. R., 21 Calc., 639**

JAGERNATH SAHAI *v.* DIP RANI KOER **[I. L. R., 22 Calc., 871**

227. ——— *Attachment of assets of a judgment-debtor outside the jurisdiction of the attaching Court—Procedure.*—The plaintiff, having obtained a decree against the defendant in the Court at Bhusaval, sought to execute it by attaching a moiety of the defendant's pay. The defendant was a sorter in the Railway Mail Service, and travelled between Bhusaval and Nagpur, at which latter place he resided and received his pay. By an order of attachment issued, at the plaintiff's instance, by the Bhusaval Court to the defendant's disbursing officer at Nagpur, a moiety of the defendant's pay having been withheld by that officer, the defendant applied to the Bhusaval Court to cancel the order, contending that it was illegal, as neither he nor his disbursing officer resided at Bhusaval. On reference to the High Court,—*Held* that the order of attachment was *ultra vires,* as neither the defendant nor his disbursing officer resided within the jurisdiction of the Bhusaval Court. The proper procedure was to send the decree of the Bhusaval Court for execution to Nagpur, where the disbursing officer resided, and where the defendant's pay was available for satisfaction of the decree. RANGO JAIRAM *v.* BALKRISHNA VITHAL **[I. L. R., 12 Bom., 44**

GOPAL *v.* LAVET . **I. L. R., 12 Bom., 45 note**

EXECUTION OF DECREE—*continued*

8. TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION —*continued*

—*Certificate of non execution* A money decree was made by the Judge of the 24 Pergunnahs against a mortgagor who was possessed of property in the 24 Pergunnahs and also of an estate called Kismut Kosdaha 18 mouzahs of which lay in Zillah 24 Pergunnahs and 42 mouzahs in Zillah Nuddea The whole estate was entered in the tauzi of and the Government revenue was payable in the Collectorate of Nuddea The Judge of the 24 Pergunnahs without selling the property of the judgment debtor which was within his jurisdiction transmitted a certificate under s 285 of the Civil Procedure Code to the Judge of Nuddea *stating that no portion of the* amount of the decree had been realized by the Court of the 24 Pergunnahs Thereupon Kismut Kosdaha was attached and sold by order of the Nuddea Court In a suit brought against the purchaser for possession

that although the Court of the 24 Pergunnahs strictly ought not to have granted the certificate until the the or nut

Kosdaha being substantially in the Nuddea District KALLY PROSONO BOSE DINONATH MULLICK [11 B L R, 56 19 W R, 434

217 ———— *Decree on mortgage—Sale in execution of decree—Property in different districts—Civil Procedure Code (Act X of 1877) s 19*—A suit was instituted on a mortgage of a single revenue paying estate in the Court of the Subordinate Judge of the district of Backergunge under the provisions of s 19 Act X of 1877 and a

mortgaged property though only a portion of it was situated in the district of Backergunge *Kally Prosunno Bose* v *Dinonath Mullick 11 B L R 56* followed SHURROOP CHUNDER GOOHO v AMEERRUNNISSA KHATOON I L R, 8 Calc, 703

218 ———— *Power of Mun*

logy to the principle on which the case of *Kalli Prosunno Bose* v *Dinonath Mullick 11 B L R 56 19 W R 434* was decided that the sale was

convenient in such a case that the sale should be held by a superior Court having jurisdiction over the entire district RAM LALL MOITRA v BAMA SUNDARI DABIA I L R, 12 Calc., 307

219 ———— *Power of local Court to sell portion of estate in execution of decree outside its jurisdiction*—A Court having local jurisdiction is competent to sell in execution of

220 ———— *Civil Procedure Code 1859 s 286—Munsif—Power of execution of decree out of local jurisdiction* A Munsif is not competent under Act VIII of 1859 s 286 to bring to sale property lying without his own jurisdiction without reference to any other Court NAWAB ALI v UZIR MAHOMED 23 W R., 233

221 ———— *Power of Mun*

order of a Court which is not empowered to make any order at all does not stand on the same footing

within its jurisdiction and not to cases where a Court has gone wholly out of its jurisdiction *Kalee Prosunno Bose* v *Deno Nath Mullick 11 B L R 56; 19 W R 434* and *Nawab Ali* v *Uzir Mahomed 23 W R 233* considered UNNOCOOL CHUNDER CHOWDHRY v HURRY NATH KOONDOO [2 C L R, 334

222 ———— *Sale by local Court of property a portion of which is not within its jurisdiction*—Where an estate consisting of 18

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

law of procedure then in force. VISHNU SAKHARAM NAGARKAR *v.* KRISHNARAO MALHAR [I. L. R., 11 Bom., 153

236. ———— Adaptation of mode of execution to nature of case—*Civil Procedure Code (Act VIII of 1859), s. 212.*—The words "otherwise as the case may be" in s. 212 meant that the mode of execution was to be adapted in each case to the nature of the particular relief sought to be enforced under the decree. DENONATH RUCKIT *v.* MUTTY LALL PAUL **1 Ind. Jur., O. S., 125: 1 Hyde, 158**

237. ———— Former mode of execution in High Court—*Practice of High Court—Civil Procedure Code, 1859, s. 250.*—The practice of the High Court under the Civil Procedure Code, on the execution of decrees for money, either against immoveable or moveable estate, has been, in the first instance, to issue a writ of attachment, and subsequently, on its return by the Sheriff duly executed, to issue a writ directing a sale. The writ of *fi. fa.* which issued from the Supreme Court was an authority to the Sheriff not only to seize, but also to sell. S. 250 of the Civil Procedure Code applied neither to executions against immoveable property nor to executions against debts due to the defendant; and in order to give to third parties full opportunity of vindicating their right before sale and also to give the defendant an opportunity of paying, it has not been usual to issue process of attachment and sale simultaneously even against personal property, and it would not seem to be proper to do so, except under special circumstances. FINANCIAL ASSOCIATION OF INDIA AND CHINA *v.* PRANJIVANDAS HARJIVANDAS . **3 Bom., O. C., 25**

238. ———— ———— *Decree for sale of hypothecated property and against judgment-debtor personally—Execution against judgment-debtor's person—Decree-holder entitled to proceed against property or person as he might think fit.*—Where a decree upon a hypothecation-bond allows satisfaction of the debt from the hypothecated property and also from the judgment-debtor personally and contains no condition that execution shall first be enforced against the property, and where there is no question of fraud being perpetrated on the judgment-debtor, there is no principle of equity which prevents the decree-holder from enforcing his decree against the judgment-debtor's person or property, whichever he may think best. *Wali Muhammad* v. *Turab Ali, I. L. R., 4 All., 497,* explained. JOHARI MAL *v.* SANT LAL . . . **I. L. R., 9 All., 484**

239. ———— *Decree of Appellate Court—Decree referring to judgment.*—Where the judgment of an Appellate Court directed that a certain sum over and above what had been decreed to him in the Court of first instance should be decreed to the appellant, but the decree of the Appellate Court did not specify the sums that would be due to the appellant under that decree, except by reference to the judgment on which it was based and to the decree of the Court of first instance,—*Held* that, though the decree as thus drawn was informal, yet, as the amount due to the decree-holder was ascertainable from the record, and the decree was thus practically capable of execution, execution should, as a matter of equity, be granted to the decree-holder. JAWAHIR MAL *v.* KISTUR CHAND [I. L. R., 13 All., 343

240. ———— Against what property decree may be executed—*Property hypothecated to debtor.*—*Held* that a decree-holder is entitled to execute his decree against any property devolving on the judgment-debtor before the decree has been fully executed, and this without reference to whether the property was hypothecated to him; and that the denial of the judgment-debtor that he is interested in the property which it is sought to make subject to execution can have no effect. BULDEO SINGH *v.* DWARKA DOSS . . . . **1 Agra, 169**

241. ———— Execution of decree against party holding another decree—*Collector's Court—Sale of decree—Appointment of manager.*—Where a Deputy Collector executes a decree against a party holding another decree from his own Court, he ought, instead of selling that other decree, to appoint a manager under the provisions of Act VIII of 1859 to realize the judgment-debt due thereon. RAMCHUNDER ROY *v.* RAM CHURN BUKSHEE . . . . . . **9 W. R., 372**

242. ———— Decree declaring lien on property without power to sell—*Civil Procedure Code, 1859, s. 243.*—Where a decree declares a decree-holder's lien on certain property without distinctly declaring his right to sell the same, it may be executed as against that property specially; but the usual course of attachment and sale on one hand, or of attachment and management under s. 243, Code of Civil Procedure, on the other hand, must still take place. NUDDYABASHEE DASS *v.* REZA CHOWDHRY . . . . **15 W. R., 337**

243. ———— Decree against railway servant for salary—*Consent of debtor to particular mode.*—The order of a judgment-debtor, being a railway servant, upon the paymaster to satisfy the decree out of his salary, does not alter the case as regards the mode in which the Court should execute its decree, which should be as directed by law and not according to the consent of the judgment-debtor. IN RE MACFARLANE . . . **11 W. R., 69**

244. ———— Decree for specific property—*Order for production of property by defendant after decree.*—There is no provision of the Civil Procedure Code authorizing a Court to call upon a defendant to appear in Court and produce property decreed to plaintiff. The decree must be executed in the ordinary course. BHOZA RUGHBUR SINGH *v.* BHOZA RAJ SINGH . . . **3 N. W., 319**

245. ———— Informality in mode of execution—*Ground for setting aside execution.*—In execution-proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds.

EXECUTION OF DECREE—*continued*

9 EXECUTION BY COLLECTOR

228 ——— **Right of creditor under a simple money-decree obtained after property has been taken over by the Collector to be entered in list of creditors prepared under s. 322B**—*Civil Procedure Code (1882), ss 322, 322A, 322B, 325 and 326—Civil Procedure Code (1877), s 326*—*Held* that the assignees of a decree for money obtained against a person whose property had been taken over by the Collector under s 326 of Act X of 1877, whilst such property was under the management of the Collector, were not entitled to be placed on the list of creditors prepared by the Collector under s 322 of Act XIV of 1882, and that, in any case, application to be placed on the said list of creditors should have been made to the Collector, and not to the District Judge MURARI DAS *v* COLLECTOR OF GHAZIPUR

[I. L. R., 18 All., 313

229. ——— **Decree transferred for execution to Collector**—*Civil Procedure Code (1882), ss 320 and 322A—Collector not authorized to hear objections to execution of decree so transferred*—Where a decree for money has been transferred for execution to the Collector under the provisions of s 300 of the Code of Civil Procedure, the Collector is not authorized under s 322A to hear any objection by the parties interested in the property advertised for sale to the sale of that property, nor is it any part of the Collector's duty to decide whether the property has or has not been properly attached ONKAR SINGH *v.* MOHAN KUAR

[I. L. R., 20 All., 428

10 DECREES OF COURTS OF NATIVE STATES

230 ——— **Foreign judgment—Execution in British India of foreign judgment**—*Civil Procedure Code (Act XIV of 1882), ss 229A and B and 245B—Decree obtained without jurisdiction and by fraud—Jurisdiction*—The plaintiff

without jurisdiction, and that it had been fraudulently obtained by the plaintiff The Court refused to commit the defendant *Held*, on the facts as presented in the affidavit, that the Court in Cochin had no jurisdiction over the defendant, and that the plaintiff obtained the decree by misrepresentation and concealment of essential facts *Held* also that the Court was entitled to exercise a judicial discretion as to whether it would put into force the provisions of s 229B of the Civil Procedure Code. No duty is cast upon the Court to execute a decree which can be

EXECUTION OF DECREE—*continued*

10 DECREES OF COURTS OF NATIVE STATES—*concluded*

shown to have been passed without jurisdiction or obtained by fraud S 229B of the Civil Procedure Code does not remove the decree of a Native State falling within its purview from the category of foreign judgments It merely alters the procedure

to execute the decree of a foreign Court which has been obtained by the fraud of the plaintiff Where

PURMANUND NURSEY I. L. R., 1[illegible] Bom., 2[illegible]

11 MODE OF EXECUTION

(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION

231. ——— **Decree how constructed for purposes of execution**—A decree cannot be extended in execution beyond the real meaning of its terms *BUDAN v RAMCHANDRA BHUNJGAYA*

[I. L. R., 11 Bom., 537

232 ——— **Division of decree**—*Execu-*

See NUND COOMAR PUTTEHDAR *v* BUNSO GOPAL SAHOY 23 W. R., 342

and GOODUR SAHOY *v.* DHONESSUR KOER

[7 C. L. R., 117

233. ——— *Severance of right under decree*—The right under a decree cannot be severed so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another PADMANABHA *v* THANAKOTI I. L. R., 2 Mad., 119

234 ——— *Decree for land and for certain papers—Splitting execution*—

235 ——— Decree having continuous

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

his claim to the land. BUDDUN CHUNDER MADUCK v. CHUNDER COOMAR SHAHA . 5 W. R., 218

274. ———— *Family dwelling-house.*—In a suit for possession by the auction-purchaser of a judgment-debtor's share in a family residence, possession was ordered to be given to him so as not to annoy or insult the inmates of the house; and as the plaintiff could not use the family staircase without exposing the ladies of the family to annoyance, and was obliged to build a separate staircase, he was held entitled to compensation to the value of his share in the family staircase. OODHOY CHUNDER MULLICK v. PITAMBER PYNE

[6 W. R., Mis., 75

275. ———— *Family dwelling-house—Sale in execution of decree—Share in joint family property—Service rents—Right of purchaser.*—Where the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling-house with the other shareholders, and also to a right to share in the service rents. *Bijoi Kesal Roy* v. *Samasundari, B. L. R., Sup. Vol., 172,* commented on. RAJANIKANTH BISWAS v. RAM NATH NEOGY I. L. R., 10 Calc., 244

276. ———— *Decree against an undivided brother—Mortgage of joint property.*—*A*, an undivided member of a Hindu family, mortgaged part of the family property by way of conditional sale to *B*, to secure a loan. *B* having sued *A* personally for the amount due, *A* admitted the mortgage and said he would surrender the property in discharge of the debt, and a decree was passed accordingly. *A*'s undivided brothers intervened in execution. *Held* that the decree, not being passed against the joint family or its representative, and not describing the property which it directed to be delivered to the plaintiff by way of absolute sale to be family property, could not be executed against the family property. GURUVAPPA v. THIMMA

[I. L. R., 10 Mad., 316

277. ———— *Decree for maintenance against karnavan—Execution against tarwad property.*—A member of a Malabar tarwad, having obtained a decree for maintenance against her karnavan, assigned the decree to the plaintiff, who proceeded to execute it against the tarwad property. The then karnavan objected, and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against tarwad property,—*Held* that the plaintiff was entitled to execute the decree against the tarwad property. CHANDU v. RAMAN

[I. L. R., 11 Mad., 378

278. ———— *Joint Hindu family—Money-decree against deceased member—Execution after judgment-debtor's death against joint family property not allowed.*—The mere obtaining of a simple money-decree against a member of a joint Hindu family without any steps being taken during his lifetime to obtain attachment under or execution of the decree does not entitle the decree-holder, after the judgment-debtor's death and a subsequent partition, to bring to sale in execution of the decree the interest which the judgment-debtor had in the joint family property. *Suraj Bunsi Koer* v. *Sheo Pershad Singh, I. L. R., 5 Calc., 148; Rai Balkishen* v. *Rai Sitaram, I. L. R., 7 All., 731;* and *Balbhadar* v. *Bisheshar, I. L. R., 8 All., 695*; referred to. JAGANNATH PRASAD v. SITA RAM

[I. L. R., 11 All., 302

279. ———— *Joint Hindu family—Simple money-decree against father alone sought to be executed after his death against joint family property in the hands of the son—Civil Procedure Code, ss. 234 and 244.*—A creditor of a father in a joint Hindu family governed by the law of the Mitakshara, who has obtained a simple decree for money in a suit against the father alone, cannot obtain execution of that decree against the joint family property or any part of it in the hands of the son in a proceeding against the son in execution of that decree instituted after the death of the father, and not being a proceeding in continuation of an attachment of the property effected during the lifetime of the father; the proceeding in execution not being barred by the law of limitation, and the son not being precluded by any estoppel from proving that the property was joint family property at the time of his father's death, and is in his hands ancestral property, and not assets representing what was at the time of his father's death separate property of his father. But in such a case, if the creditor desires to obtain a remedy against the ancestral property or any part of it in the hands of the son, he must seek that remedy in a suit against the son, in answer to which suit, when brought, the son will be entitled to prove that the suit is barred by limitation, that the debt was tainted by immorality, or any other matter that would be a defence against the son. *Suraj Bunsi Koer* v. *Sheo Proshad Singh, I. L. R., 5 Calc., 148: L. R., 6 I. A., 88; Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21: L. R., 13 I. A., 1; Badri Prasad* v. *Madan Lal, I. L. R., 15 All., 751; Seth Chand Mal* v. *Durga Dei, I. L. R., 12 All., 313; Cregg* v. *Rowlands, L. R., 3 Eq., 373; Payne* v. *Parker, L. R., 1 Ch. App., 327; Chowdry Wahid Ali* v. *Jumaee, 11 B. L. R., 149: 18 W. R., 185; Raghubar Dyal* v. *Hamid Jan, I. L. R., 12 All., 73; Sangili Virapandia Chinnathambiar* v. *Alwar Ayyangar, I. L. R., 3 Mad., 42; Karnataka Hanumantha* v. *Andukuri Hanumayya, I. L. R., 5 Mad., 232; Muthia* v. *Virammal, I. L. R., 10 Mad., 283; Ariabudra* v. *Dorasami, I. L. R., 11 Mad., 413; Venkatarama* v. *Senthivelu, I. L. R., 13 Mad., 265; Balbir Singh* v. *Ajudia Prasad, I. L. R., 9 All., 142; Jagannath Prasad* v. *Sita Ram, I. L. R., 11 All., 302;* and *Beni Pershad* v. *Parbati Koer, I. L. R., 20 Calc., 895,* referred to. LACHMI NARAIN v. KUNJI LAL. LACHMI NARAIN v. CHOTE LAL . . . . I. L. R., 16 All., 449

280. ———— *Money decree against father—Execution against son after the*

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*continued*

when they find that it is substantially right BISSESSUR LALL SAHOO v LUCHMESSUR SINGH
[L R, 6 I A, 233

246 ——— **Warrant of arrest, Power of Sheriff's officer in executing** *Breaking open door—Assault and false imprisonment* —A Sheriff's officer in execution of a bailable writ peaceably obtained entrance by the outer door but before he could make an actual arrest was forcibly expelled from the house and the outer door fastened against him The officer obtained assistance, broke open the outer door, and made the arrest *Held* that the officer was justified in so doing *Held also that* demand of re entry under such circumstances was not requisite to justify his breaking open the outer door *Quære*—If indictment for assault and false imprisonment will under such circumstances lie against the Sheriff's officer AGA KURBOOLIE MAHOMED v QUEEN **3 Moore s I A, 164**

247. ——— **Power of officer in executing decree**—*Mamlatdar's Court—Bombay Act V of 1864* —A Mamlatdar's Court, authorized under Act V of 1864 (Bombay) to give immediate possession of lands and premises *has the power to direct the* breaking open of a door when necessary to give effect to its decree BAJI DEV v SADASHIV BHAISHANKAR **5 Bom, A C, 158**

248. ——— *Breaking open inside door of house* —A person executing a process directing a general attachment of moveable property, having gained access to a house, has a right to remove the lock from the door of a room in which he has reasonable ground for believing moveable property to be lodged KONDASAWMY PILLAY v KRISTNASWAMY PILLAY **5 Mad, 189**

249 ——— A Civil Court s bailiff, in executing a process against the moveable property of a judgment debtor, has no authority to use force and break open a door or gate ANDERSON v MCQUEEN **7 W R, Cr., 12**

250. ——— *Civil Procedure Code, 1859, s 233—Execution of warrant against moveable property Attachment—Removing locks* —Under s 233, Act VIII of 1859 a nazir, authorized to execute a warrant by attachment of

. . . .

251. ——— *Bailiff or nazir —Writ of attachment* —A bailiff or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by s 271 of the new Code of Civil Procedure (Act X of 1877) DAMODAR PARSOTAM v ISHVAR JETHA
[I. L. R., 3 Bom., 89

See SODAMINI DASI v. JAGESWAR SUR
[5 B. L. R., Ap, 27

252 ——— *Process of attachment against person or goods—Breaking open doors* —A Nazir or Sheriff cannot, under a writ of attachment break open a defendant's dwelling house to execute civil process against his person or goods if the outer door is closed and locked even when he finds that the defendant has absconded to evade such execution The privilege extends to a man s dwelling house or out house or any office annexed to the dwelling house but not to a building standing at a distance from the dwelling house and not forming parcel of it If however the outer door of the defendant's dwelling house be open and the Sheriff or Nazir enter, he may afterwards break an inner door to take the goods BAI KUVAR v VENDIDAS GANGARAM **8 Bom, A C, 127**

253 ——— *Madras Reg IV of 1816, s 30—Personal property only liable to attachment in execution of Village Munsif's decree* —Under Regulation IV of 1816 the decrees of Village Munsifs cannot be executed against other than personal property Such decrees can be executed by a transferee of the decree and against the representative of a deceased judgment debtor KALANDAN v PAKRICHI **I L R, 9 Mad, 378**

(b) ALTERNATIVE DECREE

254 ——— **Decree for delivery of moveable property**—*Specific alternative amount payable in money* —Where a decree is for the delivery of moveable property and states the amount to be paid as an alternative if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery, then assessed damages should be paid KASHEE NATH KOOER v DEBKRISTO RAMANOOJ DOSS
[16 W. R, 240

(c) ATTACHMENT, REMOVAL OF

255. ——— **Decree declaring attachment should be removed.**—A decree declaring that an attachment should be removed cannot be executed for money BOYDO NATH SHAW v SHUMBHOO RAMNUTEE **25 W R, 59**

(d) BOUNDARIES

256 ——— **Declaratory decree as to boundaries**—*Proclamation of decree* —The holder of a decree which declares that the boundary-line laid down in the survey map as the boundary-line of the plaintiff s permanently settled estate is not the true boundary line is not entitled either to have the decree proclaimed on the spot or to have the line erased from the survey map RAJKRISHNA SINGH v COLLECTOR OF MYMENSINGH
[19 W R., 232

(e) CANCELMENT OF LEASE.

257. **Decree for cancelment of lease** —A decree for cancelment of a lease is virtually one for possession in supersession of that lease,

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

1894, a decree in a partition suit provided as follows: "Plaintiff is a minor twelve years old; until he attains twenty-one years, Narayan (defendant) should for the next five years annually deliver to him twenty maunds of paddy, and for this year ten maunds; after that plaintiff should take his one-sixth of the family lands, until then defendant is not to alienate the lands." The minor died, and in 1897 his widow, [illegible], as his heir, applied for execution of the decree, claiming twenty maunds of paddy, being the amount due at the rate specified in the decree. *Held* that in execution of the decree she was entitled to recover the arrears of the allowance up to the date of her husband's death. When he died he was still a minor, and the allowance ceased, and the claim was not within her right of inheritance, and was recoverable only by a separate suit, and not in execution. LAXMIBAI [illegible] *v.* NARAYAN LAXMIDAS . . . I. L. R., 24 Bom., 182

289. ——— **Enforcement of money charge created by decree, by application, by suit**—*Transfer of Property Act (IV of 1882), s. 100—Subsequent tender—Costs.*—When a decree creates a charge and contains a direction for its payment and default is made with respect to it, the proper course for its enforcement is not simply to make an application, but either to apply for an order in the nature of a decree for an account and sale or else to institute a suit for the purpose of enforcing the charge. *Alangamonjori Dabee v. Gour Sunder Pande, I. L. R., 22 Calc., 859,* and *Matangini Dassi v. Chooney Money Dasi, I. L. R., 12 Calc., 108,* referred to. CHUNDRA MONI DASSI *v.* MUTTY LAL MULLICK . 2 C. W. N., 33

See HEMANGINI DASSEE *v.* KEDAR CHUNDER DASS . . . . I. L. R., 26 Calc., 441
[3 C. W. N., 139

(m) MARRIED WOMEN.

290. ——— **Liability of married women**—*Arrest—Stridhan.* R, as surety for her husband, joined with him in executing a bond for R90. In a suit brought upon the bond, a decree was passed against both. R was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but, not doing so, she was committed to jail. Subsequently, however, she applied to be declared an insolvent, but her application was rejected. She then claimed to be released, on the ground of her coverture. The Judge rejected her application as being too late. On reference to the High Court,—*Held* that, although the decree was absolute in its terms and contained no express limitation of R's liability, nevertheless the law being clear that she could only be liable to the extent of her stridhan, it was to be assumed that the direction to pay, contained in the decree, had reference to that fund only. IN RE THE PETITION OF RADHI
[I. L. R., 12 Bom., 228

(n) MORTGAGE.

291. ——— **Decree on mortgage**—*Collateral security—Money-decree on bond.*—The defendants mortgaged certain property in the mofussil to the plaintiffs in April 1866, and at the same time, as a collateral security to the mortgage, executed a bond in favour of the plaintiffs and a warrant of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon soon after the bond was executed. In accordance with a covenant in the mortgage-deed, the mortgagees entered into possession and receipt of the rents and profits of the estate, which they were authorized to receive for five years from the date of the mortgage. They remained in possession for six years, and then, more than one year having elapsed since any proceedings in execution had been taken, they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held* that, if the application were granted, the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to shew that the parties had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. BRAJANATH KUNDU CHOWDHRY *v.* GOBINDMANI DASI . . . . 4 B. L. R., O. C., 83

292. ——— **Decree establishing a mortgage and directing sale**—*Attachment.*—In order to enforce a decree which establishes a mortgage and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Codes of Civil Procedure. DAYACHAND *v.* HEMCHAND DHARAMCHAND . . . I. L. R., 4 Bom., 515

293. ——— **Decree for enforcement of mortgage**—*Execution limited to mortgaged property—Equity.*—K brought to sale in execution of a simple decree for money which he held against P certain property, and purchased it himself. The property was subject to a mortgage at the time it was sold. Subsequently a decree was obtained against P enforcing this mortgage, of which K became the holder. K sought to have this decree executed, not against the mortgaged property, but against other property belonging to P. *Held* that, if K purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of P. GULAB SINGH *v.* PEMIAN . I. L. R., 5 All., 342

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*continued*

death of the father—Ancestral property in the hands of the son—Civil Procedure Code (1882) s 234—A money decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands even if the debt has been incurred for the sole purposes of the father provided that it is not tainted with immorality or illegality If the son against whom the decree is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality he can do so under s 244 of the Civil Procedure Code (Act XIV of 1882) *Arnabudra* v *Dorasami I L R 11 Mad 413* and *Lachmi Narayan* v *Kunjilal I L R, 16 All 449* not followed UMED HATHISING *v* GOMAN BHAIJI I L R, 20 Bom, 385

(*l*) MAINTENANCE

281 ———— Decree for future maintenance—*Arrears of maintenance*—Arrears of maintenance can be recovered by process of execution in a suit in which a decree is passed providing for the payment of future maintenance Where they can be so recovered they cannot be made the subject of a fresh suit SINTHAYEE *v* THANAKAPUDAYEN *alias* PONDILY UDAYAN 4 Mad, 183

282 ———— Decree for monthly maintenance—*Civil Procedure Code 1859 ss 201 212—Act XXIII of 1861 s 15*—A decree for maintenance to be paid at a certain rate per month stands on the same footing as a decree ordering payment by instalments where the decree holder may apply for execution from time to time as the instalments fall due and the Court may issue execution under ss 201 and 212 of Act VIII of 1859 and s 15 of Act XXIII of 1861 PEAREENATH BROHMO *v* JUGGESSUREE *alias* RAKHALEE DOSSEE [15 W R, 128

283 ———— Decree declaring right to maintenance and directing payment of arrears—*Order for future payments—Maintenance subsequently falling due and enforced by fresh suit or by execution of decree* Where the Civil Court upon the suit of a Hindu widow for maintenance makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during a past period but as to the future merely declares her right to receive maintenance at an annual rate from the defendant the proper way of enforcing the right thus declared is not by executing the decree, but

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[I L R, 9 Bom, 108

284 ———— Decree for maintenance of widow—*Liability of ancestral estate*—Maintenance decreed to a co-parcener's widow by reason of her exclusion from succession in a joint family cannot be regarded as a charge on the family estate or the decree treated as a decree against the managing member of the family for the time being *A*, the widow of an undivided member of a joint Hindu family obtained a decree for maintenance against *B* the brother of her deceased husband not expressed to be a decree against the head or representative of the joint family *B* died and *C* his son having been brought in as his representative resisted the execution of the decree by attachment of the family estate *Held* that the family estate was not liable *Per Cur* In a regular suit *C* might clearly be held liable to pay maintenance to *A* and a decree might be passed against him but in execution proceedings the decree must be taken as it stands and executed against the son as his legal representative in the mode prescribed by s 234 of the Code of Civil Procedure and it is not open to extend the scope of the decree in such proceedings *Karpakambal* v *Subbayyan I L R 5 Mad 234* approved and followed MUTTIA *v* VERAMMAL

[I L R, 10 Mad, 283

285 ———— Decree directing payment of a certain sum every month for life—*Declaratory decree*—Where a decree ordered the defendants to pay to the plaintiff the sum of R15 per mensem by way of maintenance during her lifetime and directed that such maintenance should be charged on certain zamindari property—*Held* that the decree holder could obtain the amount ordered in execution of the decree which was more than a mere declaration of right and which by allowance of a fixed rate per mensem stood exactly on the footing of a decree ordering payment by instalments *Pearee nath Brohmo* v *Juggessuree 15 W R 128*, *referred to* MANSA DEBI *v* JIWAN LAL

[I L R, 9 All, 33

286 Enforcement of decree for maintenance—*Right of suit*—Where a decree in a suit for maintenance gave the plaintiffs a right to recover maintenance for the year previous to the

[illegible]

enforced from time to time by suit *Vishnu Shambhog* v *Manjamma I L R 9 Bom 108* approved *Ashutosh Bannerjee* v *Lukhimoni Debya I L R 19 Calc 139* distinguished RAM DIAL *v* INDAR KUAR I L R, 16 All, 179

287 ———— Future maintenance, right to recover, in execution of decree awarding maintenance—Future maintenance awarded by a decree when falling due can be recovered in execution of that decree without further suit ASHUTOSH BANNERJEE *v* LUKHIMONI DEBYA

[I L R, 19 Calc, 139

288 ———— Decree for partition awarding allowance until minor member of family come of age—*Suit by his widow for allowance after his death*—On the 21st February

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

1894, a decree in a partition suit provided as follows: "Plaintiff is a minor twelve years old; until he attains twenty-one years, Narayan (defendant) should for the next nine years annually deliver to him twenty maunds of paddy, and for this year ten maunds; after that plaintiff should be given one-sixth of the family lands; until then defendant is not to alienate the lands." The minor died, and in 1897 his widow, Sundri, as his heir, applied for execution of the decree, claiming seventy maunds of paddy, being the amount due at the rate specified in the decree. *Held* that in execution of the decree she was only entitled to recover the arrears of the allowance up to the date of her husband's death. When he died, he was still a minor, and the allowance ceased, and the share went to his heirs by right of inheritance, and was recoverable only by a separate suit, and not in execution. LAKSHMAN DARKU *v.* NARAYAN LAKSHMAN . . . I. L. R., 24 Bom., 182

289. ———— **Enforcement of money charge created by decree, by application, by suit**—*Practice—Transfer of Property Act (IV of 1882), s. 99—Subsequent tender—Costs.*—Where a decree creates a charge and contains a direction for its payment and default is made with respect to it, the proper course for its enforcement is not simply to make an application, but either to apply for an order in the nature of a decree for an account and sale or else to institute a suit for the purpose of enforcing the charge. *Abhoyessury Dabee* v. *Gour Sunker Panday, I. L. R., 22 Calc., 859*, and *Matanginee Dasi* v. *Chooney Monee Dasi, I. L. R., 22 Calc., 903*, referred to. CHUNDRA MONI DASSEE *v.* MUTTY LAL MULLICK . 2 C. W. N., 33

See HEMANGINEE DASSEE *v.* KUMODE CHANDER DASS . . . . I. L. R., 26 Calc., 441
[3 C. W. N., 139

(*m*) MARRIED WOMEN.

290. ———— **Liability of married women**—*Arrest—Stridhan.*—*R*, as surety for her husband, joined with him in executing a bond for R90. In a suit brought upon the bond, a decree was passed against both. *R* was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but, not doing so, she was committed to jail. Subsequently, however, she applied to be declared an insolvent, but her application was rejected. She then claimed to be released, on the ground of her coverture. The Judge rejected her application as being too late. On reference to the High Court,—*Held* that, although the decree was absolute in its terms and contained no express limitation of *R*'s liability, nevertheless the law being clear that she could only be liable to the extent of her stridhan, it was to be assumed that the direction to pay, contained in the decree, had reference to that fund only. IN RE THE PETITION OF RADHI
[I. L. R., 12 Bom., 228

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

(*n*) MORTGAGE.

291. ———— **Decree on mortgage**—*Collateral security—Money-decree on bond.*—The defendants mortgaged certain property in the mofussil to the plaintiffs in April 1866, and at the same time, as a collateral security to the mortgage, executed a bond in favour of the plaintiffs and a warrant of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon soon after the bond was executed. In accordance with a covenant in the mortgage-deed, the mortgagees entered into possession and receipt of the rents and profits of the estate, which they were authorized to receive for five years from the date of the mortgage. They remained in possession for six years, and then, more than one year having elapsed since any proceedings in execution had been taken, they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held* that, if the application were granted, the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to show that the parties had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. BRAJANATH KUNDU CHOWDHRY *v.* GOBINDMANI DASI . . . . 4 B. L. R., O. C., 83

292. ———— **Decree establishing a mortgage and directing sale**—*Attachment.*—In order to enforce a decree which establishes a mortgage and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Codes of Civil Procedure. DAYACHAND *v.* HEMCHAND DHARAMCHAND . . I. L. R., 4 Bom., 515

293. — **Decree for enforcement of mortgage**—*Execution limited to mortgaged property—Equity.*—*K* brought to sale in execution of a simple decree for money which he held against *P* certain property, and purchased it himself. The property was subject to a mortgage at the time it was sold. Subsequently a decree was obtained against *P* enforcing this mortgage, of which *K* became the holder. *K* sought to have this decree executed, not against the mortgaged property, but against other property belonging to *P*. *Held* that, if *K* purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of *P*. GULAB SINGH *v.* PEMIAN . I. L. R., 5 All., 342

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

294. ———— **Decree for sale of mortgaged property**—*Application for execution before time allowed for payment—Act IV of 1882,*

[I. L. R., 7 All., 101

295. ———— *Beng Act VII of 1868—Surplus sale-proceeds—Attachment of surplus sale-proceeds.*—The purchaser of property sold subject to the incumbrances thereon at a sale under Bengal Act VII of 1868 subsequently became the purchaser of a decree passed prior to the sale in a

296. ———— *Decree against mortgaged property—Liability of judgment-debtor to arrest under such decree—Decree not to be extended in execution beyond its terms*—A decree cannot be extended in execution beyond the real meaning of its terms A decree obtained on a mort

not executed, as the decree-holder did not pay the process fee Subsequently a fresh application was made for execution against the person of the judgment-debtor *Held* that, as the decree merely provided for the satisfaction of the judgment-debt out of the property mortgaged, the decree could not be executed against the person of the judgment-debtor. BUDAN v. RAMCHANDRA BHUNJGAYA

[I. L. R., 11 Bom, 537

297. ———— *Decree for enforcement of hypothecation—Decree limiting judgment-debtor's liability to the hypothecated property.*—A decree upon a hypothecation-bond which only provides for its enforcement against the hypothecated property cannot be executed against the person or other property of the judgment-debtor, though an order for costs contained therein may be so executed. PRAN KUAR v DURGA PRASAD

[I. L. R., 10 All., 127

EXECUTION OF DECREE—*continued.*

11 MODE OF EXECUTION—*continued.*

298. ———— *Mortgage by one owner of undivided share of estate—Rights of mortgagee on partition where the undivided share is allotted to a sharer other than the mortgagor—Execution not against mortgaged property, but against property allotted to mortgagor*—Where *A* mortgaged to the plaintiff his undivided share in certain land which he held jointly with *B*, and subsequently to the mortgage, by a decree in a partition-suit to which the plaintiff was not a party, the mortgaged property was allotted to *B*, other property in substitution being allotted to *A*,—*Held*, in a suit against *B* and the representatives of *A* to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not

GHOSE v THAKO MONI DEBI

[I. L. R., 20 Calc, 533

299. ———— *Mortgage by owner of undivided share of estate—Rights of mortgagee on partition where share is allotted to a sharer other than the mortgagor*—Land having been granted to several persons jointly, disputes

fact his possession then remained undisturbed *A*

limited in execution to the share allotted to his mortgagor the plaintiff's vendor had therefore, after the arbitration, a good title against both *A* and his mortgagor, and the plaintiff was entitled to recover. *Hem Chunder Ghose* v. *Thako Moni Debi, I L. R, 20 Calc, 533*, and *Byjnath Lall* v *Ramoodeen Chowdhry, L. R., 1 I. A., 106 21 W. R, 233*, referred to. PULLAMMA v PRADOSHAM

[I. L. R., 18 Mad., 316

300. ———— *Transfer of Property Act (IV of 1882), s 43—Right to execute decree against subsequently acquired interest of mortgagor—Decree against mortgagor's unascertained share—Subsequent inheritance by the mortgagor of the share of a co-owner*—A Mahomedan xecuted a in which to certain

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

shares. The mortgagee brought his suit on the mortgage, joining as defendants the younger children as well as the mortgagors, and obtained a decree, whereby the mortgage amount was made payable "on the responsibility of the shares" of the co-mortgagors; the suit was otherwise dismissed, and no personal decree was passed. Subsequently the shares of the co-mortgagors were increased by inheritance from one of the other defendants who died before the decree was executed. *Held* that the increased shares of the mortgagors were liable to be sold in execution of the decree. AJIJUDDIN SAHIB *v.* BUDAN SAHIB . I. L. R., 18 Mad., 492

301. ———————— *Transfer of Property Act (IV of 1882), ss. 87, 88, 89, and 93—Mortgage—Default in payment on the date fixed in the decree—Power to enlarge the time.*—In a suit brought by a mortgagee for sale of the mortgaged property, a decree was passed on 27th July 1895, directing that the mortgagor should pay the mortgage-debt within six months, and that in default his right of redemption should be foreclosed, and the mortgagee should be at liberty to sell the property. On the 27th July 1898, the mortgagee applied for an order absolute for sale. On the 11th October 1898, the mortgagor applied for permission to pay into Court the amount of the decree. *Held* that the application could not be granted. The case fell within ss. 88 and 89, and not within s. 87 or 93, of the Transfer of Property Act. The money not having been paid within the appointed time, the Court was bound to pass an order absolute for sale; it had no power to enlarge the time for payment. *Nandram* v. *Babaji, I. L. R., 22 Bom., 771,* distinguished. TANIRAM *v.* GAJANAN

[I. L. R., 24 Bom., 300

302. ———————— *Money-decree—Transfer of Property Act (IV of 1882), ss. 88, 89, 90.*—A decree in favour of a mortgagee for sale of the mortgaged property cannot be treated as one for money. According to the Transfer of Property Act, ss. 88, 89, and 90, the mortgagee must first sell the mortgaged property, and if the net proceeds of such sale be insufficient to pay the amount due for the time being on the mortgage, and if the balance be legally recoverable from the mortgagor otherwise than out of the property sold, he may ask the Court for a decree for such balance. GOPAL DAS *v.* ALI MUHAMMAD

[I. L. R., 10 All., 632

303. ———————— *Transfer of Property Act (IV of 1882), ss. 88, 90—Decree unsatisfied by sale of mortgaged property—Right to decree for sale of other than mortgaged property.*—The holder of a decree on mortgage obtained an order under s. 88 of the Transfer of Property Act for sale of the mortgaged property, and the proceeds of this, when sold, being insufficient to satisfy the decree, he applied for a decree under s. 90 for the sale of other properties belonging to the judgment-debtor. The Subordinate Judge refused the application on the ground that there was no such provision in the order for sale under s. 88. *Held* that the decree-holder was entitled to the decree asked for. The terms of s. 90 contemplate a decree in the suit for recovery of the mortgage-money after sale of the mortgaged properties under a decree given under s. 88. The decree-holder can then apply to the Court, and if he can show that, after the sale of the mortgaged properties, there is still a balance due to him under the decree obtained under s. 88, and that amount is legally recoverable from the judgment-debtor, he can ask for and obtain a decree under s. 90 for realization of the balance from other properties of the debtor. SONATUN SHAW *v.* ALI NEWAZ KHAN

[I. L. R., 16 Calc., 423

304. ———————— *Transfer of Property Act (IV of 1882), ss. 88, 89, 90—Decree not satisfied by sale—Recovery of balance due on mortgage.*—The decree contemplated by s. 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed; and it is not necessary to institute a fresh suit to obtain such decree. RAJ SINGH *v.* PARMANAND

[I. L. R., 11 All., 486

305. ———————— *Transfer of Property Act (IV of 1882), s. 90—Execution of decree—Mortgaged property sold in execution of a decree held by a different mortgagee—S. 90 not applicable.*—In order to make the remedy provided by s. 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the person applying for a further decree under s. 90. S. 90 does not apply where the mortgaged property has been sold under a decree held by some other person. *Muhammad Akbar* v. *Munshi Ram, Weekly Notes, All., 1899, p. 208,* followed. BADRI DAS *v.* INAYAT KHAN . I. L. R., 22 All., 404

306. ———————— *Conditional decree for sale not made absolute.*—A conditional decree for the sale of mortgaged property under s. 88 of the Transfer of Property Act cannot be executed unless and until it is made absolute by an order passed under s. 89. RAM LAL *v.* NARAIN

[I. L. R., 12 All., 539

307. ———————— *Transfer of Property Act (IV of 1882), s. 90—Nature of decree contemplated by that section.*—The plaintiff obtained a decree on a hypothecation-bond, the decree providing that the money secured by the bond was to be realized by sale of the hypothecated property, and, if that proved insufficient to satisfy the decree, by sale of other property of the judgment-debtor. The hypothecated property was sold, and the proceeds were not sufficient to satisfy the decree. The decree-holder thereupon applied for enforcement of that portion of the decree which related to the other property of the judgment-debtor. To this application it was objected that it was necessary to obtain a decree under s. 90 of the Transfer of Property Act. This objection was allowed, and the decree-holder applied for and obtained a decree under the

EXECUTION OF DECREE—*continued.*

11 MODE OF EXECUTION—*continued.*

294. ——— Decree for sale of mortgaged property—*Application for execution before time allowed for payment—Act IV of 1882, ss 66, 88* —An application for execution of a decree

provided. HAR DAYAL *v* CHADAMI LAL

[I. L. R , 7 All , 194

295. ——— *Beng Act VII of 1868—Surplus sale-proceeds—Attachment of surplus sale-proceeds.*—The purchaser of property sold subject to the incumbrances thereon at a sale under Bengal Act VII of 1868 subsequently became the purchaser of a decree passed prior to the sale in a

decree against the surplus sale-proceeds under such sale, although he abandoned his lien on the property GOLUK CHUNDER MAHINTA *v* SURBOMANGALA DABI . I. L. R., 6 Calc , 711 : 8 C. L R., 189

296. ——— *Decree against mortgaged property—Liability of judgment-debtor to arrest under such decree—Decree not to be extended in execution beyond its terms* —A decree cannot be extended in execution beyond the real meaning of its terms A decree obtained on a mort-

not executed, as the decree holder did not pay the process fee. Subsequently a fresh application was made for execution against the person of the judgment-debtor *Held* that, as the decree merely provided for the satisfaction of the judgment-debt out of the property mortgaged, the decree could not be executed against the person of the judgment-debtor. BUDAN *v*. RAMCHANDRA BHUNJGAYA

[I. L R., 11 Bom , 537

297. ——— *Decree for en*

or other property of the judgment-debtor, though an order for costs contained therein may be so executed PRAN KUAR *v*. DURGA PRASAD

[I. L. R., 10 All., 127

EXECUTION OF DECREE—*continued.*

11 MODE OF EXECUTION—*continued.*

298. ——— *Mortgage by one owner of undivided share of estate—Rights of mortgagee on partition where the undivided share is allotted to a sharer other than the mortgagor—Execution not against mortgaged property, but against property allotted to mortgagor.*—Where *A* mortgaged to the plaintiff his undivided share in certain land which he held jointly with *B*, and subse-

arty, the property *ld,* in a suit against *B* and the representatives of *A* to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not

GHOSE *v*. THAKO MONI DEBI

[I. L. R., 20 Calc., 533

299. ——— *Mortgage by owner of undivided share of estate—Rights of mortgagee on partition where share is allotted to a sharer other than the mortgagor* —Land having been granted to several persons jointly, disputes

fact his possession then remained undisturbed. *A*

limited in execution to the share allotted to his mortgagor the plaintiff's vendor had therefore, after the arbitration, a good title against both *A* and his mortgagor, and the plaintiff was entitled to recover. *Hem Chunder Ghose v. Thako Moni Debi, I. L. R , 20 Calc , 533,* and *Byjnath Lall v Ramoodeen Chowdhry, L. R., 1 I. A , 106 21 W. R., 233,* referred to PULLAMMA *v* PRADOSHAM

[I. L. R., 18 Mad., 316

300. ——— *Transfer of Property Act (IV of 1882), s 43—Right to execute decree against subsequently acquired interest of mortgagor—Decree against mortgagor's unascertained share—Subsequent inheritance by the mortgagors of the share of a co-owner.*—A Mahomedan woman, together with her eldest son, executed a mortgage comprising the whole of an estate in which her younger children were also entitled to certain

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

313. ———————— *Transfer of Property Act, ss. 88, 90—Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.*—Where a decree-holder has obtained a decree under s. 88 of the Transfer of Property Act and on sale of the mortgage property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under s. 90 of the Act for a decree for the balance remaining unsatisfied. LALLA TIRHINI SAHAI *v.* LALLA HURRUK NARAIN . **I. L. R., 21 Calc., 26**

314. ———————— *Transfer of Property Act (IV of 1882), ss. 88 and 90—Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.*—Where a decree-holder has obtained a decree under s. 88 of the Transfer of Property Act, and on sale of the mortgaged property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under s. 90 of the Act for a decree for the balance remaining unsatisfied. LALLA TIRHINI SAHAI *v.* LALLA HURRUK NARAIN

[I. L. R., 21 Calc., 26

315. ———————— *Land Acquisition Act (X of 1870), s. 9—Acquisition by Government of land subject to a mortgage—Neglect of mortgagees to claim compensation—Assessment of compensation in favour of mortgagor—Subsequent remedy of mortgagee—Transfer of Property Act (IV of 1882), ss. 88 and 90.*—*B M* and others, mortgagees, obtained a decree under s. 88 of the Transfer of Property Act, 1882, for the sale of the mortgaged property. Before execution of that decree, some of the mortgaged property was taken up by Government under the provisions of the Land Acquisition Act, 1870. The mortgagees never put in any claim with regard to the mortgaged property in response to the notification made under s. 9 of the last-mentioned Act, but subsequently sought to attach in the hands of the Collector the compensation money about to be paid to the mortgagor. On these facts, it was *held* that the mortgagees were not entitled to attach such money in execution of their decree under the Transfer of Property Act, 1882. Their remedy was to proceed against the mortgaged property not taken up, and if the proceeds of sale of that were insufficient, then to apply to the Court under s. 90 of the Transfer of Property Act for a decree for the balance. BASA MAL *v.* TAJAMMAL HUSAIN

[I. L. R., 16 All., 78

316. ———————— *Transfer of Property Act (IV of 1882), ss. 88 and 89—Suit for sale on a mortgage—Future interest.*—A decree for sale under s. 88 of the Transfer of Property Act, 1882, in a suit for sale on a mortgage declared a certain sum, including principal and interest up to date of decree, to be payable to the plaintiff within a stated time, and also provided that the decree should carry future interest. The judgment-debtor did not pay within the specified time, and subsequently the decree-holder applied for an order absolute for sale under s. 89 of the above-mentioned Act. *Held* that the amount which could be realized by the decree-holder by sale of the mortgaged property would include future interest from the date of the decree under s. 88 to the date of sale, and that it was not necessary that specific mention of future interest should be contained in the order under s. 89 of the Act. RAJ KUMAR *v.* BISHESHAR NATH

[I. L. R., 16 All., 270

See also BHAWANI PRASAD *v.* BRIJ LAL

[I. L. R., 16 All., 269

317. ———————— *Transfer of Property Act (IV of 1882), ss. 88 and 89.*—A decree on a simple mortgage directing the sale of the mortgaged property on default of payment within a fixed period is substantially a decree *nisi* or conditional decree under s. 88 of the Transfer of Property Act, and cannot be executed unless it is made absolute by an order under s. 89 of that Act. *Ram Lal* v. *Narain, I. L. R., 12 All., 539,* followed. *Siva Pershad Maity* v. *Nundo Lal Kar Mahapatra, I. L. R., 18 Calc., 139,* distinguished. *Poresh Nath Mojumdar* v. *Ram Jodu Mojumdar, I. L. R., 16 Calc., 246,* referred to. TARA PROSAD ROY *v.* BHOBODEB ROY . **I. L. R., 22 Calc., 931**

318. ———————— *Transfer of Property Act (IV of 1882), s. 90—Personal covenant in mortgage to pay—Application to sell non-hypothecated property—"Balance legally recoverable"—Cause of action—Limitation.*—A mortgage-bond securing a debt payable on demand provided that for the payment of the amount of the mortgage-debt the immoveable property mentioned in it should be held as collateral security, and that, "in case of this hypothecated property being insufficient for the satisfaction of the entire amount of the bond, the creditors would be at liberty to realize the amount remaining due from the obligors personally and from their other property." *Held* that no separate cause of action for the personal remedy accrued after the mortgaged property was found on sale to be insufficient to satisfy the mortgage-debt, but that the cause of action for both remedies was one and the same, and accrued when the covenant to pay was broken. Hence, the suit for sale of the mortgaged property having been brought more than ten years after the date of the mortgage, the balance due upon the mortgage was not legally recoverable otherwise than out of the property sold, and an application for a decree under s. 90 of the Transfer of Property Act was not maintainable. *Musaheb Zaman Khan* v. *Inayat-ul-lah, I. L. R., 14 All., 513; In re McHenry: McDermott* v. *Boyd, L. R., 3 Ch., 290:* and *Miller* v. *Runga Nath Moulick, I. L. R., 12 Calc., 389,* referred to. CHATTAR MAL *v.* THAKURI . **I. L. R., 20 All., 512**

319. ———————— *Mortgage-decree—Transfer of Property Act (IV of 1882), Decree regarded as mortgage decree under.*—In a suit for recovery of mortgage-money by sale, brought after

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*continued*

said section The judgment debtor then appealed against that decree on the ground amongst others that, looking to the terms of the original decree, the application under s 90 was superfluous *Held*

may have been superfluous it may nevertheless be regarded as an application for execution of a decree by enforcement of a portion of it against *Miller* 1890, v *Da* 9, and *Raj Singh* v. *Parmanand, I L R, 11 All*, 486, referred to DURGA DAI v BHAGWAT PRASAD

[I. L. R., 13 All, 356

308 ——— *Transfer of Property Act (IV of 1882), s 90—Decree against the person and other property of the judgment-debtor as well as against the property mortgaged*—In a suit for enforcement of a mortgage security the plaintiff prayed for a decree both as against the mortgaged property and also, in the event of the mortgaged property not realizing sufficient to satisfy his claim as against the other property and the persons of the defendants and the decree which e with decree tgaged imount three, and the persons of two of the judgment debtors were to be liable *Held* that such a decree could be executed against the persons and other property of the parties named therein, without its being necessary for the decree holder to obtain a separate decree under s 90 of the Transfer of Property Act *Miller* v *Digambari Debya Weekly Notes, All, 1890, p 142*, referred to BATAK NATH v PITAMBAR DAS

[I L R, 13 All, 360

309. ——— *Rights of mortgagee in respect of non hypothecated property of the mortgagor—Res judicata—Transfer of Property Act (IV of 1882), ss 68 88, 89, and 90—Civil Procedure Code, sch iv, forms Nos 109 and 128*—Where there is nothing to show a contrary intention of the parties every mortgage carries with it a personal liability to pay the money advanced, but a mortgagee must sue for his remedy against the property first In so doing it is immaterial whether or not he prays in his plaint for relief against non hypothecated property Unless in exceptional cases, he can obtain such relief only under the provisions of s 90 of the Transfer of Property Act, and if such relief is refused, the refusal will not bar a subsequent application under s 90 *Hafiz ud-din Ahmad* v *Damodar Das, Weekly Notes, All, 1889, p 149*, approved. *Batak Nath* v *Pitambar Das, I L R, 13 All, 360*, distinguished *Sutton* v. *Sutton, L R, 22 Ch D, 515, Raj Singh* v *Parmanand, I L R, 11 All, 486, Miller* v. *Digambari Debya, Weekly Notes, All, 1890, p 142*, and *Durga Dai* v *Bhagwat Prasad, I L R, 13 All, 356*, referred to Observations on the meaning and application of ss 88, 89 and 90 of the Transfer of Property Act Explanation of the term 'legally recoverable" in s 90 *Sonatun Shah* v *Ali Newaz Khan, I L R, 16 Calc, 423*, discussed MUSAHEB ZAMAN KHAN v INAYAT UL-LAH

[I L R, 14 All, 513

310 ——— *Transfer of Property Act, s 90—Meaning of the term "legally*

hypothecated property, which was purchased by a third party The sum for which that property was sold was only sufficient to satisfy one decree and the decree holder accordingly, within three years from the date when the latter of the two bonds fell due, applied for a decree under s 90 of the Transfer of Property Act *Held* that, under the above circumstances, there was a balance legally recoverable otherwise than out of the property sold, and that the decree holder was therefore entitled to a decree under s 90 *Musaheb Zaman Khan* v *Inayat ul lah, I L R, 14 All, 513*, referred to BAGESHRI DIAL v MUHAMMAD NAQI

[I. L R, 15 All, 331

311 ——— *Transfer of Property Act (IV of 1882) s 90—Application for decree over against non hypothecated property—Balance legally recoverable—Limitation*—On an application under s 90 of the Transfer of Property Act, 1882 the time to be looked at in considering

to HAMID UD DIN v KEDAR NATH

[I. L. R., 20 All., 386

312 ——— *Court executing decree not competent to go behind its terms—*

hypothecated property of the judgment debtor, and such decree remaining unchallenged became final in its entirety,—*Held* that it was competent to the decree holder by application for execution of the decree to proceed against the non hypothecated property of his judgment-debtor, and it was not necessary for him to apply to the Court for a decree under s 90 of the Transfer of Property Act *Musaheb Zaman Khan* v *Inayat ul lah, I. L. R., 14 All, 513*, distinguished. LALJI LAL v BAEBFE

[I. L. R., 15 All, 334

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

and the other partners of the firm. KESHAV GOPAL GINDE *v.* RAYAPA . . . . **12 Bom., 165**

(*q*) POSSESSION.

326. ———— **Order for delivery of possession**—*Civil Procedure Code, 1859, s. 223.—Semble*—A decree which is not a decree for possession cannot, under s. 223, be executed by an order for delivery of possession of property in the possession of a third party who has acquired a title subsequently to the institution of the suit. AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON . . **16 W. R., 307**

327. ———— **Decree for possession**—*Civil Procedure Code, 1859, s. 223—Removal of building—Decree for khas possession.*—If in executing a decree for khas possession it is necessary to remove any of the defendants from the land covered by the decree, the Court, on application, is authorized under Act VIII of 1859, s. 223, to remove such person; but if the decree is silent as to a building situated on the land, it is not within the province of the Court which executes to direct that the building be pulled down. RADHA GOBIND SHAHA *v.* BRIJENDRO COOMAR ROY CHOWDHRY . . . **18 W. R., 527**

328. ———— *Civil Procedure Code, 1859, s. 223—Possession of house locked up by judgment-debtor.*—In a case in which the officers of a Munsif's Court were unable to give a decree-holder possession of a house, because the judgment-debtor had bolted and locked the doors, and the Munsif struck the case off the file, the High Court held that the Munsif was bound under the Code of Civil Procedure, s. 223, to remove the locks and to place the decree-holder in possession of the house. GUNESH CHUNDER SHAH *v.* RAM DHUNEE DOSSEE [**22 W. R., 283**

329. ———— *Civil Procedure Code, 1859, s. 223.*—Act VIII of 1859, s. 223, refers to decrees generally whenever they may be passed, and provides that, being so passed, they are to be effectual from the time the suit was instituted, so far as parties claiming under a title made by the judgment-debtor are concerned, even when such title was created before an appeal was filed from the order dismissing the suit, and when no decree existed. *Per* GLOVER, *J.* (MITTER, *J., dissentiente*)—When a Court of competent jurisdiction has pronounced its judgment in a suit, that suit is for the time at an end. Where a suit is dismissed and no petition of appeal is filed, the suit has no legal existence, and there is no suit pending. CHUNDER COOMAR LAHOOREE *v.* GOPEE KRISTO GOSSAMEE . . . **20 W. R., 204**

330. ———— *Decree partly in occupation of defendants' raiyats—Civil Procedure Code, 1859, ss. 223, 224.*—Where a decree is partly for a share of land in the occupancy or khas possession of the defendants and partly for a share of land in the occupancy of raiyats, the decree as to the former can only be executed according to s. 223, Act VIII of 1859; and as to the latter, according to s. 224. SHAMA SOONDERY DEBEA *v.* JARDINE, SKINNER & Co. . . . . **7 W. R., 376**

Reversing on review, S. C. . **3 W. R., 144**

331. ———— *Decree for ijmali property—Civil Procedure Code, 1859, ss. 223, 224.*—Where in a suit against certain sutputtees and patnidars to recover possession of a share of an ijmali family talukh plaintiff obtained a decree, it was held that the Court executing was bound, under s. 233, Act VIII of 1859, to put her in possession of the immoveable property adjudged, and, if necessary, to remove any person who might refuse to vacate; and that her having already been put in possession under the provisions of s. 224 was no bar to her being put into the more direct and actual possession contemplated by s. 223. ADOREMONEE DASSEE *v.* PREMCHUND MUSSANT . . . **9 W. R., 454**

332. ———— *Civil Procedure Code, 1859, s. 224—Delivery of shares and interest in property.*—Plaintiff, having only partially succeeded in a suit against *R*, *G*, and others for possession of certain land with mesne profits, appealed to the High Court, who gave him a decree with costs. Upon this, all the defendants except *R* and *G* applied for a review, and obtained a modification of the High Court's judgment, such as left the lower Court's decree standing against *R* and *G* alone. Plaintiff then applied for execution. *Held* that the only thing that the plaintiff could do in these circumstances was to ask for delivery, in the mode prescribed in s. 224, Code of Civil Procedure, of the shares and interest of *R* and *G*, but that the Court in execution was not authorized to make any enquiry into the extent or amount of these shares in relation to the other defendants. ANNODA PERSHAD MOOKERJEE *v.* TROYLUCKHNATH PAUL CHOWDRY . **13 W. R., 123**

333. ———— *Civil Procedure Code, 1859, s. 224.*—An application for execution of a decree for possession, asking for the eviction of the defendant, is quite different from an application for possession under s. 224, Act VIII of 1859. Although the lower Court rightly refused to grant the former application,—*Held* that there were no grounds for refusing the latter application, except as to that part in which the decree-holder asked for an order to issue to the raiyats to pay rent to him, which order would be beyond the purview of that section. GIBBON *v.* SHEO PURSHUN MISSER . . **17 W. R., 236**

334. ———— *Civil Procedure Code, 1859, ss. 223, 224.*—Where a decree-holder, who had received possession under s. 224, Code of Civil Procedure, and gave the usual acknowledgment, was refused khas possession of part of the land which defendants claimed to hold as raiyats, it was held that his proper course was an application under s. 223, although the case had been struck off the execution file, and that defendants' allegation of purchase (their sole plea at the trial) having failed, they could not afterwards set up a raiyati title. BANEE MUHTOON *v.* GOPEE BHUGGUT . . . **12 W. R., 285**

EXECUTION OF DECREE—continued.

11 MODE OF EXECUTION—continued

the Transfer of Property Act (IV of 1882) had come into force, the decree of the Court was "That a decree be passed in favour of the plaintiffs in respect of R5,387-10-13, together with costs and interest at the rate of 6 per cent per annum up to the date of realization, and that the mortgaged properties be made liable (*pae band kea jae*) for realization of the decretal money" *Held* that the decree was to be regarded as a mortgage-decree governed by the Transfer of Property Act, though not made in the

BUR RAHMAN . . I. L. R., 26 Calc., 166 [3 C. W. N., 8

320. ——— *Puisne mortgagee—Execution against properties outside the ... of the High Court—Leave to sue—*

Calcutta, were mortgaged to a second mortgagee In a suit against the mortgagor and the second mortgagee it was *held* that, after the usual mortgage, decree was made, the second mortgagee had the right to proceed against the properties out of Calcutta for ... any balance of the mortgage-money

1 C. W. N., 156

321. ——— *Execution of ... decree by sale of properties in the posses-*

... cannot execute a decree against such

(*o*) PARTITION.

322. ——— **Decree for partition of property partly ascertained and partly un-**

EXECUTION OF DECREE—continued

11 MODE OF EXECUTION—continued

agreed that certain property already ascertained

[4 C. L. R., 67

323 ——— **Decree for share of undivided plot of land and removal of trees thereon**—*Separation of share—Civil Procedure Code, s. 265—Act XIX of 1873, ss 107-110—Partition of mahal —M* obtained against *R* a decree for possession of "a one-fourth share of the two fallow lands, Nos 490 and 541, measuring 7 bighas and ... after removal of ... execu... ...nt possession of the two plots to the extent of the ... fourth share decreed to him, but declined to remove the trees until the said share had been specifically ascertained and partitioned by the Collector in reference to s 265 of the Civil Procedure Code *Held* that the decree could not be understood to entitle the plaintiff to remove the trees from a larger area than that to which he was entitled under that decree, and that, so long as that area remained joint and unascertained, the plaintiff could not execute the decree in the manner sought *Held* also that the decree in the present case could not be called a "decree for the partition or for the separate possession of a share of an undivided estate paying ... within the meaning of s. 265 ... inter... ...cuting the decree, and that the Court ... stance, in order to meet the exigencies of the decree, should have separated the one-forth to which the plaintiff was declared entitled, and, in executing the decree, should have ordered that the trees standing on the one-fourth area should be uprooted. RAM DAYAL *v.* MEGU LALL . . I. L. R., 6 All., 452

324 ——— **Powers of Court executing a decree for partition**—*Civil Procedure Code*

(*p*) PARTNERS

325. ——— **Decree against one of several partners in firm.**—It is an improper way of executing a decree obtained personally against one of the several partners of a firm to seize part of the partnership property, to sell that part, and then distribute the proceeds between the execution-creditor

EXECUTION OF DECREE—*continued.*

11. MODE OF EXECUTION—*continued.*

the whole of the debt then due. RAMANUND KOONDOO *v.* CHOWDHRY SOONDER NARAIN SAHUNGY [I. L. R., 4 Calc., 331

342. ———— *Stay of execution on giving security—Default of judgment-debtor—Liability of surety in execution—Decree how to be satisfied when property brought into Court by judgment-debtor and payment made by surety.*—The execution of a decree for partition was stayed pending appeal on the defendant giving security that he would satisfy such decree as might ultimately be passed against him by the Appellate Court. That Court confirmed the decree of the lower Court. In obedience to the decree, the judgment-debtor deposited in Court certain property in his possession consisting of bonds, decrees, and other articles. But as he did not produce the whole of the property as ordered by the decree, the Court directed execution to proceed against his surety. The surety paid into Court the full sum stipulated in the surety-bond. Thereupon the judgment-debtor applied that the property deposited by him in Court should be valued and made over to the decree-holder in part satisfaction of the decree *pro tanto*, and that only the balance then remaining due should be paid out of the money paid in by the surety. The Court refused, holding that the decree-holder was entitled to be paid over the whole sum paid in by the surety. On appeal, *held* (reversing the order of the lower Court) that the property already produced in Court by the judgment-debtor should be first applied towards the satisfaction of the partition-decree, and if the decree-holder did not obtain complete satisfaction in this way, the money paid in by the surety should then be made available. GOPAL NANA SHET *v.* JOHARMAL [I. L. R., 19 Bom., 578

(*s*) PRODUCE OF LAND.

343. ———— **Decree for produce of land**—*Execution for future produce—Decree before Civil Procedure Code, 1859.*—In the execution of a decree for land passed prior to the enactment of the Code of Civil Procedure, in which the value of the produce of the land was given to the plaintiff up to the date of the decree, it is not competent to the Court executing the decree to grant further produce up to the date of execution. CHINNAIYA CHETTY *v.* NARANAPAIYA . . 6 Mad., 15

(*t*) REMOVAL OF BUILDINGS.

344. ———— **Decree ordering removal of wall**—*Civil Procedure Code (Act X of 1877), ss. 235 and 260—Special appeal, Power of High Court in.*—Upon an application under s. 235 of Act X of 1877 (Civil Procedure Code) for the execution of a decree, which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column (*j*) of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X of 1877, by the imprisonment of the judgment-debtor, or the attachment of his property, or both. *Held* also that the Court was wrong in passing the order it had; but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that, if he fail to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order either for the judgment-debtor's imprisonment or for the attachment of his property, due regard being had to the provisions of s. 260 in the latter case. *Held* further that the High Court in special appeal should not vary the order for execution which had been passed in such a way as to give the decree-holder that relief for which he did not ask. PROTAP CHUNDER DOSS *v.* PEARY CHOWDHRAIN [I. L. R., 8 Calc., 174: 9 C. L. R., 453

(*u*) RIGHT OF WAY.

345. ———— **Decree giving passage through doorway**—*Removal of door.*—Where a decree only declared plaintiffs' right of passage through a doorway and to remove the brick-work with which it was filled,—*Held* that in executing it the decree-holder was not authorized to remove a wooden door in existence there. ROOKNEE KANT CHOWDHRY *v.* NUND LALL CHOWDHRY [25 W. R., 120

(*v*) SIRDAR, HEIR OF, DECREE AGAINST.

346. ———— **Decree against heir of Sirdar**—*Suit on decree.*—The mode of enforcing against a Sirdar's heir (who is not a Sirdar) a decree passed by the Agent's Court against that Sirdar is by a suit founded upon the decree. GOVIND VAMAN *v.* SAKHARAM RAMCHANDRA [I. L. R., 3 Bom., 42

(*w*) TEMPLE, SCHEME FOR MANAGEMENT OF.

347. ———— **Failure of trustees to carry out scheme**—*Mode of enforcing proper [illegible] of trustees—Civil Pro-[illegible] of 1882), ss. 539 and 260—Separate suit.*—A decree was passed in a suit under s. 539 of the Civil Procedure Code (Act XIV of

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*continued*

335 ———————— *Civil Procedure Code ss 263 264* —Applying the principle laid down in *Adoremonee Dossee* v *Prem Chand Mussant 9 W R 454* and *Banee Muhtoon* v *Gopee Bhuggut 12 W R 285* it was held that a Munsif had jurisdiction to issue an order for khas possession under s 263 Act VIII of 1859 although in the first instance he had ordered possession to be given under s 264 HUR KISHORE AUDHIKARY *v* SUDOY CHUNDER NUNDEE 17 W R., 80

336 ———————— *Reversal of decree giving mortgagors possession—Execution of decree made on reversal* —Where a decree under which mortgagors obtained possession of mortgaged property is reversed the mortgagees are entitled to be replaced in possession and to get complete restitution and to be placed in the same position as they were in before the erroneous decree was made even if the decree reversing the erroneous decree does not provide that the mortgagees should recover possession KOONDUN LALL *v* RAM RUCHA SINGH 14 W R., 465

337 ———————— *Decree for pos*

RADHA KRISTO PANJAH *v* BAMASOONDUREE DOSSEE [13 W R., 9

338 ———————— *Decree for specified property* —Where it was ordered in execution

could not touch the remaining plots JOGENDRO NATH MULLICK *v* BIJOY KESHUB ROY [19 W R, 161

339 ———————— *Civil Proce*

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*continued*

does not make any difference if such a decree is in a partition suit RAMCHANDRA SUBRAO *v* RAVJI [I L R, 20 Bom, 351

340 ———————— *Decree for possession of a village—Right of the holders of such a decree to the possession of village account books and other papers relating to the management of the village—Title-deeds* —The plaintiffs as managers

documents in question as being essential to the proper and effectual enjoyment and management of the village awarded by the decree Such books and documents were properly to be regarded as accessory to the estate and as claimable by those to whom it had been awarded The title deeds of an estate counterpart leases and other documents of the like kind such as

(r) PRINCIPAL AND SURETY

341 ———— **Decree against principal and surety**—*Interest* —*R* sued *M B C* and *P* for money due for goods supplied Separate solehnamas were filed by each of the four defendants in which they admitted the debt and each undertook to pay one fourth thereof with interest by instalments and each further agreed that if the other

deficiency A decree was passed by the Court in

titled to interest after the time when he might and ought to have put up the property of the principal debtors for sale when possibly it might have realized

EXECUTION OF DECREE—*continued.*

12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*continued.*

second execution was illegal, and the execution-creditor was responsible in respect of it. PURTAB CHUNDER BOROOAH *v.* BHUGGOBUTTY DABEA [Marsh., 59 : 1 Hay, 131

355. ——— Judgment-debtor acquiring interest in property after sale in execution—*Right to second execution for balance of decree.*—If a judgment-debtor, whose property has been once sold in execution of decree, again acquires an interest in the same property, there is no law which prohibits the decree-holder from applying for a second sale of the property to satisfy a balance due on his decree. GANESH PERSHAD *v.* SHEO CHURUN LALL . . . . . 6 N. W., 197

356. ——— Execution after satisfaction—*Decree for possession.*—A decree for possession, once satisfied by the plaintiff's being put in actual possession, cannot afterwards be revived or re-executed on the plaintiff being dispossessed. KHATOO BIBEE *v.* FURUKH ALI . 6 W. R., Mis., 108

357. ——— *Mistake, Agreement under—Agreeing to interest at certain rate unpaid—Subsequent execution.*—Where a decree-holder, under a misconception of the law, asked to receive interest, calculating that he was not entitled to more on account of interest than the principal sum decreed, and the judgment-debtor did not pay in the money,—*Held* that the decree-holder was entitled to fall back upon the original decree, and execute it according to its terms. ABED HOSSEIN *v.* ASSUD ALY [11 W. R., 29

358. ——— Execution after adjustment out of Court—*Certificates of part satisfaction—Act X of 1877, s. 258.*—Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part payment. RAJENDRONATH ROY BAHADOOR *v.* CHUNNOOMUL . . I. L. R., 5 Calc., 448

359. ——— *Civil Procedure Code, 1877, s. 235.*—S. 235 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree, that is, any matter not done through the Court as well as any agreement through the Court. PAUPAYYA *v.* NARASANNAH [I. L. R., 2 Mad., 216

360. ——— *Civil Procedure Code, 1877, s. 258.*—An adjustment of a decree not certified to the Court by either party within the time limited by law cannot be recognized as a bar to execution. CHEDUMBARA PILLAI *v.* RATNA AMMAL [I. L. R., 3 Mad., 113

361. ——— Satisfaction of decree—*Subsequent application for execution.*—After a decree had been satisfied and the case struck out at the request of the decree-holder, he discovered that, by resorting to a different mode of calculation, he might have recovered more under the decree. The Court refused to re-open the matter or to allow execution for the difference. COLONAS *v.* BULAJAN [Marsh., 211 : 1 Hay, 587

362. ——— *Satisfaction of decrees by agreement—One decree afterwards set aside.*—By mutual agreement two decree-holders entered up satisfaction in respect of their cross-decrees. Nevertheless, one of them appealed from the decree passed against him and obtained its reversal. He then applied to issue execution on his cross-decree. *Held* that the application could not be entertained, as satisfaction had been entered. The grounds upon which the application could have been entertained discussed. GUPINATH ROY *v.* DINABANDHU NANDI [3 B. L. R., Ap., 62

363. ——— *Settlement of case—Subsequent application for execution.*—A suit having been decreed, defendants appealed, but on both parties petitioning to the Court to the effect that they had come to a settlement of their differences, the appeal was struck off the file. The plaintiffs then applied to execute the original decree. *Held* that, as the Appellate Court did not reverse the decision of the first Court, the decree stood good, except so far as the plaintiffs, judgment-creditors, were debarred from executing it by their own agreement. MEWA SING *v.* AZEEZOODDEEN KHAN [13 W. R., 311

364. ——— *Intended satisfaction—Striking off execution—Failure to complete satisfaction.*—An intimation to the Court of a contemplated satisfaction of the decree by arbitration, on which intimation the execution-case was removed from the file, would not preclude the decree-holder from suing out execution again, unless it be proved on enquiry that the result of the private arbitration was a satisfaction of the decree in the mode contemplated by the parties. CHOONNEE LALL *v.* DOORGA PERSHAD . . . . . . 3 Agra, 252

365. ——— *Application by assignee of decree-holder after satisfaction entered.*—A share of a decree was mortgaged by the decree-holder's vendor, who sold his rights and interests to petitioner, who then sought to execute the decree as against the judgment-debtor with reference to that share. The judgment-debtor having paid in the money by order of the Court, and the mortgagee having entered up satisfaction of this decree against the judgment-debtor,—*Held* that there was an end to that decree as against any person liable under it for the mortgagee's share. KRISTO DOSS KOONDOO *v.* WILKINSON . . . . . 17 W. R., 159

366. ——— *Deed of compromise—Service of idol.*—Two brothers executed and filed a deed of compromise, dividing between them

EXECUTION OF DECREE—*continued*

11 MODE OF EXECUTION—*concluded*

1882) settling a scheme of management of a certain temple The scheme provided that the defendants and their heirs were during their good conduct to be retained as trustees and managers of the temple

procedure would be to amend the scheme of management so as to include a provision for the removal of the trustees necessary and not to file a separate

attachment of their property or by both DAMODARBHAT *v* BHOGILALL I L R, 24 Bom, 45

12 EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES

348 ——— **Agreement of parties not embodied in a decree**—Execution cannot be issued upon a razinamah unless the terms of it are embodied in a decree of the Court DARBHA VENKATTA SASTRI *v* VURELLA GANGAIA EX PARTE VURELLA GANGAIA 2 Mad, 305

349 ——— **Compromise of suit**—*Decree made on razinamah after lapse of five years —Execution of decree on razinamah* —A suit was compromised by a razinamah which required that a decree should be passed in conformity with its terms

dure erroneous and ordered that the decree should

decree having been properly made the Judge had no authority to direct that it should not be acted on VENKATARAMANA HODAI *v* BAPANNA PAI [7 Mad, 103

350 ——— **Application to execute solenamah made after decree** —Where parties to a suit which had been decreed entered after remand into a compromise and filed a solenamah in accordance with which the case was decided,—*Held* that an application to execute the solenamah was not a proceeding taken on the basis of the decree, and

EXECUTION OF DECREE—*continued*

12 EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*continued*

was illegal PREO MADHUB SIRCAR *v* BISSUMBHUR SIRCAR 15 W R, 514

351 ——— **Agreement not to execute decree**—*Injunction to restrain execution—Civil Procedure Code 1859 s 206* —Where a decree holder agrees for a good consideration not to enforce his decree the Court may legitimately on the suit of the opposite party issue an injunction against the former not to do what he had agreed not to do s 206 notwithstanding NUBO KISHEN MOOKERJEE *v* DEBNATH ROY CHOWDRY 22 W R, 194

352 ——— **Agreement not to execute unless on a contingency**—*Agreement to give good title* —Certain property was handed over by a

353 ——— **Agreement for execution in a particular manner**—*Agreement made before decree* —An agreement entered into before decree between a person who subsequently became the decree holder and the defendant his debtor, stipulating that the decree should be enforced in a particular manner is no bar to the execution of that decree according to its terms SAKHARAM RAMCHUNDRA DIKSHIT *v* GOVIND VAMAN DIKSHIT [10 Bom, 361

354 ——— **Second execution after debt has been realized under the first and misapplied**—*Agent not authorized to receive amount of decree* —Execution was issued upon a decree and the proceeds of the execution paid over by the officer of the Court to the mooktear of the

EXECUTION OF DECREE—*continued.*

12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES —*concluded.*

sought to have it declared that satisfaction should be entered upon it to the extent of the value of the property purchased by *A.* *Held* that *C* was not entitled to appear in the execution-proceeding following upon a case to which he was no party. GREEJA BHOOSUN MITTER *v.* KISHEN KISHORE GHOSE [7 W. R., 221

13. EXECUTION BY AND AGAINST REPRESENTATIVES.

372. ———— Right of execution—*Illegitimacy of decree-holder declared after decree.*—Where a decree was made in favour of persons on the presumption that they were legitimate, and by a subsequent High Court decision they were found to be illegitimate,—*Held* that they were not precluded from executing the decree. HIMMUT BAHADOOR *v.* SOLANO . . . . . 17 W. R., 428

373. ———— Execution by representative—*Illegitimacy, Question of—Civil Procedure Code, 1859, ss. 102, 103, and 208—Act XXIII of 1861, s. 11.*—The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. Ss. 102 and 103 of Act VIII of 1859 relate only to proceedings prior to decree, and not to proceedings in execution. S. 208 of the same Act does not apply where the person seeking to execute is not a transferee from the original decree-holder, either by assignment or operation of law. The section does not apply to cases where the right to an equitable interest in a decree is seriously contested, and was not intended to enable a Court to try, on an application for execution, such an important question as the legitimacy of an heir. Since proceedings under s. 208, Act VIII of 1859, were, by s. 364 of the Act, not liable to appeal, a suit would probably lie to reverse an order passed therein. ABIDUNNISSA KHATOON *v.* AMIRUNNISSA KHATOON . . . I. L. R., 2 Calc., 327 [L. R., 4 I. A., 66

Affirming the decision of the High Court in [S. C., 20 W. R., 305

374. ———— Purchaser from decree-holder—*Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, s. 208—Right of appeal.*—Where a decree had been purchased benami, and the party alleging herself to be the real purchaser had not been put upon the record as a party, and an application for execution made by her under s. 208 of Act VIII of 1859 had been refused, and there was a dispute as to who was the real purchaser of the decree,—*Held* that the applicant was not a party to

EXECUTION OF DECREE—*continued.*

13. EXECUTION BY AND AGAINST REPRESENTATIVES—*continued.*

the suit within the meaning of s. 11 of Act XXIII of 1861, and had no right of appeal against the order refusing her application. *Abidunnissa Khatoon v. Amirunnissa Khatoon, I. L. R., 2 Calc., 327,* followed. SOBHA BIBEE *v.* SAKHAMUT ALI [I. L. R., 3 Calc., 371: 1 C. L. R., 331

375. ———— Death of decree-holder—*Injunction to restrain execution—Revival of proceedings.*—Where a decree-holder, whose right of execution has been, by injunction restraining him pending another suit from executing the decree, temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. KALYANBHAI DIPCHAND *v.* GHANOSHAMLAL JADUNATHJI [I. L. R., 5 Bom., 29

376. ———— Civil Procedure Code, ss. 207-208—*Representative of decree-holder.*—Where application is made for execution of a decree standing in the name of a deceased person, the Judge ought, under s. 208 of the Code of Civil Procedure, in exercise of his judicial discretion, to put one of the applicants at least on the record, and to take such steps as to him may seem right and proper for protecting the interests of other claimants. If the deceased died while the suit was pending in appeal, the first amendment in the record must be to put in place of the deceased the names of those persons who were allowed by the Court to carry on the appeal in his name. ABDOOLLAH *v.* REASUT HOSSEIN [20 W. R., 51

377. ———— *Representative of deceased decree-holder—Civil Procedure Code, 1859, s. 103.*—The claim of a petitioner to represent a deceased person for the purpose of executing a decree made in favour of the deceased ought not to be rejected, but the Judge should, in accordance with the principle of s. 103, Act VIII of 1859, call upon the plaintiff to establish his right to represent the deceased. WOOMA CHURN MOOKERJEE *v.* LUCKHEE NARAIN ROY CHOWDHRY [1 W. R., Mis., 10

378. ———— *Right of representative of decree-holder to execution—Civil Procedure Code, 1859, s. 210.*—The representative of a deceased person in whose favour a decree has been made cannot claim execution as a matter of strict right, but must satisfy the Court, under s. 210, Civil Procedure Code, that it is proper that he should be allowed satisfaction of the decree; and the Court cannot determine the question without hearing the opposite side. UMRITH NAUTH CHOWDHRY *v.* CHUNDER KISHORE SINGH . . . 21 W. R., 31

379. ———— *Representative of decree-holder—Attachment of decree—Civil Procedure Code (Act XIV of 1882), ss. 232, 244, 273.*—A person attaching a decree is a representative of the decree-holder within the meaning of that term as used in s. 244, cl. (*c*), of the Civil Procedure Code, and in every case is entitled to enforce execution of the decree which he has attached. When the decree

EXECUTION OF DECREE—*continued*

12 EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES —*continued*

the family property, and a decree was passed in terms thereof Under this decree, the elder was to hold possession of certain lands the rents of which were to go to perform the worship of the family idol The younger however, kept the elder out of possession of the lands who therefore performed the worship at his own charges and then took out execution for possession and mesne profits in order to recoup his own expenditure on the family idols The elder brother having died without executing his decree his widow applied to execute it for the amount of the mesne profits due under it *Held* that the widow was entitled to execute the decree for mesne profits of the idol lands, without showing that the ceremonies had been performed by her husband out of his own private funds RADHAJIBUN MUSTAFI *v* TARAMONEE DASSEE

[2 B L R, P C, 79 11 W R, P C, 31 12 Moore's I A, 380

367. ———— *Refund decreed —Application for further execution*—A decree

368 ———— *Partial satisfaction under arrangements made by Court—Limitation—Subsequent application for execution*—In execution of a decree, an order was made by the Court directing the payment of the rents of certain property which had been attached as they became due from the mokuraridar to the judgment debtors, to be made to the decree holder to satisfy his decree, and afterwards the execution case was struck off the file Subsequently, default having been made by the mokuraridar in the payment of the rents of certain years and the decree not having been fully satisfied the decree holder applied for an order directing the payment of the rents which were in arrear to be made by the mokuraridar in accordance with the previous order Notice having been directed to be served on the judgment debtors, they came in and pleaded limitation *Held* that, as the application was not strictly one for fresh execution limitation could not apply, and that, as the effect of the order in the execution proceedings was virtually to appoint the decree holder receiver under the provisions of s 243 of Act

EXECUTION OF DECREE—*continued*

12 EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES —*continued*

369 ———— *Partial satis*

in execution of *A*'s decree) brought a suit against *B* and *A*, seeking for a refund of the moneys received by the latter, this suit (to which *C* was not made a

binding upon *A*, so as to prevent a second application for execution for the same amount being made, and that, even were it not so the refund made on a private understanding between them by *A* to *D* in the suit brought by *D* against *B* and *A* could not be binding upon *B*, unless he were a party to the compromise and much less would it be so as against the represen

and the

tained.

SAHOO

370 ———— *Acquiescence*—

of the decree of 1847 The decree of 1847 had been

AHMAD ALI I. L R, 1 All., 368

371. ———— *Claims to attached property*—*A* obtained a money decree against *B* declaring certain properties belonging to *B* liable to be sold in satisfaction of it Other decrees were subsequently obtained against *B* in execution of one of which certain of these properties were sold (subject to the lien) and purchased by *A* himself, and in execution of another certain others were sold also (subject to the lien) and purchased by *C* On *A* proceeding to execute his own decree against *B*, *C*

EXECUTION OF DECREE—*continued.*

12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES —*concluded.*

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13. EXECUTION BY AND AGAINST REPRESENTATIVES.

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373. ———— **Execution by representative**—*Illegitimacy, Question of—Civil Procedure Code, 1859, ss. 102, 103, and 208—Act XXIII of 1861, s. 11.*—The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. Ss. 102 and 103 of Act VIII of 1859 relate only to proceedings prior to decree, and not to proceedings in execution. S. 208 of the same Act does not apply where the person seeking to execute is not a transferee from the original decree-holder, either by assignment or operation of law. The section does not apply to cases where the right to an equitable interest in a decree is seriously contested, and was not intended to enable a Court to try, on an application for execution, such an important question as the legitimacy of an heir. Since proceedings under s. 208, Act VIII of 1859, were, by s. 364 of the Act, not liable to appeal, a suit would probably lie to reverse an order passed therein. ABIDUNNISSA KHATOON *v.* AMIRUNNISSA KHATOON . . . **I. L. R., 2 Calc., 327**
[L. R., 4 I. A., 66

Affirming the decision of the High Court in **[S. C., 20 W. R., 305**

374. ———— **Purchaser from decree-holder**—*Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, s. 208—Right of appeal.*—Where a decree had been purchased benami, and the party alleging herself to be the real purchaser had not been put upon the record as a party, and an application for execution made by her under s. 208 of Act VIII of 1859 had been refused, and there was a dispute as to who was the real purchaser of the decree,—*Held* that the applicant was not a party to

EXECUTION OF DECREE—*continued.*

13. EXECUTION BY AND AGAINST REPRESENTATIVES—*continued.*

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375. ———— **Death of decree-holder**—*Injunction to restrain execution—Revival of proceedings.*—Where a decree-holder, whose right of execution has been, by injunction restraining him pending another suit from executing the decree, temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. KALYANBHAI DIPCHAND *v.* GHANOSHAMLAL JADUNATHJI **[I. L. R., 5 Bom., 29**

376. ———— *Civil Procedure Code, ss. 207-208—Representative of decree-holder.*—Where application is made for execution of a decree standing in the name of a deceased person, the Judge ought, under s. 208 of the Code of Civil Procedure, in exercise of his judicial discretion, to put one of the applicants at least on the record, and to take such steps as to him may seem right and proper for protecting the interests of other claimants. If the deceased died while the suit was pending in appeal, the first amendment in the record must be to put in place of the deceased the names of those persons who were allowed by the Court to carry on the appeal in his name. ABDOOLLAH *v.* REASUT HOSSEIN **[20 W. R., 51**

377. ———— *Representative of deceased decree-holder—Civil Procedure Code, 1859, s. 103.*—The claim of a petitioner to represent a deceased person for the purpose of executing a decree made in favour of the deceased ought not to be rejected, but the Judge should, in accordance with the principle of s. 103, Act VIII of 1859, call upon the plaintiff to establish his right to represent the deceased. WOOMA CHURN MOOKERJEE *v.* LUCKHEE NARAIN ROY CHOWDHRY **[1 W. R., Mis., 10**

378. ———— *Right of representative of decree-holder to execution—Civil Procedure Code, 1859, s. 210.*—The representative of a deceased person in whose favour a decree has been made cannot claim execution as a matter of strict right, but must satisfy the Court, under s. 210, Civil Procedure Code, that it is proper that he should be allowed satisfaction of the decree; and the Court cannot determine the question without hearing the opposite side. UMRITH NAUTH CHOWDHRY *v.* CHUNDER KISHORE SINGH . . . **21 W. R., 31**

379. ———— *Representative of decree-holder—Attachment of decree—Civil Procedure Code (Act XIV of 1882), ss. 232, 244, 273.*—A person attaching a decree is a representative of the decree-holder within the meaning of that term as used in s. 244, cl. (*c*), of the Civil Procedure Code, and in every case is entitled to enforce execution of the decree which he has attached. When the decree

EXECUTION OF DECREE—*continued*

13 EXECUTION BY AND AGAINST REPRESENTATIVES—*continued*

attached has been passed by the same Court as the decree in execution of which it has been attached, the Court has jurisdiction to execute the attached decree on the application of the attaching creditor PEARY MOHUN CHOWDHRY *v* ROMESH CHUNDER NUNDY I. L. R., 15 Calc, 371

380 ———— *Judgment creditor who has attached a decree—Right to execute decree—Civil Procedure Code (1882),*

381 ———— **Death of judgment-debtor**—*Civil Procedure Code 1859, s 210 and s 204—Application to make heir or surety of deceased liable—Delay*—An application under s 210 Civil Procedure Code, cannot be allowed to succeed upon the ground which would support an application under s 204, and an application under s 204 must be disposed of on a state of facts which would

AMEEN AHMED *v* VELAET ALI KHAN [20 W. R., 422

382 ———— *Civil Procedure Code, 1859, s 210—Right to execute decree against representative where certificate of administration has been obtained*—A decree holder is at liberty, under s 210 Act VIII of 1859, to

DOOR *v* RAJESSUREE . 15 W. R., 476

383 ———— **Right of representative of co-sharer to execute decree**—*Personal right.*—The right of one of several co-sharers in an endowment to recover possession of the land from which he has been ousted by the other co-sharers is a personal one and does not descend to his heirs A decree for that purpose obtained by him, if not executed by him in his lifetime will become infructuous after his death His widow, however can recover in a regular suit whatever sums he paid out of his own funds for keeping up the service of the idols RADHA JEEBUN MUSTOFEE *v* TARA MONEE DOSSEE . . 3 W. R., Mis, 25

384 ———— **Judgment-debtor purchasing share in decree**—*A* mortgaged certain property to *B*, and afterwards sold a two annas share thereof to *C*, and gave him an ijara of a portion *B* obtained a decree on his mortgage, which decree was purchased by *C*, who then applied for execution The judgment debtor *A* objected that

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385 ———— **Representative of minor**—*Execution by guardian—Death of minor*—When a party applies to execute a decree on behalf of a minor his representative capacity comes to an end by the death of that minor, and further steps in execution, or otherwise, must be taken by the legal representative of the deceased whoever that may be HULODHUR ROY CHOWDRY *v* JUDDO NATH MOOKERJEE 14 W. R., 162

386 ———— **Decree passed against dead man**—*Civil Procedure Code, 1859, s 11*—Where the sole defendant to a suit dies before de

[3 C. L. R., 192

387 ———— **Representative of debtor**—*Procedure*—Exposition of the procedure to be observed for the execution of a decree against the legal representative of a deceased person ROODRO NARAIN ROY *v* NITTYANUND DOSS 8 W R., 195

388 ———— *Civil Procedure Code (1882) s 234—Execution of decree against deceased judgment debtor—Probate and Administration Act (V of 1881), s 104—Equal and rateable distribution*—The right of a decree-holder, under s 234 of the Civil Procedure Code to have his decree executed against the legal representative of a deceased judgment debtor is not affected by s. 104 of the Probate and Administration Act, which directs debts to be paid equally and rateably out of the assets VENKATARANGAYAN CHETTI *v* KRISHNASAMI AYYANGAR

[I. L. R., 22 Mad., 194

389. ———— *Execution of decree where judgment debtor is dead*—Execution cannot issue against the estate of a deceased person until there is some one on the record as representing the estate LEKRAJ ROY *v* BECHARAM MISSER

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390 ———— *Execution against person as representative*—If execution has

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taken out against him personally as one of the original defendants, even if he were liable in both capacities. PREM LALL GOSSAMEE *v.* HOSSEINOODEEN [13 W. R., 36

392. ———— Decree against deceased person, Effect on representatives—*Civil Procedure Code, 1859, ss. 104, 203, 210, 249.*—When a decree has been obtained against *A* in his lifetime, and *A* dies before execution, *A's* estate is properly described in the proceedings in execution as the estate of *A* (s. 210, Code of Civil Procedure); and in the certificate of sale the purchaser is properly declared to have purchased the right, title, and interest of *A* in the property sold; but this procedure is improper in cases in which the debtor dies before or pending the suit, and the suit is brought or continued against his representative. In such cases the representative, and not the deceased person, is the defendant (ss. 104 and 203); and in the notification of sale (s. 249) and in the certificate of sale (s. 259) it ought to be set forth that what is sold is the right, title, and interest of the representative on the record. NATHI HARI *v.* JAMNI . . . . 8 Bom., A. C., 37

393. ———— Representative of debtor —*Civil Procedure Code, 1859, s. 203.*—S. 203, Act VIII of 1859, although it primarily refers to a party who has been substituted before decree for the original debtor, is equally applicable to a person who has become representative of the original debtor in execution-proceedings, his liability being limited to the extent of the property of the original debtor which may have come into his hands. JAFUR HOSSEIN *v.* HINGUN JAN . . . . 8 W. R., 161

394. ———— *Execution against representative where he has assets, but fails to satisfy decree.*—If a decree-holder can show that assets of a deceased judgment-debtor have come into the hands of such debtor's legal representative, and if the representative fails to satisfy the Court that he has duly applied such assets, the latter may be arrested in execution of the decree. DHERAJ MAHTAB CHUND BAHADOOR *v.* MUNMOHINEE DASSEE [12 W. R., 517

395. ———— *Civil Procedure Code, 1859, s. 203.*—When a decree-holder wishes to execute his decree against the heirs of his judgment-debtor to the extent of property inherited from the debtor and not duly applied by the heirs, he must, before he can put s. 203, Act VIII of 1859, in force, satisfy the Court that no such property of the deceased can be found as he can sell in execution. INDRO NARAIN MISSER *v.* KRISTO CHUNDER MAHTO [14 W. R., 362

396. ———— *Death of judgment-debtor after appellate decree—Civil Procedure Code (1882), ss. 234, 248, 361 to 372 and 583—Parties, Substitution of—Subordinate Judge, Jurisdiction of.*—The Civil Procedure Code (Act XIV of 1882) does not contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. Ss. 361 to 372 relate to changes during suit, and speak only of plaintiffs and defendants—terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree and not to proceedings in execution between the judgment-creditor and judgment-debtor. A Court of appeal having confirmed the decree of a second class Subordinate Judge, the decree was transferred for execution to the first class Subordinate Judge. After the transfer, the judgment-debtor died. The judgment-creditor then applied to the first class Subordinate Judge to substitute on the record the name of the representative of the deceased. The first class Subordinate Judge rejected the application and referred the judgment-creditor to the second class Subordinate Judge, who also rejected the application on the ground that the decree which was being executed was the appellate decree in which his decree was merged, and therefore he had no jurisdiction to entertain the application. *Held* that the course open to the judgment-creditor was by way of application to execute the decree against the legal representative of the deceased as provided by s. 234 of the Civil Procedure Code (Act XIV of 1882), in which case the application to execute the decree, having regard to s. 583, would be to the second class Subordinate Judge, although by s. 248 the notice to the party against whom execution was applied for would be issued by the first class Subordinate Judge to whom the decree was transferred for execution. HIRACHAND HARJIVANDAS *v.* KASTURCHAND KASIDAS [I. L. R., 18 Bom., 224

397. ———— *Execution against representative of debtor—Civil Procedure Code (1882), ss. 234, 248, 249, and 578—Application by decree-holder for execution of decree by substitution on death of the judgment-debtor to the Court where the decree has been transferred.*—A decree was transferred to another Court for execution. Pending the proceedings, one of the judgment-debtors died. On an application to that Court by the judgment-creditor to execute the decree against the legal representative of the deceased judgment-debtor, a notice was issued under s. 248 of the Code of Civil Procedure. The legal representative objected that the Court had no jurisdiction to entertain the application, and that the application should have been made under s. 234 of the Code to the Court that passed the decree. *Held* that the power of the Court executing a decree to order execution under s. 249 against the legal representative of a deceased judgment-debtor, after the issue of notice under s. 248, is not cut down by the provisions of s. 234, which simply empowers the decree-holder to apply to the Court which passed the decree to execute it against the legal representative of a judgment-debtor who is dead, and that the Court to which the decree has been transferred has full jurisdiction to allow execution to proceed against the legal representative. *Held* also that, even assuming that an application under s. 234 to the Court which passed the decree was a necessary

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attached has been passed by the same Court as the decree in execution of which it has been attached, the Court has jurisdiction to execute the attached decree on the application of the attaching creditor. PEARY MOHUN CHOWDHRY *v* ROMESH CHUNDER NUNDY . . I. L. R., 15 Calc, 371

380. ——— *Judgment-creditor who has attached a decree—Right to execute decree—Civil Procedure Code (1882),*

381. ——— **Death of judgment-debtor**—*Civil Procedure Code, 1859, s. 210 and s. 204—Application to make heir or surety of deceased liable—Delay*—An application under s 210 Civil Procedure Code, cannot be allowed to

cumbent on him to explain the reason of the delay. AMEEN AHMED *v* VELAET ALI KHAN [20 W. R, 422

382. ——— *Civil Procedure Code, 1859, s 210—Right to execute decree against representative where certificate of administration has been obtained*—A decree-holder is at liberty, under s 210, Act VIII of 1859, to

383. ——— **Right of representative of co-sharer to execute decree**—*Personal right.*—The right of one of several co-sharers in an endowment to recover possession of the land from which he has been ousted by the other co-sharers is ... A ... not ... ruc- ... can recover in a regular suit whatever sums he paid out of his own funds for keeping up the service of the idols RADHA JEEBUN MUSTOFEE *v* TARA MONEE DOSSEE . . 3 W. R., Mis., 25

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385 ——— **Representative of minor**—*Execution by guardian—Death of minor*—When a party applies to execute a decree on behalf of a minor, his representative capacity comes to an end by the death of that minor, and further steps in execution, or otherwise, must be taken by the legal representative of the deceased, whoever that may be HULODHUR ROY CHOWDRY *v* JUDDONATH MOOKERJEE . 14 W. R, 162

386 ——— **Decree passed against dead man**—*Civil Procedure Code, 1859, s 119*—Where the sole defendant to a suit dies before de

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387. ——— **Representative of debtor**—*Procedure*—Exposition of the procedure to be observed for the execution of a decree against the legal representative of a deceased person ROODRO NARAIN ROY *v* NITTYANUND DOSS . 8 W. R., 195

388. ——— ——— *Civil Procedure Code (1882) s. 234—Execution of decree against deceased judgment debtor—Probate and Administration Act (V of 1881), s 104—Equal and rateable distribution*—The right of a decree-

out of the assets VENKATARANGAYAN CHETTI *v* KRISHNASAMI AYYANGAR [I. L. R., 22 Mad., 194

389. ——— *Execution of decree where judgment-debtor is dead.*—Execution cannot issue against the estate of a deceased person until there is some one on the record as representing the estate. LEKRAJ ROY *v.* BECHARAM MISSER [7 W. R., 52

390. ——— *Execution against person as representative*—If execution has

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saves limitation against another representative. Accordingly, where the plaintiff, on the death of his sole debtor, sued out execution on the 18th June 1881, under a darkhast No. 718 of 1878, against *V*, one of the three sons of the debtor, and the execution-proceedings continued till the death of *V* in March 1884, whereupon the plaintiff applied on the 28th May 1884 to put *M* and *N*, the brothers of *V*, on the record as his representatives,—*Held* that the application was not too late against *M* and *N* regarded as joint representatives, with their brother *V*, of their father, the original judgment-debtor. KRISHNAJI JANARDAN *v.* MURARRAV [I. L. R., 12 Bom., 48

404. ———— *Civil Procedure Code, s. 234—Successive deaths of judgment-debtor and his legal representative—Execution against legal representative of the legal representative.*—The judgment-debtor under a simple money-decree died before execution was taken out against him. Execution of the decree was sought against his legal representative, into whose hands it was found that certain of the assets of the deceased judgment-debtor had come; but before anything was recovered, the legal representative in turn died. *Held* that the decree-holder was entitled to execute his decree against the legal representative of the legal representative to the extent of any assets of the original judgment-debtor which might have come into her possession. JAFRI BEGAM *v.* SAIRA BIBI . . . . I. L. R., 22 All., 367

405. ———— *Civil Procedure Code, 1882, s. 234.*—Under s. 234 of the Civil Procedure Code, the legal representative of a deceased judgment-debtor is liable summarily only in respect of property actually received by him, or taken into his disposition. On the 27th March 1878, one *B* obtained a decree for R2,100 against one *P*, who died in July of that year, leaving his son *H* his legal representative. Subsequently, one Homjibhai sued *H* as the legal representative of *P* upon a mortgage executed by the latter in his lifetime, and obtained a decree, in execution of which he sold the mortgaged property by auction, and bought it in himself for R810. On appeal, this decree was reversed on the 3rd August 1883. Instead of thereupon recovering the property which had been sold in execution, *H*, on the 16th November 1883, agreed with Homjibhai that the latter should retain it on payment of R240 as costs of the suit. Shortly before this compromise was effected, *B* sold her decree to the appellant, *K*, who in 1884 applied for execution against *H*. The Subordinate Judge made an order for execution against *H personally to* the extent of R810, holding that *H* had fraudulently adjusted the decree in Homjibhai's suit, and that, even if there was no fraud, he, as administrator of *P's* estate, ought to have recovered back the money realized by the sale, instead of accepting a compromise. On appeal, the order of the Subordinate Judge was reversed by the District Judge. On appeal to the High Court,—*Held,* confirming the order of the District Judge that *H* was not personally liable. Under s. 234 of the Civil Procedure Code (Act XIV of 1882), a representative of a deceased judgment-debtor, who has failed purposely or negligently to recover some debt due to the estate of the deceased, or some property belonging to it, is not liable in the same way as for property of the deceased which has come to his hands. In that section, property is not defined as identical with assets, and so to include mere rights of action. Nor is it provided that in an execution-proceeding the representative shall be made answerable as well for what with diligence on his part would have come to his hands as what actually has come to his hands. It may well be that, while the Legislature intended to bring the representative under the control of a summary inquiry where he had actually received property, it did not intend to make him answerable in other cases except through the medium of a suit for administration or other regular action. KHUSHROBHAI NASARVANJI *v.* HORMAZSHA PHIROZSHA [I. L. R., 11 Bom., 727

406. ———— *Representation of estate by mother—Decree against mother when adopted son in existence.*—Plaintiff obtained a decree on a bond executed by *S* against the mother of *S*, whom he believed to be the heiress of *S*. In attempting to execute this decree against the estate of *S*, plaintiff was obstructed by the defendant, who was the adopted son of *S*. Plaintiff sued the defendant for a declaration that he was entitled to execute his decree against the estate of *S* in the hands of the defendant. *Held* that the suit must fail, inasmuch as the estate of *S* was not properly represented in the former suit. *Sotish Chunder Lahiry* v. *Nil Komul Lahiry, I. L. R., 11 Calc., 45,* distinguished. SUBBANNA *v.* VENKATAKRISHNAN . . . I. L. R., 11 Mad., 408

407. ———— *Decree against executors for debts incurred while acting under a will afterwards found invalid, Effect of—The heir's liability under the decree—The remedy of the decree-holder.*—Certain executors, acting under an order of the Court, borrowed a sum of money from *K M* for the funeral expenses of *J D*, the testator. *K M* obtained a decree for the amount against the executors and the adopted son of *J D*. Afterwards *F D* got a decree, whereby both the will and the adoption were set aside, and he was declared the legal heir of *J D*. *K M* then sought to enforce his decree against *F D* by the sale of the property which now formed part of the estate of *F D*, who objected to the proceedings. *Held* that, as *F D* was not the legal representative of the judgment-debtors, the decree could not bind the estate in his hands; but, in order to make the estate liable for the debt, the proper course of the decree-holder was to bring a regular suit against *F D*. FANINDRO DEB RAIKUT *v.* JUGDISHWARI DABI . I. L. R., 14 Calc., 316

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preliminary to proceedings under s 248 by the Court executing the decree, the omission to make it was only an irregularity which did not affect the merits of the case, and, under s 578 the order of the Court of first instance should not have been reversed on account of such irregularity SHAM LAL PAL v MODHU SUDAN SIRCAR [I. L. R, 22 Calc., 558

398 ———— *Civil Procedure Code (1882), s 234—Attachment during*

ment debtor against property which has not been attached during the lifetime of the judgment debtor, his proper course is that marked out by s 234 of Act XIV of 1882, but if the property has been attached during the lifetime of the judgment debtor, it then

any one as a legal representative ABDUR RAHMAN v. SHANKAR DAT DUBE I. L. R., 17 All., 162

399. ———— *Civil Procedure Code (1882), s. 234—Application to execute decree against alleged representative of deceased judgment-debtor*—In the case of an application under s 234 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of

representative ... *dhry, I L R, 13 Calc, 257*, referred to SETH SHAPURJI NANA BHAI v SHANKAR DAT DUBE [I. L. R, 17 All., 431

400. ———— *Civil Procedure*

deed of release executed by a Hindu widow relinquishing the estate inherited by her from her husband in favour of reversioners, the latter bound themselves

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Code of Civil Procedure, liable to have execution taken out against them to the extent of those assets *Davenport v Bishopp, 2 Y. & C, 460*, referred to *Kameshwar Persad v Ram Bahadur Singh, I L R., 12 Calc, 459*, distinguished CHINTAMONY DUTT v MOHESH CHUNDRA BANERJEE [I. L. R., 23 Calc, 454

401. ———— *Death of a party to a suit after argument and before delivery of judgment—Execution against the heirs of deceased judgment debtor—Civil Procedure Code (1882), ss 234 and 248 250*—On the 30th November 1892,

was still living On the 15th December 1893, the decree holder applied for execution of the decree, but the application was rejected by the Court of first instance on the ground that, as the heirs of the

ss 234 and 248 250 of the Civil Procedure Code (Act XIV of 1882) without placing them on the record of the suit. RAMACHARYA v ANANTACHARYA [I. L. R., 21 Bom, 314

402 ———— *Death of plaintiff after hearing, but before judgment—Judgment*

... *R, 21 Bom, 314*, and *Surendro Keshub Roy v. Doorgasoondery Dossee, I. L R, 19 Calc, 513*, followed CHETAN CHARAN DAS v BALBHADRA DAS [I. L. R., 21 All., 314

403. ———— *Death of judgment debtor—Execution—Execution against one of several representatives of a sole debtor—Death*

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plaintiffs had been a party to the decree of 1856, which did not ascertain the amount of the profits or determine whether the then defendants were liable, jointly or severally, in respect of the wrongful possession. Before the issue of a money-decree which was capable of being put into execution, the alleged ancestor of the present plaintiffs was dead, and the latter, not having been parties to that decree, were not liable under it. RADHA PRASAD SINGH *v.* LAL SAHAB RAI . . . **I. L. R., 13 All., 53 [L. R., 17 I. A., 150**

413. ———— *Civil Procedure Code (1882), s. 234—Claim by judgment-debtors to property seized in execution of a decree against them as representatives of original debtor—Burden of proof.*—Where, in execution of a decree against the representatives of a deceased debtor, specific property was seized as the property of the deceased debtor and as being in the possession of his representatives, and the judgment-debtors claimed the property so seized as their own,—*Held* that the burden of proof lay on the decree-holder who asserted that the property seized in execution of his decree was the property of the deceased debtor, and was as such in the possession of the judgment-debtor. ABDUL RAHMAN *v.* MAHOMED AZIM . . . **4 C. W. N., 151**

414. ———— **Party in possession of property of deceased.**—An order was made under s. 210 of Act VIII of 1859, making the legal representatives of a deceased judgment-debtor parties to a suit in execution of a decree obtained against the deceased in his lifetime. Subsequently, the decree-holder discovered that certain property which he claimed to be the property of the deceased was in the possession of a third person, *C*, and he applied to have *C*'s name put upon the record and to be allowed to execute the decree against him. *Held* that the Court had no power to put *C*'s name on the record. NADIR HOSSEIN *v.* BISSEN CHAND BASSARAT . . . . . . **3 C. L. R., 437**

415. ———— **Marriage of party pending execution**—*"Judgment"—Civil Procedure Code, 1859, s. 105.*—A party having died while a suit against him was pending, his widow was brought upon the record as defendant, and judgment was given against her, which was subsequently affirmed on appeal. The original decree embraced an award of certain wasilat (accruing after the husband's death) for which the widow was personally liable. Between the original and final judgments she married again, and execution of the decree was accordingly sought against her second husband. *Held* that he was not liable to summary proceedings in execution, and that the term "judgment" in s. 105, Act VIII of 1859, did not include the judgment in appeal. BINDABUN CHUNDER SIRCAR *v.* MACKINTOSH . **9 W. R., 442**

416. ———— **Decree for an account**—*Personal decree.*—Where a decree ordered a defendant to give in certain accounts within a specified period, and the defendant survived the period without any proceedings being ever taken against him, it was held that the decree was binding upon him personally, and could not, after his death, be executed against his widow and representative. BIDHOO MOOKHEE DASSEE *v.* BEEJOY KESHUB ROY . **12 W. R., 495**

417. ———— **Decree for damages**—*Civil Procedure Code, 1859, ss. 102, 103—Liability of purchaser for personal debt.*—A defendant, against whom a Principal Sudder Ameen had decreed damages on account of certain malicious and wrongful conduct towards plaintiff, appealed to the High Court; but before the appeal came on for hearing, he died. Upon this a party (*M*) sought to be substituted for the deceased appellant, not as his legal representative otherwise than as having purchased a share in his property, and in consequence liable to be injuriously affected if the plaintiff proceeded to execute the decree which he had obtained in the lower Court. *Held* that the dena-pauna clause in *M*'s deed of purchase from deceased did not make *M* liable to pay so purely personal a debt of deceased as that which the decree created, and consequently *M*'s only title to be the appellant's legal representative failed. MACLEOD *v.* KUNHOJE SAHOO . . . . **9 W. R., 271**

418. ———— **Effect on decree of judgment-debtor becoming by inheritance one of decree-holders.**—Where a judgment-debtor becomes by inheritance one of the decree-holders in respect of the same property, or a share in it, the effect of the inheritance, either as to a part or as to the whole of the decree, is to extinguish it *pro tanto.* POGOSE *v.* FUKUROODDEEN MAHOMED AHSAN *alias* ALIMOODDEEN CHOWDHRY . **25 W. R., 343**

419. ———— **Judgment-debtor acquiring interest in decree as representative.**—A plaintiff who had obtained a decree having died, and the defendant in the suit being one of the representatives of the deceased plaintiff, and as such entitled to succeed to a share in his estate,—*Held* that the mere fact of the defendant being one of the representatives of the deceased did not debar the other representatives from executing the decree according to their rights. WISE *v.* ABDOOL ALI [**7 W. R., 136**

420. ———— **Decree for possession of immoveable property**—*Joint-decree—Purchase by judgment-debtor of rights of some of the decree-holders—Decrees extinguished pro tanto.*—Where, subsequent to a decree, a portion of the rights to which the decree relates devolves either by inheritance or otherwise upon the judgment-debtor, or is acquired by him under a valid transfer, the decree does not become incapable of execution, but is extinguished only *pro tanto.* This rule of law is sufficiently general to comprehend alike cases in which the decree is for money only, and where it is for immoveable property. The rule of law against breaking up the integrity of a mortgage-security is a rule aiming at the protection of the mortgagee, and is not applicable to cases where the mortgagee himself has acquired the ownership of a portion of the mortgaged property. *Benars*

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408. ——————— *Decree for maintenance of widow—Liability of ancestral estate in execution—Civil Procedure Code, s 234* *A*, the widow of an undivided member of joint Hindu family, obtained a decree for maintenance against *B*, the brother of her deceased husband, not expressed to be a decree against the head or representative of the joint family *B* died and *C*, his son, having been brought in as his representative, resisted the execution of the decree by attachment of the family estate *Held* that the family estate was not liable *Per Cur*—In a regular suit *C* might clearly be held liable to pay maintenance to *A*, and a

Procedure, and it is not open to extend the scope of the decree in such proceedings *Karpakambal* v *Subbayyan, I L R, 5 Mad, 234*, approved and followed MUTTIA v VERAMMAL

[I. L. R., 10 Mad, 283

409. ——————— *Maintenance—Arrears of maintenance due to a Hindu widow at her death—Liability of such arrears to satisfy a decree against her assets*—Where sums due for a widow's maintenance have become a debt, such a debt should be regarded as assets of the widow after her death liable to be taken in execution of a decree against her *A* sued upon a bond executed in his favour by *R*, a Hindu widow, and after her death obtained a decree against *N*, as her legal representative, directing "that the judgment creditor should be satisfied out of such assets of the deceased widow as may in course of execution be proved to have come into the possession of the defendant *N*" *A* sought in execution to obtain satisfaction out of arrears of an annuity due by *N* to the deceased on account of her maintenance for fifteen years before her death The Subordinate Judge held that, the right to recover these arrears was one personal to the widow *R*, and, though it could be enforced by her would not pass to her creditor He therefore dismissed the darkhast *Held*, reversing the order of the Subordinate Judge, that the arrears of the annuity due by *N* to *R* as maintenance were properly to be regarded as the assets of the widow, and as such were available in execution to satisfy the decree *N*, owing money in his individual capacity to *R*, would, in the interest of creditors and justice, be assumed to have paid it to himself as her legal

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[I. L. R., 11 Bom, 528

410 ——————— *Civil Procedure Code, 1882, s 234—Execution of a decree against the son of a Hindu judgment debtor—Determination of questions as to the binding nature of the decree debt.*—In execution of a money-decree passed against a Hindu since deceased, ancestral property in the possession of his son was attached A petition by the son objecting that the property was not liable to be attached in his hands was dismissed *Held* that the order dismissing the petition was wrong, for when a judgment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death he cannot be considered as executing the decree against the property of the deceased judgment debtor within the meaning of s 234 of the Code of Civil Procedure VENKATARAMA v SENTHIVELU I L R, 13 Mad, 265

411. ——————— *Legal representative of a joint undivided Hindu in respect of ancestral immoveable property attached in execution—Civil Procedure Code, s 248—Notice of execution*—The plaintiff and his brother were joint undivided brothers possessed of certain immoveable property

but before

obtained, th

issued a no

Code (XIV of 1882) addressed to the brother and widows of the plaintiff as his "legal representatives" within the meaning of that section, calling on them to show cause why execution should not proceed against them *Held* that his widows, and not his brother were the plaintiff's legal representatives for this purpose, for it must be as quasi separate property of the deceased plaintiff that the attaching creditor had a claim to it If it were to be treated as joint property, he could have none for the deceased's interest would then have disappeared, having gone by survivorship to his brother NANABHAI GANPATRAO v JANARDHAN VASUDEVJI

[I. L R, 16 Bom, 638

412 ——————— *Ascertainment of a defendant's liability by an operative decree*

profits, Decree for—Non joinder of parties—An operative decree, obtained after the death of a defendant, ascertaining for the first time the extent and quality of his liability, the latter having been already declared in general terms in a prior decree, cannot bind the representatives of the deceased, unless they were made parties to the suit in which such ascertainment was pronounced The question

right to execute for mesne profits was not wholly dependent upon whether or not the ancestor of the present

EXECUTION OF DECREE—*continued.*

14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*continued.*

GOPAL PERSHAD *v.* RAMANOOGRA SINGH [8 W. R., 201

ROGHOONATH DOSS *v.* ALLADEEN PATTUCK [5 W. R., 9

426. ———————— *Joint judgment-debtors, Liability of.*—In executing a joint decree against several debtors, it is not open to a Court to stay the sale of the property of certain of the debtors, upon their offering to pay what they consider their share of the amount due under the decree; nor can a Court, in such a case, upon proper action taken by the judgment-creditor, refuse to attach and sell the property of any one of the judgment-debtors in satisfaction of the entire judgment-debt. The liabilities of joint debtors as amongst themselves, if not settled privately, can be determined only in another suit. KALLY MOHUN PAL *v.* DINO NATH CHUCKERBUTTY [8 C. L. R., 34

427. ———————— *Joint and several decree for mesne profits.*—On an appeal from an order passed in execution of a decree for possession and mesne profits, the High Court laid down the principle that, though the decree was in words a joint and several decree for mesne profits, yet where it could be proved incontestably that out of a number of defendants any one had been in possession only of particular lands or a distinct mouzah or lease, his liability to satisfy the decree would in equity extend no further than two such particular land, mouzah, or lease, and for such land the decree-holder could take out execution as against lessor and lessee; the principle was then applied to the case under appeal. *Held*, in explanation of that opinion, that as the appellant was the lessee of one village, he could be held jointly and severally liable with the proprietors (co-defendants), and the decree-holder could proceed against him either severally or jointly with those defendants, and realize the wasilat due on that village. GUNESH DUTT *v.* BULWUNT SINGH [14 W. R., 175

428. ———————— *Release of some debtors on payment of part.*—When a decree-holder having a joint decree against several persons deals with some of them as severally liable for certain respective shares, he cannot execute the same decree as a joint one against the remaining judgment-debtors. BISSONAUTH TEWARRY *v.* KOYLASHBANY NARAIN SINGH . . . . . . 2 Hay, 297

429. ———————— *Release of one debtor.*—The fact of a decree-holder giving a release to one or more of the judgment-debtors who were jointly and severally liable cannot prevent his proceeding against the others for the balance due. SHEO CHURN LALL *v.* RAM SURUN SAHOO 16 W. R., 49

430. ———————— *Release of one of several joint debtors.*—Having regard to s. 44 of the Contract Act, a release of one of two judgment-debtors who are made jointly liable for the amount of the decree does not discharge the other from liability; execution can be taken out against him. KIAM ALI *v.* KAYAMADDI . . . 6 C. L. R., 212

431. ———————— *Liability of judgment-debtors.*—When the judgment-debtors are jointly and severally liable to pay the decreed amount, the fact that one has paid his quota of an instalment will not modify his joint liability if default be made by the other judgment-debtor, and an order protecting the estate of the former from proceedings to realize the whole sum decreed is improper. SALIG RAM *v.* RAM SEWUK . . 1 Agra, Mis., 14

432. ———————— *Satisfaction of decree—Representatives of decree-holder.*—Where two joint decree-holders, each interested in an eight-anna share in a money-decree, issued joint execution, and one of them, after the death of the other, received the whole amount due under the decree,—*Held* that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half. MAHIMA CHUNDRA ROY *v.* PYARI MOHUN CHOWDHRY [2 B. L. R., Ap., 43: 11 W. R., 262

433 ———————— *Joint shareholders, Debt due to, on mortgaged property.*—A mortgaged property, burdened with the payment of an entire debt to two shareholders, is liable to sale at the instance of both creditors separately so long as their claims remain unsatisfied. The act of one of two holders of a bond cannot destroy the lien of the other on property pledged to both as security for a joint debt. INDURJEET KOONWAR *v.* BRIJ BILAS LALL . . . . . . 3 W. R., 130

434. ———————— *Agreement by one decree-holder to take by instalments.*—One of several joint decree-holders is not bound by the acts of another who has compromised with the judgment-debtor and agreed to receive payment by instalments. BALGOBIND *v.* BHAWANEE DEEN SAHOO [1 Agra, Mis., 16

See INDURJEET *v.* SEWARAM *alias* MUNEERAM [5 N. W., 16

435. ———————— *Discharge by one of several joint decree-holders.*—The representatives of one of several decree-holders conveyed his interest in the decree to *A*. Some time afterwards *A* filed a petition in Court, stating that the decree had been satisfied out of Court, and the case was thereupon struck out as far as he was concerned. Subsequently, the other decree-holders applied for execution of their share of the decree, but it was objected that the decree had already been satisfied by payment to *A*. *Held* that the other decree-holders were entitled to proceed with execution for the amount of their share, a joint decree-holder having no power to give a discharge out of Court to a judgment-debtor for more than his own share in the decree. BUDHUN *v.* HAFEZAH . . . . . 4 C. L. R., 70

436. ———————— *Separate executions—Execution of share of decree.*—Joint

EXECUTION OF DECREE—*continued*

13 EXECUTION BY AND AGAINST REPRESENTATIVES—*continued*

421. ——— Right to raise question as to validity of decree—*Execution against sons*

the execution stage, to re-open the whole case and to ask for a decision as to whether the debt incurred by the father was not for the benefit of the estate or was in some other way invalid under the Hindu law and not binding on the joint family SHEO SAHOY PANDEY *v.* RAM BHUNJUN SINGH [23 W. R., 127

RAMANUGRA SINGH *v* KISHEN KISHORE NARAIN SINGH . 23 W. R., 265

BUTTOO SINGH *v* RAM PURMESSUR SINGH [24 W. R., 364

422. ——— Impeachment of the decree by a legal representative—*Power of Court*

decree against *B*, the widow of the opponent's separated brother, and on the 17th November 1881 assigned it to the applicant Immediately after the assignment, the applicant applied to the Court for execution, which was ordered under s 232 of the Civil Procedure Code (Act XIV of 1882)—neither *A*

grounds, *viz*, (1) that the decree had already been satisfied, and (2) that the transfer of the decree was fraudulent and collusive The lower Court rejected the application for execution, holding, as to the

of the decree The applicant thereupon applied to the High Court *Held* that the applicant was entitled to execution As to the first objection, the decision of the lower Court was right As to the second objection, there was no evidence of fraud or collusion, and the Court having found that the sale was duly effected, the applicant had the same

EXECUTION OF DECREE—*continued*

13 EXECUTION BY AND AGAINST REPRESENTATIVES—*concluded.*

it being unreversed and in full force MULCHAND RANCHODDAS *v* CHHAGAN NARAN [I. L. R., 10 Bom., 74

14 JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER

423 ——— Joint decree—*Unchanging character of joint decree* —When once a joint decree has been given, that decree ever after remains a joint decree, any act or conduct of the decree-holder notwithstanding JUGGURNATH SINGH *v* AHMEDOOLLAH . . . 8 W R, 132

OUDH BEHARI LAL *v* BROJO MOHUN LAL [4 B. L. R., Ap, 41; 13 W. R., 128

424 ——— *Unchanging character of* —A joint decree remains a joint decree,

425 ——— *Joint and several liability* —On 29th November 1861, *A* obtained a decree against *B, C, D,* and others in the following terms —That "the suit be decreed with mesne

and the High Court on appeal, on 12th December 1866, affirmed that decision The lower Court allowed *A* to proceed to execute his decree as against *B*, and on 2nd June 1866 certain property belonging to *B* was sold in execution of *A*'s decree, and purchased by *A* On 8th August 1866, the Court duly confirmed the sale, and ordered the suit to be struck off the file On 5th July 1869, *A*, stating that

ENAYET HOSSEIN ALI [12 B. L. R., 500: 20 W. R. 31

SREENATH GHOSE *v* SAHIB RAM ROY [12 B. L. R., 504 note: 12 W. R, 304

KRISTO KISHORE CHUCKERBUTTY *v* RAM LOCHUN BURDHUN . . . 2 W. R., Mis., 49

EXECUTION OF DECREE—*continued.*

14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*continued.*

realized by the sale in the execution which has been ordered. ABID ALI *v.* MUNNOO BYAS [2 Agra, 183

447. ——— *Civil Procedure Code, 1859, s. 207.*—Where one of several holders of the same decree wishes to take out execution, his proper course is to apply under s. 207, Act VIII of 1859, to execute the whole decree, and the Court, if it sees sufficient cause, may admit the application, passing such order as may be necessary for protecting the interest of the other decree-holders. INDRO COOMAR DOSS *v.* MOHIMA MOHUN ROY [15 W. R., 159

AUSEEMOONISSA KHATOON *v.* AMEEROONISSA KHATOON . . . . 22 W. R., 204

FAEZ BUKSH CHOWDHRY *v.* SADUT ALI KHAN [23 W. R., 282

448. ——— *Absence of some decree-holders—Protection of interests of absent.*—Where some of the decree-holders in a joint decree apply for execution, the application may be refused or granted at the discretion of the Court, which is bound to see that injury is not done to the rights of absent decree-holders; but whether the Court does so or not, all recoveries in execution so made must be for the benefit of all the decree-holders. SHIB CHUNDER DASS *v.* RAM CHUNDER PODDAR [16 W. R., 29

449. ——— *Execution by one creditor.*—*A* and *B* obtained a decree against *C*. *A* obtained an order for execution of his share in the amount of the decree. *C* pledged immoveable property as security to *A*, who caused it to be sold. *B* applied to the Court for her share of the sale-proceeds. The Principal Sudder Ameen refused the application. On appeal,—*Held* that the order for execution ought in express terms to have reserved the rights of the other decree-holders to share in the proceeds of the execution. The case was sent back that the Principal Sudder Ameen might apportion the amount realized amongst all the decree-holders. TARASUNDARI BURMONI *v.* BEHARI LAL ROY [1 B. L. R., A. C., 28

450. ——— *Execution of portion of decree according to extent of the applicants' interest.*—The effect of a Privy Council judgment being that each of two co-plaintiffs was entitled to a moiety of a talukh in the possession of the defendant, who then purchased the interest of one of them,—*Held* that the other co-plaintiff could obtain execution according to the extent of her interest in the estate. HURBISH CHUNDER CHOWDHRY *v.* KALI SUNDERI DEBI [I. L. R., 9 Calc., 482 : 12 C. L. R., 511 L. R., 10 I. A., 4

451. ——— *Civil Procedure Code, 1859, s. 207—Execution of portion of decree.*—A joint decree was passed in favour of *A* and *B*, and *A* subsequently applied for execution alone, alleging that *B* would not join with him in the application. The judgment-debtor stated, and *B* admitted, that more than half of the decretal money had been paid to the latter (out of Court), but the Court disbelieved the statement, and ordered execution to issue for the full amount of the decree. *Held* that the Court should, under s. 207 of Act VIII of 1859, have allowed execution for half the amount of the decree only. BROJESWARI CHOWDHRANEE *v.* TRIPOORA SOONDAREE DEBI . 3 C. L. R., 513

452. ——— *Civil Procedure Code (1882), s. 231—Application for partial execution of joint decree.*—A decree provided that the plaintiff should pay R304 for the costs of thirteen out of eighteen defendants. Two of the defendants now sought to execute the decree in respect of their proportionate share of the sum so awarded. Besides the plaintiff, two only of the other defendants were joined as parties to these proceedings. *Held* that the application was not maintainable, and should be dismissed. MUTHUSAMI AYYAR *v.* NATESA AYYAR [I. L. R., 18 Mad., 464

453. ——— *Application by one joint decree-holder for execution in respect of his own share—Transfer of decree to judgment-debtor—Civil Procedure Code, 1877, ss. 231, 232.*—A joint decree cannot be executed by one of the several joint holders in respect only of his share of the decree. *Ram Autar* v. *Ajudhia Singh, I. L. R., 1 All., 231; Collector of Shahjahanpur* v. *Surjan Singh, I. L. R., 4 All., 72;* and *Haro Sanker Sandyal* v. *Tarak Chandra Bhuttacharjee, 3 B. L. R., A. C., 114,* followed. When by operation of law one of several joint judgment-debtors acquires the position of decree-holder in respect of the whole judgment-debt, the effect is to extinguish the liability of the other judgment-debtors, and the decree cannot be executed against them. But when one of them so acquires only a partial interest in the decree, the effect is not to extinguish the entire judgment-debt, but so much only of it as such judgment-debtor has so acquired. *Wise* v. *Abdool Ali, 7 W. R., 136; Pogose* v. *Fukuroodeen Mahomed Ahsan, 25 W. R., 343; In re Degumburee Dabee, B. L. R., Sup. Vol., 938;* and *Khoshalee* v. *Nund Lall, 6 N. W., 1,* referred to. *Held* therefore, where one of several joint decree-holders applied for execution in respect of his own share only and the joint judgment-debtors under the decree had inherited the right therein of one of the joint decree-holders, that the application was contrary to law; that so much of the judgment-debt as had devolved upon such persons had been extinguished; and that application should have been made for execution in respect of the entire unextinguished portion of the judgment-debt. *Brojeswari Chowdhranee* v. *Tripoora Soonderee Debi, 3 C. L. R., 513,* and *Bibee Budhun* v. *Hafezah, 4 C. L. R., 70,* followed. BANARSI DAS *v.* MAHARANI KUAR [I. L. R., 5 All., 27

454. ——— *Payment out of Court to one of several joint judgment-creditors*

EXECUTION OF DECREE—*continued*

14 JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*continued*

decree holders are not entitled to apply separately for execution of the decree limited to what they consider their respective interests in it PRANNATH MITTER v MOTHOORNAUTH CHUCKERBUTTY [6 W. R., Mis, 65

INDURJEET KOONWAR v MAZUM ALI KHAN [6 W. R., Mis, 76

RAE DAMODHUR DOSS v BHOLANATH [2 N. W, 413

437. ———— *Application by* ... *re of decree* — ... lows a decree ... a decree nor ...

the benefit of all BALKISHOON v MAHOMMED TAZAM ALLEE . 4 N. W., 90

Contra, CHOOA SAHOO v TRIPOORA DUTT [13 W. R., 244

438 ———— *Complex decree—Application for execution of portion of decree* —When a decree is of a complex nature and ...

... N. W., ...

439. ———— *Partial satisfaction—Execution for remainder* —The rule of law which forbids application for execution of part of a decree does not bar application for all that remains due upon a decree where the rest has been previously satisfied TEJ NARAIN CHATTERJEE v RAM TUNOO MOJOOMDAR . 12 W R, 370

440 ———— *Execution of* ... —One out of ...

BUKSH CHUTTANGEE . 7 W. R, 535

441 ...

SARADA CHURN ROY [3 B. L R, Ap, 21: 11 W. R., 241

NUBO KISHORE MOJOOMDAR v ANNUND MOHUN MOJOOMDAR . . . . 17 W. R., 19

EXECUTION OF DECREE—*continued.*

14 JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*continued*

NUND COOMAR FOUTEHDAR v BUNSO GOPAL SAHOY . . . 23 W. R, 342

442 ———— *Civil Procedure Code, 1859, s 207—Execution of share of decree* —Though one of two or more decree holders may, with the permission of the Court, take out execution of a joint decree under s 207, the execution must be for the whole decree, and not for any fractional share to which the decree holder may consider himself entitled, the Court making such orders as may be necessary for protecting the interest of other decree holders THAKOOR DOSS SINGH v LUCHMEPUT DOOGUR . . 7 W. R., 10

JUGJEEBUN GOOPTO v GOLOCK MONEE DEBIA [22 W. R., 354

443. ———— *Civil Procedure Code, 1859, s 207—Parties* —Where one of ...

under s 207 of the Civil Procedure Code, 1859. AMATOOL RASSOOL v LUTEEFUN 19 W. R., 302

444. ———— *Right of one of joint decree holders to execution—Civil Procedure Code, 1859, s 207* ...

445 ...

know of the alleged payment to *H*, and that, if made, it had been made to defraud them, or that the defendant was privy to the fraud NYNA KOOER v DOOLEE CHUND . . . . 22 W. R., 77

446. ———— *Joint decree-holders—Civil Procedure Code, 1859, s 207.*—Where more persons than one are interested in a decree, any one or more of them may apply for execution of it under s 207, but the Court, in passing an order in execution of such decree, ought to protect the interests of other decree-holders, and such other person ought not to apply for second attachment of the same property under the same decree, but should apply to share in the proceeds

EXECUTION OF DECREE—*continued.*

4. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*concluded.*

—*Decree extinguished pro tanto.*—Where subsequent to a decree a portion of the rights to which the decree relates devolves either by inheritance or otherwise upon the judgment-debtor, or is acquired by him under a valid transfer, the decree does not become incapable of execution, but is extinguished only *pro tanto.* This rule of law is sufficiently general to comprehend alike cases in which the decree is for money only and where it is for immoveable property. The rule of law against breaking up the integrity of a mortgaged security is a rule aiming at the protection of the mortgagee, and is not applicable to cases where the mortgagee himself has acquired the ownership of a portion of the mortgaged property. *Benarsi Das* v. *Maharani Kuar, I. L. R., 5 All., 27; Wise* v. *Abdool Ali, 7 W. R., 136;* and *Pogose* v. *Fukurooddeen Mahomed Ahsan, 25 W. R., 345,* referred to. KUDHAI *v.* SHEO DAYAL . . . I. L. R., 10 All., 570

15. LIABILITY FOR WRONGFUL EXECUTION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

See DAMAGES—SUITS FOR DAMAGES—TORTS.

461. ——— **Seizure in execution**—*Trespass—Liability of judgment-creditor.*—Seizure of personal property in execution of a decree is not an act of the Court, but one of the party himself seeking execution, for which he is liable if any trespass be committed on the property of a stranger. SUBJAN BIBI *v.* SARIATULLA

[3 B. L. R., A. C., 413 : 12 W. R., 329

RASH BEHARY LALL *v.* WAJAN

[12 B. L. R., 208 note : 11 W. R., 516

462. ——— *Liability of execution-creditor in damages for wrongful seizure—Attachment of stranger's property—Measure of damages.*—Certain unthreshed rice belonging to the plaintiff was wrongfully attached by the defendants under a money-decree obtained by them against a third party. The attachment had been made under a warrant which specified the rice in question, and which had been issued upon a darkhast presented by the defendants in which they prayed for the attachment of this particular rice as their judgment-debtor's property. The rice, while in the custody of a bailiff of the Court nazir in the place where it had been attached, was clandestinely threshed and carried off by thieves, who left the straw. In a suit brought by the plaintiff to recover the value of the unthreshed rice from the defendants, both the lower Courts dismissed the plaintiff's claim on the ground that the theft was not the immediate or probable result of the attachment, and that the conduct of the defendants had not in any way conduced to the loss of the rice. *Held* by the High Court, reversing the decrees of the lower Courts, that the defendants were liable. When the wrongful seizure was made at the instance of the defendants, the plaintiff's cause of action was complete, and was independent of the subsequent occurrence. The theft might have rendered the defendants unable to restore the rice in specie, but could not purge, and was no satisfaction of, the previous trespass which rendered the defendants liable for the full value of the rice. GOMA MAHAD PATIL *v.* GOKALDAS KHIMJI . . I. L. R., 3 Bom., 74

16. STAY OF EXECUTION.

463. ——— **Application for stay of execution**—*Civil Procedure Code, 1859, s. 338.*—Application for stay of execution of a decree, an appeal from which has been filed, should, under Act VIII of 1859, s. 338, be made to the Court of appeal, and not to the Court which passed the order under appeal. ABBASSEE BEGUM *v.* RAJ ROOP KOOER

[1 C. L. R., 368

464. ——— **Power to stay execution**—*Civil Procedure Code, ss. 284, 290—Decree transferred for execution.*—Where a decree of the High Court is transmitted to a Judge for execution under s. 284, Act VIII of 1859, and the judgment-debtor contends that the balance due on the decree is less than that for which execution is sought, the Judge has no jurisdiction to enquire into the question, but may, on cause shown under s. 290, stay execution, pending a reference to the High Court. KISHUB CHUNDER PAUL CHOWDHRY *v.* KHELAT CHUNDER GHOSE . . . . . . 9 W. R., 361

465. ——— **Decree for arrears of rent—Decree for money**—*Code of Civil Procedure (Act XIV of 1882), s. 546.*—A decree for arrears of rent is a "decree for money" within the meaning of s. 546 of the Code of Civil Procedure, and execution of such decree may therefore be stayed under that section. BANKU BEHARY SANYAL *v.* SYAMA CHURN BHUTTACHARJEE . . I. L. R., 25 Calc., 322

466. ——— **Power of Court executing decree to go behind decree**—*Question of service of notice.*—Where an application is made by a judgment-debtor for stay of execution of an Appellate Court's decree, the Court executing the decree cannot enquire into the question whether any notice was served upon the applicant before the appeal judgment was passed. MUKHDOOMUN *v.* BHUGWAN DASS . . . . . . 24 W. R., 33

467. ——— **Application by person not party to suit**—*Civil Procedure Code, 1859, s. 230.*—The Court will not interfere to stay execution upon the application of a person not a party to the suit who claims immoveable property liable to be taken under the decree. The remedy of such a person is under s. 230 of Act VIII of 1859. KHELAT CHUNDER GHOSE *v.* PROSUNNOMOYEE DASSEE

[Marsh., 478

468. ——— **Security**—*Consent.*—Execution will be stayed only on security being given or by consent. SAGORE CHUNDER CHUCKERBUTTY *v.* SHERBOURNE . . . Bourke, O. C., 103

EXECUTION OF DECREE—*continued*

14 JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*continued*

—*Part satisfaction certified to the Court—Application for execution of full amount of decree—Civil Procedure Code (Act XIV of 1882) ss 231 244 258*—On an application for execution for the full amount due under a decree by some of several joint decree holders the judgment debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to *B*, one of the joint decree holders The payment was made out of Court, but *B* who claimed to be entitled to a 12½ annas share in the decree, certified the payment in the manner prescribed by s 258 of the Civil Procedure Code (Act XIV of 1882) and represented that his claim had been satisfied in full The other joint decree holders denied *B's* right to the 12½ annas share claimed by him and refused to recognize the payment said to have been made to him The lower Court disallowed the objection, and granted execution for the full amount of the decree *Held* that, regard being had to the provisions of the General Clauses Act (Act I of 1868) the word "decree holder" in s 258 of Act XIV of 1882 should be read in the plural, and looking at the provisions of s 231 of the later Act, the Court ought not to recognize payments made out of Court unless made and certified for the benefit of all the joint decree holders of any portion of the decree in excess of that to which the decree holder so paid is undisputedly entitled. *Held* also that a judgment debtor is entitled to credit for any sum paid *bonâ fide* to one of several joint decree holders, and duly certified to the Court by the latter, and that the other joint decree holders cannot execute the decree for more than their own share *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree holder *B*, and that it should have determined, *first* whether the payment to *B* was a fraud on the other joint

R, 77, *Brojesuari Chowdhranee* v *Tripoora Soonderee Debi*, 3 *C L R*, 513, and *Mahima Chandra Roy* v *Pyari Mohan Chowdhry* 2 *B L R*, *Ap*, 43 TARUCK CHUNDER BHUTTACHARJEE v DIVENDRO NATH SANYAL

[I. L R, 9 Calc, 831 12 C. L R, 566

455 ———————— *Civil Proce-*

payment was valid only to the extent of the share to which the payee was entitled and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance SULTAN MOIDEEN v SAVALAYAMMAL I L R, 15 Mad, 343

456 ———————— *Joint decree-holders—Conditional decree—Refusal of some to join in applying for execution—Civil Procedure Code, s 231*—The provisions of s 231 of the Civil Procedure Code are not applicable to the case of joint decree holders the execution of whose decree is conditional on their joint performance of a particular act FARZAND v ABDULLAH I L. R, 6 All., 69

457 ———————— *Application by some of joint decree holders—Execution of portion of decree*—Where two out of several decree holders petitioned the Court to execute their share of the decree (which was for possession and mesne profits), and the other decree holders though they virtually joined in the application by signifying their consent, subsequently retracted their consent, and the original applicants declined to proceed with the execution of the decree for mesne profits —*Held* that there was no application on the part of all the decree-holders to execute the decree for mesne profits nor any application by some of them for execution of the whole decree and that the Court's order directing realization of the unpaid portion of mesne profits was passed without any proper application *Quære*—Can the purchasers of a share in a decree be added upon the record under Act VIII of 1859 s 208, as co decree holders? SEETAPUT ROY v ALI HOSSEIN

[24 W. R, 11

458 ———————— *Civil Procedure Code 1859, ss 207, 208*—When a decree is in favour of several persons and out of those persons some transfer their interest to a third party, the Court

BYJNATH SAHOO v DOOLAR CHAND SAHOO

[24 W. R., 245

459 ———————— *Right to execute decree—Civil Procedure Code (Act XIV of 1882), s 544—Appeal by one of several plaintiffs claiming under a joint right—Decree in such*

altogether Subsequently *A*, who had not joined in the appeal applied for execution of the original decree *Held* that, although *A* had not been a party to the appeal, he was bound by the decision of the Appellate Court, and was not entitled to take out execution BABAJI DHONDSHET v COLLECTOR OF SALT REVENUE . I L. R., 11 Bom., 596

460 ———————— *Decree for possession of immoveable property—Purchase by judgment-debtor of rights of some of the joint decree-holders*

EXECUTION OF DECREE—*continued.*

16. STAY OF EXECUTION—*continued.*

481. ——————— *Pendency of cross-suit—Power of Court to which decree is transmitted for execution—Civil Procedure Code, 1859, s. 290.*—S. 290 of Act VIII of 1859 provides that, whenever a suit shall be pending in any Court against the holder of a decree of such Court by the judgment-debtor, the Court may, if it appears just and reasonable to do so, stay execution on the decree, either absolutely or on such terms as it may think proper, until a decree shall be passed in the pending suit. Any Court to which a decree is transmitted for execution can under the section stay execution, notwithstanding that the suit pending between the judgment-debtor and the holder of the decree is pending in such Court, and not in the Court which transmitted the decree. COOKE *v.* HISEEBA BEEBEE . . . . . 6 N. W., 181

482. ——————— *Appeal pending in another suit—Civil Procedure Code (Act XIV of 1882), s. 546.*—*A* brought a suit and obtained a decree against *B* on a mortgage-bond in the Court of a Subordinate Judge, which decree was confirmed by the High Court on appeal. *A* then applied for execution. In the execution-proceedings the sons of *B* intervened claiming a portion of the properties attached; this claim was dismissed, and the sons of *B* brought a regular suit before the same Subordinate Judge to have their rights to the property declared, and obtained an *interim* injunction restraining *A* from executing his decree pending the decision of their suit. This suit was dismissed, and the sons of *B* appealed to the High Court. *A* again applied for execution of his mortgage-decree, whereupon the sons of *B* applied for a further injunction restraining *A* from executing his decree pending their appeal to the High Court: this application was granted. *Held* that the Subordinate Judge had no right to restrain the decree-holder from executing his decree, merely on the possibility of the Appellate Court reversing his decision. GOSSAIN MONEY PUREE *v* GURU PERSHAD SINGH . . . I. L. R., 11 Calc., 146

483. ——————— *Civil Procedure Code, 1882, s. 546—Application for stay of sale of immoveable property in execution of money-decree under appeal.*—An application under the third paragraph of s. 546 of the Code of Civil Procedure to stay the sale of immoveable property in execution of a decree for money against which an appeal has been filed must be made to the Court which passed the decree, and not to the Appellate Court. *Gossain Money Puree* v. *Guru Pershad Singh, I. L. R., 11 Calc., 146,* referred to. IN THE MATTER OF THE PETITION OF MURAD-UN-NISSA [I. L. R., 15 All., 196

484. ——————— *Civil Procedure Code, ss. 545, 546, 647 – Stay of execution pending application for review—Jurisdiction.*—S. 647 of the Civil Procedure Code provides for the procedure to be followed in miscellaneous matters other than suits and appeals, and its provisions, read with ss. 545 and 546, give no power to the Court or a Judge, after the passing of a final unappealable decree, and before the granting of an application for review of judgment, to order a stay of execution of the decree. No such power exists under the Code. On the 29th July 1886, an application was made by a party against whom the High Court, on second appeal, had passed a decree, dated the 18th March 1886, for review of judgment. On the 28th August, the applicant made a further application that execution of the decree might be stayed pending the determination of the application for review, and an order was passed *ex-parte* granting this application. Subsequently, the opposite party applied under s. 623 of the Civil Procedure Code for a review of the *ex-parte* order on the grounds (i) that the Court had no jurisdiction to make it; and (ii) that the application of the 29th July was beyond time, and therefore there could be no review of judgment, and no order for stay of execution pending such review. *Held* that the decree of 18th March being final and unappealable, and no application for review of judgment having been granted within the meaning of s. 630 of the Code, the application for stay of execution did not fall within s. 545 or s. 546, nor did s. 647 apply to it, nor any other provision of the Code. AMIR HASAN *v.* AHMAD ALI [I. L. R., 9 All., 36

485. ——————— *Stay of execution pending suit between decree-holder and judgment-debtor—Civil Procedure Code, ss. 235 (d), 581, 583.*—The words "such Court" in s. 243 of the Civil Procedure Code do not limit the exercise of the powers given by that section only to decree passed by the Court in which the suit is pending, but with reference to ss. 235 (*d*), 581, and 583, that Court is empowered to stay execution of decree transferred to it for execution from either a Court of co-ordinate jurisdiction or a Court of appeal. The plaintiff instituted a suit against defendant for recovery of money and other reliefs, which was ultimately dismissed in appeal by the High Court, and he was ordered to pay defendant R1,000 as cost of the litigation. Plaintiff then brought this suit against defendant in the Court of the Subordinate Judge of Farukhabad, and, while it was pending, defendant applied to the Court to execute his decree for costs. Plaintiff then applied for stay of the execution, and his application was refused by the first Court, but granted by the District Court. On appeal by defendant to the High Court,—*Held* that the Judge's order was correct. *Mithun Bibi* v. *Buzloor Khan, 8 W. R., 392,* disapproved. KASSA MAL *v.* GOPI [I. L. R., 10 All., 389

486. ——————— **Powers as to stay of execution of Court executing transferred decree**—*Civil Procedure Code, ss. 228, 239.*—The powers which the foreign Court has under s. 228 of the Civil Procedure Code are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to s. 239 of the Code, stay execution except temporarily. *Held* therefore, where the drawers of a hundi,

EXECUTION OF DECREE—*continued*

16 STAY OF EXECUTION—*continued*

469 ——— *Civil Procedure Code 1859 s 338 Stay of execution pending appeal—Act XXIII of 1861 s 38* —Pending the determination of the appeal against an order passed in execution of decree the Appellate Court has power under s 338 of Act VIII of 1859 and s 38 of Act XXIII of 1861 to stay execution IN THE MATTER OF THE PETITION OF HAR SHANKAR PARSHAD

[I L R, 1 All, 178

470 ——— *Civil Procedure*

TER OF THE PETITION OF ISMAIL KOOER

[B L R, Sup Vol, 1007 9 W R, 448

471 ——— *Act XXIII of 1861 s 36—Security for restitution of money* —Before staying execution of a decree and preventing the decree holder from receiving the fruits of his decree or before requiring him under s. 36 Act XXIII of 1861, to give security for its restitution, probable cause must be shown of the judgment debtor's inability to recover the money if the decree be reversed SUKHEE MONEE DEBIA v BROJORAJ MOOKERJEE 17 W R, 69

472 ——— *Act XXIII of 1861 s 36—Security in execution of decree—Decree against which no appeal brought* —The High Court could not under s 36 Act XXIII of 1861 direct the lower Courts to take security in the execution of a decree against which no appeal has been referred to it IN RE BHUGWAN CHUNDER GHOSE 6 W R, Mis, 15

473 ——— Ground for staying execution—*Appeal—Refusal to execute pending* —Execution of a decree for enhanced rent should not be refused merely because the decree has been appealed against on a point of law THEODORUS v ABDOOL BURKUT AMEENOOLLAH

[W R, 1864, Act X, 106

474 ——— The Court declined to stay the execution of a decree (1) because the applicant has no shown as he was bound to show something beyond the mere fact of an appeal having been preferred against it and ( ) because there seemed to have been great delay on his part LESLIE v LAND MORTGAGE BANK OF INDIA

[17 W. R., 160

475 ——— *Expiry of time for appeal—Power of Court to stay execution—Code of Civil Procedure (Act XIV of 1882) ss 239 230 213 and 246* —It is not open to the Court to refuse to execute a decree against which no appeal has been preferred and the time for appealing against which has expired ISHAN CHUNDER ROY v ASHANOOLLAH KHAN . I L R, 10 Calc, 817

476 ——— *Person sued as Government servant ceasing to hold that position* —A decree was passed by the Principal Sudder Ameen against the defendant declaring him personally liable to the claim No appeal was preferred *Held* that an order by the Judge staying execution because the defendant who was sued as a servant of Government has ceased to fill that position, was illegal MAHOMED TOQUE BEG v WALLIS

[2 Agra, Mis, 5

477 ——— *Refusal to pay costs of advertising sale* —It is not within the discretion of a Court charged with the execution of a decree to withhold execution and abstain from selling because the decree holder refuses to pay the costs of advertising The Code does not require the decree holder to pay such costs in advance KISTO KISHORE GHOSE v SOORJONATH SIRCAR

[10 W R., 354

478 ——— *Civil Procedure Code 1859 s 290—Ex parte decree* —A Principal Sudder Ameen is competent under s 290, Act VIII of 1859 to allow the stay of execution of a decree of the High Court on its original side for a sufficient time to enable the judgment debtor to make his application to the High Court for a new trial on the ground that the decree had been obtained *ex parte* without his knowledge MIRTOONJOY CHUCKERBUTTY v COCHRANE 8 W R, 202

479 ——— *Likelihood*

payment of the Government revenue —*Held* that good and sufficient cause was not shown for staying the sale AHMED REZA v KHUJOORUNISSA

[13 W R., 281

480 ——— *Allegation of a private purchase by the decree holder* —While a y the sale of creditor peti days, as the entered into a y the judg continue the fterwards the

stamp but a sum of Rs 000 having been subsequently offered the judgment debtors failed to execute the deed of sale and he prayed that the judgment debtors might be examined in respect of the sale for R8 500 and that the sale to him be confirmed The Civil Judge made an order *refusing to accede to* the prayer of the judgment creditor *Held* (INNES J dissenting) that the order of the Civil Judge was right as he had no power to order stay of execution on the ground of a private purchase having been made by the decree holder VENKATA NARASIMHA APPAROW v VENKATAKRISTNIAH NAIDU

[5 Mad., 410

EXECUTION OF DECREE—*continued.*

16. STAY OF EXECUTION—*continued.*

to invoke the aid of the Court for that purpose. LADKUVARBAI *v.* SARSANGI PARTABSANJI [7 Bom., O. C., 150

491. ——— Modification or cancellation of security-bond—*Civil Procedure Code, s. 338.*—*K* sued *R* for a sum of money due on promissory notes, and obtained a decree in the Judge's Court. *R* appealed to the High Court, and prayed that execution might be stayed till the appeal was disposed of. The Court, under the provisions of s. 338, Code of Civil Procedure, ordered that execution might be stayed, provided good and sufficient security were given. Accordingly *A* appeared before the Judge, and executed a security-bond binding himself, in the event of the appeal being dismissed, to liquidate the debt. The appeal was heard by a Division Bench, and, the Judges differing, the opinion of the senior Judge prevailed under s. 36 of the Letters Patent, and the appeal was decreed. From this judgment an appeal was preferred under s. 15 to a Full Bench. After the opinion of the Division Bench was pronounced, *A* applied to the Judge for the return of his security-bond; but his application was refused pending the final decree of the High Court in the matter. He then moved the High Court for the cancellation or return of the bond. *Held* that, as the High Court had authority under s. 338, Act VIII of 1859, to make an order calling for security, it had authority at any time to modify or cancel such order, or to direct the restoration of the security when no longer required, and that in carrying out the Court's order to take security and enquire into its validity, the Judge was acting, not judicially, but ministerially. *Held* also that, as the decree of the Judge had been reversed by the Bench who tried the appeal, there was no decree of the Judge to execute, and the Judge's order refusing to return the security-fond was passed without jurisdiction, and was therebore null and void. On the reversal of the decree, the liability of the surety ceased, and the security-bond became a dead letter. AMEER ALI *v.* KASSIM ALI KHAN . . . . . 13 W. R., 403

492. ——— Decree directing sale of land in pursuance of a contract specifically affecting it—*Civil Procedure Code, 1877, s. 326 — Stay of sale.*—S. 326 of Act X of 1877 does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court therefore cannot authorize the Collector to stay the sale in such a case under s. 326. BHAGWAN PRASAD *v.* SHEO SAHAI [I. L. R., 2 All., 856

493. ——— Scheme for satisfying decree—*Civil Procedure Code, Act X of 1877, s. 326—Stay of public sale of attached poperty.*—Where the Collector has applied to the Court under s. 326 of the Civil Procedure Code proposing a scheme for the payment of decretal money in order to avoid a sale of attached property, it is in the discretion of the Court to authorize the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner proposed; and the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered in support of those objections; and if after hearing the decree-holders' objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can, in all reasonable probability, be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction. HURO PROSAD ROY *v.* KALI PROSAD ROY [I. L. R., 9 Calc., 290

494. ——— Security for restitution of property—*Act XXIII of 1861, s. 36.*—After property, the subject of litigation, has been given over in execution of a decree to the plaintiff, it is not within the scope of s. 36 of Act XXIII of 1861 to exact security from the plaintiff for restitution of such property in the event of a successful appeal. MANSUKHRAM PURSHOTAM *v.* JAYAREVOHU [7 Bom., A. C., 122

495. ———Reversal of decree in favour of plaintiff—*Civil Procedure Code, 1859, s. 338—Duty of Appellate Court.*—When an Appellate Court reverses a decree in favour of the plaintiff in a suit, it ought not to stay execution of its own decree under s. 338 of Act VIII of 1859. Order of District Court staying execution under such circumstances set aside. KAVASJI BHUNJI *v.* DHONDIRAJ VINAYAK [10 Bom., 411

496. ——— Reversal of decree on appeal, Effect of—*Security by decree-holder on being allowed to execute decree appealed from.*—Where a decree-holder, pending appeal, gives a security-bond whereby he undertakes that, if the decision of the first Court is reversed or modified by the Appellate Court, he will make good any property taken by him in execution, the effect of such an undertaking is to bind him, in the event of the Appellate Court deciding that the claim of the creditor was in whole or in part untrue, to make good to the other party anything taken in respect of the amount so found not due. The bond would not bind the decree-holder to conform to a mere direction as to the manner in which the decree was to be executed when that direction came too late, but would need to be construed equitably, and the other party, if still a debtor to the decree-holder, would not be entitled to recover anything unless it were shown that he had sustained damage. SHURYUTOOLLAH MIRDHA *v.* TEETA GAZEE HOWLADAR . . . . . 21 W. R., 82

497. ——— Execution completed by appointment of manager—*Civil Procedure Code, 1877, s. 545.*—It having been directed by a decree that, pending an appeal, managers should be appointed to take charge of certain property, managers were appointed and they took possession of the property in question. On a rule to show cause why execution should not be stayed and the managers removed,—*Held* that under s. 545 of the Civil Procedure Code the Court had power only to stay

XECUTION OF DECREE—*continued*

16 STAY OF EXECUTION—*continued*

gainst whom the indorsee from the payee had otained a decree on the hundi, objected in the Court o which the decree had been transmitted for execu- on that execution should not be allowed, because he payee had paid the amount of the hundi to he decree-holder, after the decree had been passed, nd such Court refused to entertain the objection, hat the order of the lower Appellate Court, directing hat the parties should be allowed to produce evidence n regard to the alleged payment, and that, should he Court of first instance find that the decree- older had received satisfaction to the full amount of he decree, the judgment-debtors should be absolved rom all liability under the decree, could not be naintained RAM LAL v. RADHEY LAL

[I. L R., 7 All., 330

487. ———— Injunction to stay execu- tion—*Relief asked for in accordance with state- ments in plaint not forming a separate prayer in the plaint—General prayer for relief—Control of execution*—*A*, a joint owner of an estate with *B*, saved the joint estate from sale for arrears of Government revenue, in payment of which *B* had

order for execution, and attached certain property belonging to *B* *D* and *E* then entered into an

standing objection on the part of *D* and *E*, make any order directing the decree to be executed against the estate, then in such case *D* and *E* should not

the lien directed by the decree ... advantage which the plaintiffs might have a ... and that not- of a grant

EXECUTION OF DECREE—*continued*

16 STAY OF EXECUTION—*continued*

the injunction KRISTO MOHINEY DOSSEE v. KALLY PROSONNO GHOSE

[I L R, 6 Calc, 485 8 C L. R., 43

488 ———— *Civil Procedure Code, ss 213, 276, 295—Administration decree—Attachment after date of institution of administration suit under decree obtained prior to such suit*—On the 22nd July 1886 one *R L*

administration decree On the 5th May 1887, *S* ... taken by ... recting hi ... o, and pr ... *Held* that the attachment did not create any interest in, or charge upon, the properties in favour of the attaching creditor as against other creditors, and

489. ———— *Appeal—Decree for injunction—Damages and costs—Stay of execution as to costs*—A party appealing against a decree, which directs him to pay money, may obtain stay of execution of the decree, so far as it directs ... unless ... nent of ... versed ... party, ... ranted

[... L ..., ... n., 241

490 ———— Decree made by mistake and

have the decree set aside was dismissed, and the plaintiff then sued out an attachment, but, failing to

EXECUTION OF DECREE—*continued.*

17. STRIKING OFF EXECUTION-PROCEEDINGS—*continued.*

507. ———— *Jurisdiction of Principal Sudder Ameen—Act V of 1836.*—The jurisdiction of a Principal Sudder Ameen to deal with a decree referred to him for execution by the Zillah Judge under Act V of 1836 did not cease by his striking the case off his file after partial execution, so as to render necessary a subsequent reference by the Judge to enable the Principal Sudder Ameen, upon a fresh application being made for execution, to restore the case to the file. GOURMONEE DASSEE *v.* JOGUTINDRONARAIN . . **18 W. R., 319**

Affirming decision of lower Court in [**2 W. R., Mis., 2**

508. ———— *Order of sale—Application for execution struck off—Application for restoration—Finality of order.*—A decree for money was passed on the 19th March 1865. The first application for its execution, made after Act X of 1877 came into force, was dated the 16th December 1878. On this application an order was made by the Court executing the decree (Munsif) for the sale of certain property belonging to the judgment-debtor. The latter objected to the execution of the decree on the ground of limitation, and the decree-holders filed an answer to the objection. On the 14th July 1879, the case was struck off, because the decree-holder had not deposited certain process-fees, without the disposal of the objection. On the 1st October 1879, the decree-holders again applied for the sale of the property, and it was ordered to be sold. On the 17th February, the judgment-debtor presented a petition repeating the objection, which, on the 13th March 1880, the Munsif entertained and disallowed. This order was affirmed in appeal by the District Judge, and again by the High Court. Meanwhile, the Munsif had struck off the case from the file of execution cases pending in his Court on the ground that the records had been despatched to the Appellate Court. On the 18th September 1882, the decree-holder again applied for execution of the decree, praying that "the suit might be restored to its number, and that the judgment-debt might be caused to be realized by attachment and sale of the judgment-debtor's property specified in the former schedule." *Held* that the decree-holder was entitled to execution of the decree, and that he could get it under the application which was made on the 1st October 1879, inasmuch as the matter was made *res judicata* by the decree of the High Court in appeal, and it must be taken that that decree was correctly passed, and that the order for sale passed upon it was properly made, and that the sale ought to have taken place. *Held* also that the proper application for the decree-holder to have made in September 1882 was that the case might be restored to the Munsif, and that the present application might be so dealt with as to effect the same result, because the prayer contained therein referred to the number of the proceedings of October 1879 and to the schedule of the property then ordered to be sold. JAWAHIR SINGH *v.* JADU NATH [**I. L. R., 7 All., 439**

509. ———— *Order striking off execution-proceedings and maintaining attachment.*—An order on an application for execution striking off the application, but maintaining attachment effected in pursuance thereof, is an order not warranted by law. RAM NEWAZ *v.* RAM CHARAN [**I. L. R., 18 All., 49**

EXECUTION-CREDITOR.

See DECREE-HOLDER.

EXECUTOR.

See ATTORNEY AND CLIENT. [**3 B. L. R., O. C., 96**

See EVIDENCE ACT, s. 41. [**I. L. R., 14 Calc., 861**

See HINDU LAW—WILL—CONSTRUCTION OF WILL—GENERAL RULES. [**I. L. R., 2 Bom., 388**
I. L. R., 23 Calc., 446

See MAHOMEDAN LAW—WILL. [**4 N. W., 106**

See PARTIES—PARTIES TO SUITS—EXECUTORS.

See CASES UNDER PROBATE.

See REPRESENTATIVE OF DECEASED PERSON . **I. L. R., 4 Calc., 342**

———— **by implication.**

See WILL—CONSTRUCTION. [**I. L. R., 20 Mad., 467**

———— **Commission to—**

See MAHOMEDAN LAW—WILL. [**I. L. R., 25 Calc., 9**
L. R., 24 I. A., 196

———— **Death of—**

See HINDU LAW—ADOPTION—REQUISITES OF ADOPTION—AUTHORITY. [**I. L. R., 24 Calc., 589**

———— **de son tort.**

See LIMITATION ACT, 1877, ART. 123. [**I. L. R., 12 Mad., 487**

See REPRESENTATIVE OF DECEASED PERSON . **2 Ind. Jur., N. S., 234**

See RIGHT OF SUIT—INTESTACY. [**I. L. R., 18 Bom., 337**

See TRUST . **I. L. R., 17 Calc., 620**

EXECUTION OF DECREE—*continued*

16 STAY OF EXECUTION—*concluded*

execution and that the words stay execution in that section could not be extended to a case in which execution was completed as in the case before it DHARRAM SINGH v KISHEN SINGH 12 C L R., 532

498 ———— Setting aside proceedings giving possession under decree—*Civil Procedure Code 1882 s 243—Possession given under*

499 ———— Right of judgment debtor in giving security—*Amount of security*—

than the amount awarded by the decree BAHOORIA DOOHMA KOWAR v LALLA JUWAHUR LALL PAUREY [20 W R., 52

500 ———— Security bond—*Amount of security—Order staying execution pending appeal—Civil Procedure Code (Act XIV of 1882) ss 545 588*—The Court which passed a certain decree for specific performance of a contract to execute a mortgage on property worth 4½ lakhs of rupees ordered execution thereof to be stayed pending appeal on the debtor's furnishing security to the amount of R70 000 under the provisions of s 545 of the Code of Civil Procedure The debtor objected to the amount

[I L R., 12 Calc, 624

501 ———— *Civil Procedure Code 1882 s 545—Notice to decree holder—Practice—Affidavit*—A final order for staying the

[I L R., 15 Bom, 533

17 STRIKING OFF EXECUTION PROCEEDINGS

502 ———— Striking off execution-

EXECUTION OF DECREE—*continued*

17 STRIKING OFF EXECUTION PROCEEDINGS—*continued*

intended to be abandoned HURRONATH BHUNJO v CHUNNI LALL GHOSE

[I L R., 4 Calc, 877 3 C L R, 161

RADHAKISSORE BOSE v AFTAB CHUNDRA MAHATAB [I L R., 7 Calc, 61

503 ———— Striking execution case

and 114 of Act VIII of 1859 The practice of strik

HAN BANDOPADHYA v TARACHUND BANDOPADHYA [3 B L R, Ap, 17 11 W R, 587

Contra see RAJPAL v CHOOAMUN 4 N W, 10 where s 110 of Act VIII of 1859 was held to apply to proceedings in execution of a decree

504 ———— *Effect of as to continuance of suit*—It is contrary to general principles and a senseless addition to all the vexations of dela[illegible] for a[illegible] of a fin[illegible] the proc[illegible] off the[illegible] and the further proceedings for the same purpose are to be considered as taken in a new suit MOHESH NARAIN SINGH v KISHRAMUND MISSER

[5 W R., P C, 7
2 Ind Jur, O S, 1
Marsh, 592 9 Moore s I. A, 324

505 ———— *Effect of on rights of parties*—Striking off execution proceedings not being in accordance with the provisions of the

SYAM SINGH v BAIDYANATH RAI

[13 C L R, 176

506 ———— *Effect of on rights of parties*—The rights of the parties to execution proceedings are not affected in any way by the case being struck off by the Court there being no provision in the Civil Procedure Code for such a course *Baroda Soondari Dabi* v *Fergusson 11 C L R 17* followed The only proper mode of

[illegible] by s 647 applicable as well to execution proceedings as to suits and appeals BISWA SONAN CHUNDER GOSSYAMY v BINANDA CHUNDER DIDINGAR ADHIKAR GOSSYAMY I L R, 10 Calc 416

EXECUTOR—*continued.*

5. ———— **Express trustee**—*Limitation Act, XIV of 1859, s. 2—Trustee for heirs.*—An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed-of residue, a trustee within the scope of s. 2 of Act XIV of 1859 for the heir or heirs of the testator. LALLUBHAI BAPUBHAI *v.* MANKUVARBAI
[I. L. R., 2 Bom., 388

6. ———— **Executor also legatee under will.**—An executor of a will is not obliged in this country, as in England, to shed his character of executor before he can appear in the new character of legatee. BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . . . . . **13 W. R., 69**

7. ———— **Appointment of executor**—*Administrator General's Act (II of 1874), ss. 18, 26, 27, 29, 52, 54.*—When a testator has omitted to appoint an executor under his will, the Court will appoint as executor the person whom it would appear from the tenor of the will the testator contemplated should be executor. *In the goods of Punchard, L. R., 2 P. & D., 169,* and *In the goods of Adamson, L. R., 3 P. & D., 253,* followed. IN THE GOODS OF COURJON . **I. L. R., 25 Calc., 65**

8. ———— **Liability of executor for devastavit by co-executor.**—*Held per* NORMAN, *J.*, (PHEAR, *J.*, dissenting) that an executor who takes no share in the administration of his testatrix's estate is nevertheless liable for the loss occasioned by his co-executor neglecting to get in the assets. *Per* PHEAR, *J.*—In order to make one executor liable for devastavit committed by his co-executor, there must be a distinct allegation in the plaint that the devastavit has been committed by the co-executor to the knowledge of the executor. GREENWAY *v.* HOGG
[Bourke, A. O. C., 111: Cor., 97

In the same case in the Court below, it was held by LEVINGE, *J.*, that an executor will not be held liable for devastavit if the will was so framed as to mislead him, and he was not called upon to act differently from his own views by any parties taking an interest under the will. HOGG *v.* GREENWAY **2 Hyde, 3**

9. ———— **Power of executor of Hindu will.**—The executor of a Hindu will has no power by acknowledgment to revive a debt barred by limitation except as against himself. GOPALNARAIN MOZOOMDAR *v.* MUDDOMUTTY GUPTEE . . **14 B. L. R., 21**

10. ———— **Power of executor to pay barred debt.**—An executor may pay a debt justly due by his testator, though barred by the Statute of Limitation, and will in equity be allowed credit for such payment. TILLAKCHAND HINDUMAL *v.* TILAMAL SUDARAM . . . . . **10 Bom., 206**

11. ———— **Renunciation of executorship**—*Fiduciary relationship—Administration suit—Suit against purchaser from executor to set aside sale.*—*D*, a Hindu, died, leaving three sons, *S*, *S C*, and *R*, who on his death made a partition of his estate, and *S* covenanted with *S C* to discharge all claims made against the estate of *D*. In 1828 *B*, who claimed a portion of the share taken by *S C*, on partition with mesne profits, filed a bill in the Supreme Court against *S C* and others as representatives of *D*, and obtained a decree for R2,00,000. Pending this litigation, *S C* died, leaving six sons, *J*, *M*, *H*, *P*, *C*, and *S M*, and a will made before the birth of *S M*, by which he left all his property to his sons other than *S M*. On the death of *S C*, *J*, as one of the executors of his will, compromised *B*'s suit, so far as it related to the estate of *S C*, for R80,000, and afterwards, in the same capacity, sued the representatives of *S* to recover that amount and the costs in the suit brought by *B*, and obtained a decree for R1,70,000. In the meantime *H* died, leaving the plaintiffs, his sons and heirs, and his brothers *J* and *M*, his executors. *J* renounced the executorship. *M*, on the 3rd June 1854, as executor of *H* executed a deed of assignment, by which he conveyed to *J* and *S M*, for R5,000, the interest of the plaintiffs in the decree obtained by *J*, and subsequently, at a sale of property belonging to the representatives of *S* in execution of the decree, *J* himself became the purchaser. In 1857, in an administration suit which had been brought by the plaintiffs to compel *M* to account for the assets received by him from the estate of *H*, the master was directed to take an account, which was accordingly done. In a suit brought by the plaintiffs, the sons of *H*, against *J M* and *S M* to set aside the deed of 23rd June 1854,—*Held* that, notwithstanding the renunciation of executorship by *J*, he stood in a fiduciary relation to the plaintiffs, and the assignment, being found to have been made for an inadequate consideration, was ordered to be set aside on the plaintiffs paying the purchaser *J* the amount of the purchase-money. A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. DHONENDER CHUNDER MOOKERJEE *v.* MUTTY LALL MOOKERJEE
[14 B. L. R., 276: 23 W. R., 6
L. R., 2 I. A., 18

12. ———— **Liability of executor for funeral of testator.**—Although the executor defendants first gave orders for a third class funeral for the deceased, yet, as they by their conduct induced the plaintiff to furnish a second class funeral, they were held liable to pay for the same, whether they had assets or not. PAUL *v.* DONOHOY
[6 W. R., Civ. Ref., 27

13. ———— **Power of executor**—*Hindu will—Mortgage.*—*Per* MARKBY, *J.*—The executors of the will of a Hindu cannot, by virtue of their character as executors, mortgage the estate of the testator, in the absence of any power, express or implied, contained in the will. NILKANT CHATTERJEE *v.* PEARY MOHAN DAS
[3 B. L. R., O. C., 7: 11 W. R., O. C., 21

14. ———— *Hindu will—Mortgage—Liability of state for loan.*—When, in order to save an estate from sale in execution of a decree against the testator, his executor raised a loan from the plaintiff giving him a mortgage of the testator's property,—*Held* that, even if the executor

EXECUTOR—*continued.*

——— obtaining second grant of probate.

See COURT FEES ACT, SCH I, CL 11.
[I. L. R, 3 Calc., 733

——— Power of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION
[I. L. R, 20 Bom., 238
I. L. R., 21 Bom, 335

——— Removal of, Ground for—

See MAHOMEDAN LAW—WILL
[1 B. L. R., S. N., 16

——— Renunciation by—

See LETTERS OF ADMINISTRATION.
[I. L. R., 19 Bom., 123

See WILL—RENUNCIATION BY EXECUTOR
[I. L. R., 4 Calc, 508

——— Rights of—

See HINDU LAW—WILL—CONSTRUCTION OF WILL—VESTED AND CONTINGENT INTERESTS
[I. L. R, 1 Bom., 269
1 Ind Jur, O. S, 37: 4 W. R, P. C, 114:
6 Moore's I. A., 526

——— Transfer by, to Administrator General.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER
[I. L. R, 22 Calc, 1011
L. R., 22 I. A, 208

1. ——— Position and rights of executors—*Contract—Consideration—Gratuitous contract—Contract to pay remuneration to executor for performance of his duties—Remuneration not coming o[illegible]*
General's
as being
(IX of
appointed as executrix and executors of his will his wife, *K*, together with the plaintiff and another, and the plaintiff being unwilling to undertake the duties of executor without remuneration, *K* offered him, and he accepted, a sum of R125 a month for acting as executor, but before any formal agreement was entered into, the defendant's dewan on her behalf proposed to the plaintiff that he should accept a parwana for R125 a month from the defendant instead of from *K*, to which the plaintiff agreed, and he accordingly received from the defendant a parwana, in which she agreed to pay him from her own pocket the above sum monthly as long as he continued to perform the duties of executor of the estate of her brother, in which she was interested. In pursuance of this agreement, the plaintiff, in conjunction with the other executor, took out probate of the will, and the stipulated remuneration was paid for some time and then ceased In a suit for his salary for the portion of the time during which he had acted as executor [illegible]

administrator of commission or agency charges from the assets of the estate, and not to remuneration paid to him by a third person *Held* also that the agreement was not void under s 23 of the Contract Act as being illegal or contrary to public policy, and a suit upon it was, under the circumstances, maintainable NARAYAN COOMARI DEBI *v.* SHAJANI KANTA CHATTERJEE
[I. L. R, 22 Calc., 14

2. ——— *Position of an executor under a Hindu will before the Hindu Wills Act (XXI of 1870) came into force—Difference in position between an executor under a Hindu will and an executor under an English will*—An executor under a Hindu will, before the Hindu [illegible]

it only as manager. SARAT CHANDRA BANERJEE *v.* BHUPENDRA NATH BOSU
[I. L. R., 25 Calc, 103

3. ——— Rules and decisions of Court of Chancery as to executor—*Omission in will of directions as to conversion by executor—Liability of executor*—The rules and decisions of the Court of Ch[illegible] [illegible]uty of an exe[illegible] special direc[illegible] without great qualifications apply in the High Court of Bombay, and the Supreme and High Courts of Bombay have not, by any general rule or uniform practice, adopted any Government security accessible to a private executor as trust [illegible]

subsequently became much depreciated in value,—*Held* that the executors were not liable for the loss so occasioned to the estate of the testator DESOUZA *v.* DESOUZA 12 Bom., 184

4. ——— Derivative executor—*Succession Act (X of 1865)*—Under the Succession Act, the executor of an executor is not derivative executor of the original testator, even though such testator died before 1866 DESOUZA *v.* SECRETARY OF STATE FOR INDIA . 12 B. L. R., 423

EXECUTOR—*continued.*

of his debts, having as such executors borrowed certain moneys from a bank wherewith to discharge debts incurred by them in the administration of the estate of the testator, gave as such executors to such bank a bond for the payment of such moneys on a certain date. By a second instrument, bearing the same date as the bond, they mortgaged as such executors aforesaid to the manager of such bank all their right, title, and interest in certain real estate of the testator as security for the payment of the moneys, authorizing and empowering, in default of payment of the same, the manager, his successors or assigns, absolutely to sell such real estate, either by private sale or public auction, for the realization of the moneys, and to sign a conveyance or coveyances, and a receipt or receipts for the purchase-money, and declaring that such conveyance or conveyances, receipt or receipts, should be as valid as if the same were signed by them. By a third instrument bearing the same date as the other two, they as such executors aforesaid constituted the manager of the bank for the time being their true and lawful attorney for them, and in their names and as their act and deed to sell such real estate and to do all acts necessary for effecting the premises. Default having been made in payment of the moneys by an instrument in writing which recited the instruments already mentioned, the manager of the bank for the time being, described as such, in the exercise of the power of sale and for the purpose of reimbursing to the bank the moneys, granted and conveyed to *B* such real estate and all the estate and interest therein of the executors freed from the mortgage above recited, and the manager for the executors executed the usual covenants for title and further assurance. *B*, having been resisted in obtaining possession of such real estate under such conveyance by a legatee of the testator, sued the legatee and the executors for a declaration of right to, and for possession of, such real estate in virtue of such conveyance. The legatee contended that the executors had no authority to confer a power of sale. *Held* (STUART, *C.J.*, dissenting) that the executors had such authority under s. 269 of the Succession Act, and that the conveyance was accordingly valid and operated to transfer the property to *B*. SEALE *v.* BROWN . **I. L. R., 1 All., 710**

19. ——————— *Power of, to charge estate of testator.*—*H K* died on the 5th July 1871, leaving two widows, *J* and *A*, and one son (the defendant) him surviving. By his will he appointed *D* his executor, and named the defendant his residuary legatee. At the time of his death, *H K* was indebted to *M* in a large amount, for which *M* held mortgages on his property. On the 5th March 1873, *M's* debt amounted to R1,33,631, and it was agreed between *M* and *D* as executor that the mortgaged property (estimated at one lakh in value) should be made over to *M* absolutely in part payment, and that *D* should become personally liable to her for the balance of R33,631 with interest at 9 per cent. payable within twelve months. In consideration thereof, *M* was to release *D* as executor and the defendant from liability for the sum of R1,33,631. An indenture carrying out this agreement was executed on the same day, and *D* gave a bond making himself personally liable to *M* for R33,631. Shortly afterwards a new arrangement was made. *M* agreed to a bandon R10,631 of the R33,631 due under the bond and to accept R23,000 payable in yearly instalments of R3,000 in satisfaction of her whole claim. In pursuance of this agreement, *D*, as executor, paid the first instalment, *J* paid the second instalment, *D* having made over the estate of *H K* to the Administrator General under the provisions of Act II of 1874. *M* died in October 1874, and the plaintiff as her executrix sued the defendant for the instalments due in 1876, 1877, and 1878. *Held* that, the estate of *H K* having been released by *M* by the deed executed on the 5th March 1873, it was not competent for *D* as executor by a new contract to charge it with any liability in respect of the amount due to *M*. *Childs* v. *Monins, 1 B. & B., 460*; *Rose* v. *Bowles, 1 H. B., 109*; and *Powell* v. *Graham, 7 Taunt., 581,* followed. CASSIBAI *v.* RANSORDAS HANSRAJ **[I. L. R., 4 Bom., 5**

20. ——————— *Power to sell property—Probate and Administration Act (V of 1881), s. 90.*—No one but an executor or administrator has power to apply to the Court under s. 90 of the Probate and Administration Act (V of 1881). Where a testator directed his executor to manage the whole of his estate through the Court of Wards,—*Held* that there was no restriction on the executor's power of sale, and that the provisions of s. 90 of the Probate and Administration Act did not apply to his case. *Held* also that an order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, was without jurisdiction, and appealable under s. 15 of the Letters Patent. *Hurrish Chunder Chowdhry* v. *Kali Sundari Debi, I. L. R., 9 Calc., 482,* applied. IN THE GOODS OF INDRA CHANDRA SINGH. SARASWATI DASSI *v.* ADMINISTRATOR-GENERAL OF BENGAL . . . **I. L. R., 23 Calc., 580**

21. ——————— *Executor, Power of disposition by—Probate and Administration Act (V of 1881), s. 90.*—Under s. 90 of the Probate and Administration Act, the power of an executor to dispose of any property is subject to any restriction imposed by the will appointing him. Where there is no such restriction, the power to dispose is not dependent on the permission of the Court, and the Court has no jurisdiction in the matter. IN THE GOODS OF NUNDO LALL MULLICK **[I. L. R., 23 Calc., 908**

22. ——————— *Power of executor to lease.*—The executors of the will of a Hindu, to which neither the Hindu Wills Act, 1870, nor the Probate and Administration Act, 1881, apply, have such authority only to deal with the estate as the terms of the will confer on them. Neither a power to "manage the estate as they may deem proper," nor a power to sell it, will authorize executors to lease any part of it for 999 years, or (*semble*) for any period

EXECUTOR—*continued*

had funds to pay the plaintiff the debt without raising a loan, that fact would not invalidate the plaintiff's claim against the estate unless there was good reason to infer that he knew of these funds or might have known of them if he had used ordinary diligence in making enquiries on the point KALEE NARAIN ROY CHOWDHRY v RAM COOMAR CHAND [W. R, 1864, 99

15. ———— *Executors, Power of, to mortgage under Act V of 1881—Probate and Administration Act (V of 1881), s 90—Probate and Administration Act (VI of 1889), s 19, Effect of, on a mortgage executed by executors between 1881 and 1889—Act VI of 1889, retrospective effect of—Construction of will*—One *A* died in 1883, after having executed a will and leaving two minor and three major sons The major sons, who [illegible]

[illegible]

of Act V of 1881 The two material clauses of the will were as follows —(2) "I have certain personal debt, and I have some debt also which is joint with my brothers In order to pay off the said debt, the executors shall sell, mortgage, or pledge moveable or immoveable properties of my estate or shall let out in patni or mourasi mokurari the immoveable properties of my estate, and they shall pay off the said debt from the proceeds (3) If [illegible]

[illegible]

1881, which was in force at the time the mortgage was executed, an executor had no power to sell immoveable property without the sanction of the Court, s 19 of the Probate and Administration Act (VI of 1889) had made valid all invalid alienations that had been effected since 1881 That upon a construction of cls 2 and 3 of the will, those clauses do not imply a limitation on the powers of the executors and there is nothing in those clauses that interferes with the power of the executors under the law RAJANI NATH MUKHOPADHYAYA v RAMANATH MUKHERJI . 3 C. W. N, 483

16. ———— *Power of executors to mortgage testator's properties—How far restricted by necessary implication*—Where a will contained the following provision, viz —"The executor shall pay all my debts which are due to money-lenders, and to Babu Radheka Charan Sen as shown by his khattas, if there be any difficulty in paying off the debts from the money due to me, the executor shall either sell the whole or a portion of my estate, or make any other settlement of the estate such as patni or dar-patni, etc, and shall pay off my debts from the consideration money thus acquired" *Held* that upon such authority the executor had no power to mortgage any portion of the testator's estate KANTI CHANDRA CHATTOPADHYA v KRISTO CHURN ACHARJEE . . 3 C. W. N, 515

EXECUTOR—*continued*

17. ———— *Manager under Hindu will—Power of mortgage and borrowing money*—*R R D* died possessed of certain property in Calcutta and left him surviving *S D*, widow of his son *J C*, deceased, and three granddaughters, upon whose marriages he directed *H P*, his executor, to expend R1 000, and to pay his debts, etc, and further directed that, if there should not be money forthcoming for the purpose specified in the will, the property should be sold to make up the deficit *H P* expended on the marriages much more than was limited by the will, and for this purpose mortgaged the property to *T C* and others, who were proceeding to foreclose when *S D* sued to have the mortgage-deed set aside as against the heir of *R R D*, which she claimed to be, through *U S*, deceased whom she had adopted under a direction in the will of her husband that she should adopt three sons in succession, a direction which *H P* was enjoined by *R R D*'s will to see carried out The mortgagee resisted her claim on the grounds that she had not adopted a second son, that the powers of sale [illegible]

[illegible]

not the same power over a testator's estate as an [illegible]

[illegible]

tator, that the general power of a manager under a will may be restricted by the will, that a manager under a will is bound to act according to the directions in the will, and that where an attorney or manager under a will has power to mortgage for specific purposes, it is the duty of the mortgagee to enquire into the circumstances under which, and the authority upon which the mortgage was effected That when a will directs a certain sum to be expended for marriage purposes, the manager or executor had [illegible]

[illegible]

direction in a will to sell houses and invest the surplus proceeds in Government securities does not authorize the executor to borrow money ta a high interest and amounts to a direction not to mortgage the houses, that when a plaintiff seeks to set aside a mortgage, on the ground that the mortgagor had no power to mortgage, and that the mortgagees had acted fraudulently the Court can grant relief even if the fraud be not made out, the issue as to the mortgagor's power to mortgage being found in favour of the plaintiff SREEMUTTY DOSSEE v. TARACHURN COONDOO CHOWDHRY

[Bourke, A O. C., 48 : 3 W. R., Mis., 7 note

18 ———— *Succession Act (X of 1865), s 269—Mortgage—Power of sale*—Certain persons, being executors of the will of an Englishman domiciled in India, such will having been made after the Succession Act came into operation, and charging the testator's estate with the payment

EXECUTOR—*concluded.*

N and *R* for R165 due to him by the deceased *J.* He claimed against *N* as executrix *de son tort. Held* that, probate not having actually issued to *R* at the time that *N received the money from the Railway* Co., although an order for probate had been made, she had, by receiving it, constituted herself executrix *de son tort*, and was therefore liable to the plaintiff, and could be joined as co-defendant with *R* in the suit. *Held* also that the fact that by the terms of the consent-decree of the 25th February 1892 she was allowed to receive the money and retain it was no defence. The consent-decree did not bind the creditors or free her from her responsibility to them to the extent of the assets which she received. NAVAZBAI *v.* PESTONJI RATANJI

[I. L. R., 21 Bom., 400

29. ———— **Executor who has administered the estate without probate required to lodge will in Court and obtain probate.**—On *T V* died in 1883, and by his will appointed his brother *T* sole residuary legatee and also his executor, and he directed that, in case of *T*'s death, *D* (*T*'s son) should be executor. *T* accordingly acted as executor until his death in May 1886, and then his son *D* continued to administer the estate, but neither of them obtained probate of the will. *T* left a will whereby he appointed his two sons, *D* and the applicant, his executors and also his residuary legatees. In June 1895, the applicant, stating that he was one of the residuary legatees of *T*, applied for a citation to be issued to *D* directing him to bring in and prove the will of *T V*. In reply, *D* submitted that there was no necessity to prove the will; that the estate was fully administered, and that he had no funds left in his hands out of which to pay the costs of probate. *Held* that the executor, *D*, must lodge the will in Court, and that, on the applicant paying half the estimated cost of obtaining probate (including probate duty), *D* should take out probate of the will. DAYABHAI TAPIDAS *v.* DAMODAR TAPIDAS

[I. L. R., 20 Bom., 227

EXHIBITS.

———— **Application to alter endorsement on—**

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[I. L. R., 21 Calc., 476

EX-PARTE DECREE.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 108 (85), s. 119).

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—UNEXECUTED, BARRED, AND EX-PARTE DECREES.

See CASES UNDER LIMITATION ACT, 1877, ART. 164 (1871, ART. 157).

EXPECTANCY.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

EXPECTANCY—*concluded.*

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

[I. L. R., 17 All., 125

See ONUS OF PROOF — HINDU LAW — ALIENATION . I. L. R., 17 All., 125

EXTORTION.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R., 10 All., 58

1. ———— **Feigning attempt to commit offence**—*Penal Code, s. 387.*—The feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code. REG. *v.* GREGORY . . . 1 Ind. Jur., N. S., 423

2. ———— **Intentionally putting person in fear of injury.**—To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury and thereby dishonestly inducing him to part with his property. QUEEN *v.* MEAJAN . . . 4 W. R., Cr., 5

3. ———— **Putting person in fear of his life and taking property**—*Robbery.*—When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion. QUEEN *v.* DULEELOODDEEN SHEIKH . 5 W. R., Cr., 19

4. ———— **Requisites for offences**—*Penal Code, s. 384—Abetment.*—*Held* that it is not necessary in a case of extortion under the Penal Code that the threat should be used and the property received by one and the same individual, nor that the receiver should be charged with abetment, although that might be done. REG. *v.* SANKER BHAGVAT

[2 Bom., 417 : 2nd Ed., 394

5. ———— *Penal Code, s. 383—Belief of right to property.*—A conviction of extortion by a full-power Magistrate, and an order on a Sessions Judge rejecting an appeal therein, reversed by the High Court under s. 404 of the Criminal Procedure Code, as there was no such fear of injury as is contemplated by s. 383 of the Penal Code, nor was the delivery of money by the complainants thereby induced, nor did it appear from the evidence that the money was obtained dishonestly by the prisoner who might have demanded it, believing in good faith that he was entitled to it. REG. *v.* ABDUL KADAR

[3 Bom., Cr., 45

6. ———— *Wrongful confinement—Money lent in ordinary course of business to pay amount extorted—Lender—Penal Code (Act XLV of 1860), ss. 213, 342, and 384—Accomplice.*—The accused, as sub-inspector of police, arrested one *J*, wrongfully confined him, and extorted from him R200 under a threat that he, the accused, would not release *J* unless the money were paid. This money was paid on this account by *P*, a money lender, who lent *J* the money for this purpose. Accused was convicted under ss. 342 and 384 of the Penal Code,

EXECUTOR—*continued*

exceeding 21 years JUGMOHANDAS VUNDRAWANDAS *v* PALLONJEE EDULJEE MOBEDINA [I. L. R., 22 Bom., 1

23. ——— ——— *Powers of executor to sell—Probate and Administration Act (V of 1881), s 90, as amended by Act VI of 1889, s 14.*—S 90 of the Probate and Administration Act, V of 1881, as amended by Act VI of 1889 s 14, gives an executor merely the ordinary powers of sale that an ordinary owner would have in so far as they are not limited by the will, and as such, those powers are subject to the usual rules of equity BEHARILALJI BHAGWATPRASADJI *v* BAI RAJBAI I. L. R., 23 Bom., 342

24. ——— ——— *Probate and Administration Act (V of 1881), ss 82 and 92.—Direction in the will that all the executors will act jointly—Act of an executor who has taken out probate and the others not having done so, how far binding on the estate of the testator*—Where by a will more

[illegible]

testator did, and a suit was brought upon these hat chittas against the heirs of the testator,—*Held*

[illegible]

SATYA PRASHAD PAL CHOWDHRY *v* MOTILAL PAL CHOWDHRY . I. L. R., 27 Calc., 683

25. ——— ——— *Right of execu-*

[illegible]

affected by limitation before such accounts are taken. KRISHNARAO RAMCHANDRA *v* BENABAI [I. L. R., 20 Bom., 571

26. ——— **Sale of right, title, and interest of executor under will**—*Liability of, for costs—Charge on estate of testator—Gift to executors—Trust—Construction of will.*—*K* died leaving a will, which directed, among other dispositions of her property, that her executors should collect the rent of a house belonging to her, and after payment of revenue taxes and other expenses, should lay out every month R30 for the worship of a thakoor, and should enjoy what remained in equal shares during their lives One of the executors, *B*, having been

[illegible]

Sheriff and purchased by *D*, who was put in possession of the whole house. The other executor who

EXECUTOR—*continued.*

proved the will subsequently to *B*'s having done so then brought a suit against *D*, praying that the will might be construed, the rights of the plaintiff and the defendant ascertained, and the portion she might be entitled to decreed. *Held* that the intention of the decree against *B* was to make the costs payable, not by the estate of the testatrix, but by *B* himself, and the execution-sale was valid so far only as it conveyed such beneficial interest in the house as he took under the will *Held* also that the property was not a mere gift to the executors subject to a charge, but a trust, and that *B*'s interest was in the surplus rents and profits after satisfying the purposes of the will DEBNARAIN BOSE *v* COMULMONEE DOSSEE . 20 W. R., 39

27. [illegible]

the representatives of two deceased co-debtors, who, as managing members of an undivided Hindu family, had contracted the debt for family purposes, the plaintiff impleaded *G*, the son-in-law of one of the deceased co-debtors, and his brothers, on the ground that they, in collusion with the widow of such deceased co debtor, had, as volunteers, intermeddled with, and possessed themselves of, substantially the whole property of the family of the deceased co-

[illegible]

the nature of damages, from the date of suit was properly awarded. MAGALURI GURUDIAH *v* NARAYANA RUNGIAH . I. L. R., 3 Mad., 359

28. ——— **Executor de son tort**—*What constitutes an executor de son tort—Liability of such executor to creditors of deceased—Intermeddling with estate after order for probate made, but before issue of probate—Receipt of assets with consent of person appointed executor—Succession Act (X of 1865), s 255—Consent-decree—Parties*—Probate is necessary to complete the title of a

[illegible]

Court for probate of the will, and *A*, the widow of *J*, entered a caveat By a consent-decree, dated 25th February 1892, it was ordered that probate should issue to *R*, and by the same decree it was declared that *R*, as executrix, was not entitled to a sum of

[illegible]

FACTORIES ACT (XV OF 1881)—*concluded.*

Municipal Act (Bengal Act III of 1884), ss. 320, 321—Liability for neglecting to keep a factory in a cleanly state.—The Inspector of Factories, having found the latrines of the Hastings Mill within the Serampore Municipality in a filthy state, instituted a prosecution against the manager of the mill, but the prosecution failed. He then prosecuted as representing the Municipal Commissioners of Serampore the Chairman of the Municipality, who, on conviction, was fined R200 for "neglecting to keep the factory free from effluvia arising from a privy" under the provisions of the Factories Act and of the Bengal Municipal Act, s. 320. *Held* that the conviction of the Chairman was unsustainable on the finding that the Municipality and the occupier of the factory were jointly responsible. *Held,* further, that it lay upon the occupier of the factory, as being primarily liable for breach of any of the provisions of the Factories Act, to give the strictest proof of circumstances exonerating himself from the liability in order to fix it on any other person. CHAIRMAN OF THE SERAMPORE MUNICIPALITY *v.* INSPECTOR OF FACTORIES, HOOGHLY . I. L. R., 25 Calc., 454

FACTORS.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . 4 W. R., P. C., 1
[10 Moore's I. A., 229

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R., 17 Bom., 520

FACTORS' ACT (XX OF 1844).

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 Ind. Jur., O. S., 17
[1 W. R., P. C., 43 : 9 Moore's I. A., 140

FACTUM VALET, DOCTRINE OF—

See CASES UNDER HINDU LAW—ADOPTION —FACTUM VALET, DOCTRINE OF.

See HINDU LAW—FAMILY DWELLING-HOUSE . . 4 B. L. R., O. C., 72

FALSE CHARGE.

See HINDU LAW—MARRIAGE—RIGHT TO GIVE IN MARRIAGE AND CONSENT.
[I. L. R., 11 Bom., 247
I. L. R., 22 Bom., 812

—— Giving evidence in support of —

See ABETMENT . 9 B. L. R., Ap., 16
[10 C. L. R., 4

1. —— Penal Code, s. 211—*Knowledge by accused of offence.*—To establish a charge under s. 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. QUEEN *v.* BHITTO KAHAR . . 1 Ind. Jur., O. S., 123

2. —— *Knowledge that charge is false.*—A person may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under s. 211 of the Penal Code. To constitute this offence, it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings. The averment that the accused knew that there was no lawful ground for the charge instituted is a most material one. QUEEN *v.* CHIDDA
[3 N. W., 327

3. —— *False charge by police officer.*—S. 211 of the Penal Code applies not only to a private individual, but also to a police officer who brings a false charge of an offence with intent to injure. IN THE MATTER OF THE PETITION OF NABODEEP CHUNDER SIRKAR 11 W. R., Cr., 2

4. —— *False charge in petition of complaint.*—If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code. QUEEN *v.* MATA DYAL . . . . . 4 N. W., 6

5. —— *False charge—False information—Penal Code, s. 182.*—Where a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211 of the Penal Code, and not under s. 182. EMPRESS *v.* ARJUN . . . I. L. R., 7 Bom., 184

6. —— *Compounding offence—Discharge of accused charged under s. 211 upon plea of original charge having been compounded.*—The fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code. *A* laid a charge against *M* for wrongful confinement. The police reported the case as a false one, and, *A* not appearing to prove his complaint, the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. Upon the hearing of such charge, *A* pleaded that he had compounded the original charge laid by him against *M*, and that therefore the charge against him under s. 211 could not lie. The Deputy Magistrate, without hearing any evidence, dismissed the case. *Held* that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211. QUEEN-EMPRESS *v.* ATAR ALI
[I. L. R., 11 Calc., 79

7. —— *Specific false charge.*—Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code. QUEEN-EMPRESS *v.* JUGAL KISHORE . . . I. L. R., 8 All., 382

8. —— *Requisites for offence—Making false charge.*—To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made,

EXTORTION—*concluded*

given, that it was given by *J* to obtain his release from police custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the sub inspector refused to release *J*, as he was bound to do unless he were paid that money That *P*, paying such money under such circumstances, could not be regarded as an accomplice of the sub inspector in such misconduct AKHOY KUMAR CHUCKERBUTTY v JAGAT CHUNDER CHUCKERBUTTY [I. L. R., 27 Calc., 925 4 C. W. N., 755

7. ——— Obtaining money by threatening not to conduct case —The defendant was

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conducted his defence The defendant was convicted of extortion *Held* that the conviction was bad. ANONYMOUS 5 Mad., Ap, 14

8 ——— Terror of criminal charge—*Fear of injury—Penal Code, s 383* —The terror of a criminal charge is a fear of injury within the meaning of those words in s 383 of the Penal Code Extortion may be equally committed, whether the charge threatened is true or false QUEEN v MOBARICK 7 W. R., Cr, 28

9. ——— Making use of influence,

MATTER OF ABBAS ALI 18 W. R., Cr, 17

EXTRADITION.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE I. L. R., 17 Bom, 369

See WARRANT OF ARREST—CRIMINAL CASES I. L. R., 1 Bom, 340

——— Act VII of 1854 (Fugitive Foreign Offender), s. 23—*Act XVII of 1862—Warrant under the Extradition Act* —S. 23 of Act VII of 1854 is not repealed by the schedule to Act XVII of 1862 The treaty of the 6th of November 1817 between His Highness the Gaikwad

person to be delivered up to the Resident at Baroda,

EXTRADITION—*concluded*

without showing either that an enquiry had been made or was about to be made, the Court held that it was not therefore invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an enquiry as is required by the Act A warrant issued under s 23 of the Act should recite either that an enquiry has been held, or is about to be held, with reference to the guilt of the accused REG v SOUTER IN RE RAVJI BIN KESHAV 8 Bom, Cr, 13

EXTRADITION ACTS

——— (XXI of 1879).

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL [I. L. R., 12 Mad., 39

1 ——— s 8—*European British sub-*

thus by virtue of that section, applicable to such British subjects, native or European QUEEN-EMPRESS v EDWARDS I. L. R., 9 Bom, 333

2 ——— s 9 (and Act XI of 1872)—*Jurisdiction of Criminal Court—Offence in foreign territory—Native Indian subject* —A Native Indian subject of Her Majesty committed an offence (*viz*, theft in a dwelling-house) in the territory of a Native State in alliance with Her Majesty,

enquiry was held by a Magistrate, who committed the accused for trial by the Court of Session. *Held* that the Sessions Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under s 9 of the Foreign Jurisdiction and Extradition

section must be taken to mean not where a person is discovered but where he is actually present EMPRESS v. MAGANLAL I. L. R., 6 Bom., 622

F

FACTORIES ACT (XV OF 1881).

——— ss. 15 (g) and 17, prov. 1—*Factories Act Amendment Act (XI of 1891)—Bengal*

FALSE CHARGE—*continued.*

Code, and if a person only makes a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." EMPRESS v. PITAM RAI . . **I. L. R., 5 All., 215**

22. ———————— *Institution of criminal proceedings.*—Where no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section. EMPRESS v. PARAHU . . **I. L. R., 5 All., 598**

23. ———————— A false charge before the police is a false charge falling within the first portion of s. 211 of the Penal Code. The latter portion of s. 211 of the Penal Code is confined to cases in which criminal proceedings have been instituted, and does not apply to false charges merely. *Empress of India* v. *Pitam Rai, I. L. R., 5 All., 215,* and *Empress* v. *Parahu, I. L. R., 5 All., 598,* followed. QUEEN-EMPRESS v. KARIM BUKSH

[I. L. R., 14 Calc., 633

24. ———————— *False charge made to police—Institution of criminal proceedings—Penal Code, s. 211.*—A person who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of s. 211 of the Penal Code; and if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided. KARIM BUKSH v. QUEEN-EMPRESS . . . **I. L. R., 17 Calc., 574**

25. ———————— *False charge of offence punishable with death—Criminal proceedings, Necessity for institution of.*—To constitute the offence defined in the second paragraph of s. 211 of Act XLV of 1860, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to the institution of criminal proceedings, and the offence committed will fall within the first paragraph of s. 211, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph of that section. *Queen-Empress* v. *Pitam Rai, I. L. R., 5 All., 215,* and *Queen-Empress* v. *Parahu, I. L. R., 5 All., 598,* followed. *Karim Buksh* v. *Queen-Empress, I. L. R., 17 Calc., 574,* dissented from. QUEEN-EMPRESS v. BISHESHAR . . . **I. L. R., 16 All., 124**

26. ———————— *False charge of dacoity made to a police station-house officer—Institution of criminal proceedings.*—A false charge of dacoity was made to a police station-house officer, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under Penal Code, s. 211, and was found to have acted with the intent and the knowledge therein mentioned, and he was convicted and sentenced to four years' rigorous imprisonment. *Held* that the prisoner had instituted criminal proceedings within the meaning of that section, and that the conviction and sentence were in accordance with law. QUEEN-EMPRESS v. NANJUNDA RAU . . . **I. L. R., 20 Mad., 79**

27. ———————— *False report by* [illegible] *Criminal Procedure Code (Act V* [illegible] *-Sanction.*—Where a police-officer made a false report regarding a certain offence which the Magistrate found, after hearing the evidence, to be false, and thereupon sanction was given for the prosecution of the police-officer under s. 211 of the Penal Code,—*Held* that it could not be said that the police-officer instituted or caused to be instituted any criminal proceedings against any person, and therefore the sanction for the prosecution of the police-officer under s. 211, Penal Code, was bad in law. THAKUR TEWARY v. QUEEN-EMPRESS . **4 C. W. N., 347**

28. ———————— *Penal Code, ss. 211, 499, and 500—Falsely charging a person with an offence—Defamatory statement made by a person examined in the course of an official or departmental inquiry—Witness—Privilege—Qualified privilege—Criminal Procedure Code (1882), ss. 191 and 197.*—The complainant was Deputy Collector and first class Magistrate of Bijapur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation under s. 500 of the Penal Code (XLV of 1860) in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500, and convicted the accused under s. 211 of making a false charge. On appeal, the Joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that in making the statement to Mr. Monteath the accused had acted in good faith, and that his case fell under excep. 8 to s. 499 of the Penal Code. He therefore reversed the conviction under s. 211, and acquitted the accused of defamation under s. 500 of the Code

FALSE CHARGE—*continued.*

EMPRESS *v* SALIK I. L. R., 1 All, 527

9. ———— *Requisites to sus*

S. C QUEEN *v* TOOBANA GAUNDAN [1 Ind Jur, O. S., 136

10. ———— *Code of Criminal Procedure (Act V of 1898), s 203—Order directing issue of process against a person for an offence of bringing a false complaint before final determination of the complaint, propriety of*—So long as a

according to law, before such proceedings can be taken GUNAMONY SAPUI *v*. QUEEN-EMPRESS [3 C. W. N., 758

11. ———— *Making false charge to Court or officer having no jurisdiction*—It is necessary for a conviction under s 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial IN THE MATTER OF THE PETITION OF JAMOONA EMPRESS *v* JAMOONA I. L. R., 6 Calc, 620: 8 C. L. R., 215

12. ———— *Charge laid before police officer*—There is nothing in s 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice A false charge made before the police is therefore punishable under this section ASHROF ALI *v* EMPRESS [I. L. R., 5 Calc, 281

13. ———— *Complaint to police*—To prefer a complaint to the police in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of s 211 of the Penal Code QUEEN *v* BONOMALLY SOHAI [5 W. R., Cr, 32

14. ———— *Charge made to police—Penal Code, s 182*—Ss 182 and 211 of the Penal Code distinguished The latter held to apply

FALSE CHARGE—*continued.*

15. ———— *Charge made to police*—Where a person who is interested in the matter or has a certain official responsibility says to a police officer—"*A* tells me that *X* has committed a certain offenc
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ment by a
he prefers
be false, he may be convicted under s 211, Penal Code QUEEN *v* HANOOMAN LAL [19 W. R., Cr., 5

16. ———— *Statement made to police as to suspicion of offence—Institution of criminal proceedings*—A statement made to the police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of s 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section IN THE MATTER OF BRAMANUND BHUTTACHARJEE . . 8 C. L. R., 233

17. ———— *Charge on insufficient evidence*—It is not sufficient ground for a charge under s 211 of the Penal Code that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a

and lawful ground for making it QUEEN *v* PRAN KISSEN BID . . 6 W. R, Cr., 15

18 ———— *False charge of burning house*—Where a man burns his own house and charges another with the offence of doing so, he should be convicted and sentenced under s 211 (and not under s 195) of the Penal Code QUEEN *v* BHUGWAN AHIR 8 W. R., Cr., 65

19. ———— *Charge of refusal to give stamped receipt*—The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence REG. *v* GAPAU KOM KUSAJI . . . 1 Bom, 92

20 ———— *Instituting criminal proceeding*—Under s. 211, Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence. Where a person is charged with instituting a criminal proceeding, with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him, not for the prisoner in the first instance to show that he had just or lawful ground. QUEEN *v* NOBOKISTO GHOSE . 8 W. R., Cr., 87

21. ———— *Institution of criminal proceedings.*—The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211 of the Penal

FALSE CHARGE—*continued.*

in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him. REG. *v.* NEVALMAL VALAD UMEDMAL . . . . . 3 Bom., Cr., 16

35. —— *False charge—Act X of 1872 (Criminal Procedure Code), ss. 146, 147.*—Where a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code and decides to proceed against the complainant under s. 471 for making a false charge, he is not bound before so proceeding to give the complainant an opportunity of substantiating the truth of the complaint, by being allowed to produce evidence before him. EMPRESS *v.* BHAWANI PRASAD [I. L. R., 4 All., 182

36. —— *Prosecution for making a false charge—Opportunity to accused to prove the truth of charge.*—Before a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, not before the police, but before the Magistrate. GOVERNMENT *v.* KARIMDAD [I. L. R., 6 Calc., 496
7 C. L. R., 487

37. —— *Sanction to prosecution for making false charge.*—A sanction for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal commitment at any stage of the case. EMPRESS *v.* SHIBO BEHARA [I. L. R., 6 Calc., 584
8 C. L. R., 265

38. —— *Opportunity of substantiating charge.*—Upon a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local inquiry by a competent police officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner who ordered the prosecution, and the prisoner was convicted. *Held* that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner and afforded her an opportunity of substantiating her complaint, and should then have decided the case. IN THE MATTER OF THE PETITION OF SOKHINA BIBI. EMPRESS *v.* GRISH CHUNDER NUNDI [I. L. R., 7 Calc., 87
8 C. L. R., 387

39. —— *Opportunity of substantiating charge.*—A Magistrate should not direct a prosecutor to be put upon his trial under s. 211 of the Penal Code without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. IN THE MATTER OF THE PETITION OF GIRIDHARI MUNDUL. GIRIDHARI MUNDUL *v.* UCHIT JHA [I. L. R., 8 Calc., 435
10 C. L. R., 46

NISSAR HOSSEIN *v.* RAMGOLUM SINGH [25 W. R., Cr., 10

See QUEEN *v.* GOUR MOHUN SINGH [16 W. R., Cr., 44

40. —— *Enquiry into truth of charge.*—Where a charge of theft was reported by the police to be false,—*Held* that the Magistrate ought first to have enquired into the charge of theft and passed some orders upon it before proceeding under s. 211 of the Penal Code to enquire into the offence of false charge. IN THE MATTER OF BISHOO BARIK . . . 16 W. R., Cr., 77

41. —— *Enquiry into truth of charge—Penal Code, s. 182.*—*J* complained to the police that she had been raped by *R*. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime *J* made a complaint in Court, again charging *R* with rape. This complaint was not disposed of, but the proceedings against her under s. 182 of the Penal Code were continued, and she was eventually convicted under that section. *Held*, setting aside the conviction and directing that *J*'s complaint should be disposed of, that such complaint should have been disposed of under s. 211 before proceedings were taken against her under s. 182. EMPRESS *v.* JAMNI I. L. R., 5 All., 387

42. —— *Preliminary enquiry—Criminal Procedure Code, 1872, s. 471—Penal Code, s. 182.*—An offence under s. 211 of the Penal Code includes an offence under s. 182; it is therefore open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211. BHOKTERAM *v.* HEERA KOLITA [I. L. R., 5 Calc., 184

43. —— *False information to police—Penal Code, s. 182—Charge found false by police.*—Where a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified merely on a perusal of a police report, which has found the charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation. IN THE MATTER OF RUSSICK LALL MULLICK . . . 7 C. L. R., 382

IN THE MATTER OF BIYOGI BHAGUT [4 C. L. R., 134

44. —— *Dismissal of complaint without giving complainant opportunity to prove it true.*—A charge laid against certain persons before the police having been reported false by

FALSE CHARGE—*continued*.

accused was brought before Mr Monteath against his will He did not make any complaint before that

charging in s 211 must be construed along with the words which speak of the 'institution of proceedings' These latter words are obviously used in a technical and exclusive sense and the same restricted sense must be given to the words which relate to a false charge as implying a false complaint *Karim Buksh* v *Queen Empress, I L R, 17 Calc 574* followed *Held* also that in the absence of sanction from Government the inquiry held by Mr Monteath the District Magistrate was not a taking cognizance of the offence QUEEN EMPRESS *v* KARIGOWDA I L R., 19 Bom, 51

29 ——— *Prosecution under s 182—Rejection of complaint with reference to police report*—*K* made a report at a police station accusing *R* of a certain offence The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established the Magistrate ordered the case to be 'shelved' *K* then preferred a complaint to the Magistrate, again accusing *R* of the offence The Magistrate rejected the complaint with reference to the police report Subsequently *R* with the sanc

[I L R., 5 All, 36

30 ——— *Report of police—Absence of judicial proceeding—Criminal Procedure Code (Act V of 1898), ss 157, 159*—Where the petitioner laid information to the police charging a certain person with criminal trespass in his house

tioner under s 211, Penal Code,—*Held* that there was no judicial proceeding before the Magistrate and the order under s 476, Criminal Procedure Code directing the prosecution of the petitioner was bad

FALSE CHARGE—*continued*.

That s 159 Civil Procedure Code ha to the present case, an inquiry can under that section only on a report su the terms of s 157 and the police report was not of that description MOU *v* NAURANGI LALL 4 C W N, 351

31 ——— *Charge made on report of police that case was false—Charge of giving false information*—A commitment for trial under the provisions of s 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused is not illegal merely because the complaint which the accused made has not been judicially enquired into but is based on the report of the police that the case was a false one EMPRESS *v* SALIK ROY . I L R, 6 Calc., 582 [8 C L R., 255

32 ——— *Enquiry into truth of charge—Criminal Procedure Code, 1872 s 471*—A petition was presented to the Joint Magistrate charging the police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner The Joint Magistrate after reading the police report, rejected the petition and directed the petitioner to be prosecuted under s 211 of the Penal Code for having made a false charge *Held* that the Joint Magistrate should not have made the order without first instituting an enquiry into the truth of the complaint such as is required by s 471 of the Code of Criminal Procedure *Queen* v *Gour Mohun Sing 16 W. R, 44* and *In the matter of Nissar Hossein 25 W R, 10,* considered. IN THE MATTER OF CHOOLHAIE TELEE [2 C L R, 315

33 ——— *Dismissal of complaint—Criminal Procedure Code (Act X of 1872), ss 470 and 471*—Where a charge had been preferred against a person, and the Magistrate before whom it was heard after hearing the statement of the

the proceedings to be adopted when a sanction is given under s 4 0 and the institution by the Court of its own motion of proceedings under s 471 *Nissar Hossein* v *Ramgolam Singh, 25 W R, Cr, 10,* dissented from. IN THE MATTER OF GYAN CHUNDER ROY *v* PROTAP CHUNDER DASS [I. L R., 7 Calc, 208 8 C.L. R, 267

34 ——— *Allowing opportunity to show grounds for charge*—Where a person is charged under s. 211 of the Penal Code with having with intent to injure, falsely charged another with an offence knowing that there is no just and

FALSE CHARGE—*concluded.*

complaint, and he was not prejudiced by the omission. QUEEN-EMPRESS *v.* JIJIBHAI GOVIND [I. L. R., 22 Bom., 596

49. ———————— *Procedure before framing charge.*—Procedure before framing a charge, under s. 211 of the Penal Code, of the offence of making a false charge with intent to injure considered. IN THE MATTER OF THE PETITION OF GAUR MOHUN SING . . . 8 B. L. R., Ap., 11

S. C. QUEEN *v.* GOUR MOHUN SING [16 W. R., Cr., 44

50. ———————— *False charge, Conviction on—Entry of, in calendar.*—When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the calendar. REG. *v.* ARJUN . . . . 1 Bom., 87

51. ———————— *Information given to police—Record.*—Where the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thannah ought to be given in evidence and form part of the record. QUEEN *v.* HOOLAS [23 W. R., Cr., 32

FALSE DECLARATION.

See MARRIAGE ACT, 1872, s. 18. [I. L. R., 16 All., 212

FALSE EVIDENCE.

See CASES UNDER CHARGE—FORM OF CHARGE—FALSE EVIDENCE.

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R., 11 Bom., 702

See CRIMINAL PROCEDURE CODES, s. 487, PARA. 1 (1872, s. 473) . 10 Bom., 73
[18 W. R., Cr., 15
22 W. R., Cr., 49
I. L. R., 1 Bom., 311
I. L. R., 1 All., 625
I. L. R., 14 All., 354
I. L. R., 20 Mad., 383

See CASES UNDER FORGERY.

1. GENERAL CASES.

1. ———————— **Requisites for legal conviction of false evidence**—*Attestation of record by Magistrate.*—Before criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that after being recorded it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate, following a certificate to be given under his own hand. QUEEN *v.* NERUNI 7 W. R., Cr., 49

See QUEEN *v.* MUNGUL DASS 23 W. R., Cr., 28

2. ———————— **Requisites for conviction of giving false evidence.**—The true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. QUEEN *v.* AHMED ALY . 11 W. R., Cr., 25

3. ———————— **False statement under affirmation criminating witness himself.**—Where a party makes a false statement when legally bound by a solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence. ANONYMOUS . . . 3 Mad., Ap., 29

4. ———————— **False statement of witness criminating himself**—*Penal Code, s. 191.*—Although a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of facts for fear of penal consequences. Although without such a warning he may make a false denial and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment. JADDOO NATH DUTT *v.* EMPRESS . . 2 C. L. R., 181

5. ———————— **Evidence of corrupt intention**—*Statement known by accused to be false.*—Upon a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that in making it the accused intentionally gave false evidence. QUEEN *v.* AMERE ALI KHAN . . . 3 N.W., 133

6. ———————— **Contradictory statements in cross-examination.**—Intention is the essential ingredient in the constitution of an offence under s. 193, Indian Penal Code. Where a person made contradictory statements in the course of cross-examination, and he was convicted under s. 193, Indian Penal Code,—*Held* that the Magistrate should have taken into consideration the fact that the statements were made in course of cross-examination when possibly he may have been either confused, or under some mistake regarding the question put to him. IN THE MATTER OF MUNNI BUKSH 3 C. W. N., 81

7. ———————— **Proof that accused knew statement to be false**—*Penal Code, s. 193.*—To support a charge of giving false evidence under s. 193, it must be shown that the accused intentionally made

FALSE CHARGE—*continued*

that body, the person who made the charge complained to the Magistrate of the district who directed a fresh investigation The charge was again reported false The complainant thereupon filed a petition, in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer No further investigation having taken place, the complainant was ordered to be prosecuted under s 211 of the Penal Code, and on trial was convicted and sentenced On appeal to the High Court, it was held that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him *In the matter of Russick Lall Mullick*, 7 *C L. R*, 382, and *In the matter of Biyogi Bhagut*, 4 *C L R*, 134, followed *Per* MACLEAN, J —The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false, but if a

Procedure Code to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s 211 of the Penal Code should be granted See *In the matter of Gyan Chunder Roy*, 8 *C L R*, 267 IN THE MATTER OF CHUKRADAR POTTI . . . . 8 C. L. R., 289

45. ——— *Conviction by Sessions Court—Opportunity not given to accused*

sanction to prosecute R R was subsequently brought before the same Magistrate and committed to the Sessions, and convicted by the Sessions Court under s 211 of the Penal Code *Held* that, although R had no opportunity of proving this case before he was himself tried, the conviction was not illegal *Government* v *Karimdad, I L R*, 6 *Calc*, 496, distinguished. RAMASAMI v QUEEN-EMPRESS

[I. L. R, 7 Mad., 292

46. ——— *Prosecution for*

... reported that the charge

the Penal Code *Held* that the order under s. 195 of the Criminal Procedure Code should not have been passed until the complainants had been ... opportunity of proving their case, which ... thrown out merely on the report of the police *Government* v *Karimdad, I L R*, 6 *Calc*, 496, referred to QUEEN EMPRESS v GANGA RAM

[I L R., 8 All, 38

47. ——— *Criminal Procedure Code (Act X of 1882), s 191—Cognizance of an offence on suspicion—Police report—False charge, Prosecution for, without first enquiring into truth of original complaint* —A person having laid an information before the police, the police reported the case as false, the informant then appeared before a Magistrate, asking that his case might be investigated and his witnesses summoned This application was refused, and the Magistrate, after perusing the police report, passed an order directing him to be prosecuted under s 211 of the Penal Code *Held* that the application to the Magistrate was "a complaint" within the meaning of s 191 of the Criminal Procedure Code into which the Magistrate was bound to have enquired A Magistrate may take cognizance under s 191 of the Criminal Procedure Code of an offence brought to his notice by a police report which affords ground for a suspicion that an offence has been committed, but as a matter of sound

the original charge should be offered an opportunity of supporting it or abandoning it QUEEN-EMPRESS v SHAM LALL I. L. R, 14 Calc., 707

48 ——— *False complaint to police* —The accused complained to the police that *A* and *B* had robbed him After inquiry the police reported to the Magistrate that the charge was false The Magistrate thereupon struck off the case without holding any further inquiry himself The accused

the complaint should be made to a Magistrate It was enough that it was made to the police authorities and related to a cognizable offence, and that action was thereupon taken by the police *Held* also that the fact that no opportunity was allowed to the accused by the Magistrate to substantiate his complaint before striking it off was not a circumstance which invalidated the commitment duly made, and the conviction otherwise good could not be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court gave ample opportunity to the accused to substantiate his

FALSE EVIDENCE—*continued.*

1. GENERAL CASES—*continued.*

19. ——— **Preliminary enquiry, Statement made in**—*Penal Code, ss. 193 and 457—Criminal Procedure Code (Act X of 1882), s. 337—Evidence of accused illegally pardoned.*—In cases not of the kind contemplated in s. 337 of the Criminal Procedure Code (Act X of 1882), it is not competent to a Magistrate holding a preliminary enquiry to tender a pardon to the accused or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant; and if subsequently retracted, they cannot be used against him, or subject him to a prosecution for giving false evidence, under s. 193 of the Penal Code. *Reg.* v. *Hanmanta, I. L. R., 1 Bom., 610,* followed. QUEEN-EMPRESS *v.* DALA JIVA **I. L. R., 10 Bom., 190**

20. ——— **Enquiry by Magistrate**—*Penal Code, s. 193—Judicial enquiry.*—An enquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under s. 193 of the Penal Code. QUEEN *v.* BYKANT NATH BANERJEE . . . . **5 W. R., Cr., 72**

21. ——— **Examination of complainant**—*Statement in petition of complainant—Judicial proceeding—Investigation—Penal Code, s. 193.*—The examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding. Consequently, if in the course of that examination false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in s. 193 of the Penal Code. QUEEN *v.* MATA DYAL . . . . . **4 N. W., 6**

22. ——— **Examination on oath without jurisdiction**—*Criminal Procedure Code, 1861, ss. 168, 169—Judicial proceeding.*—When a plaintiff before a Munsif came and petitioned the Judge complaining that the Munsif had improperly refused to examine his witnesses and had dismissed his suit, although informed that witnesses were in attendance, and the Judge, upon examining the petitioner upon solemn affirmation and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence,—*Held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice,* could not form the subject of a prosecution for false evidence. QUEEN *v.* JADUB CHUNDER BISWAS **[W. R., 1864, Cr., 15**

23. ——— **Affidavit affirmed before a Deputy Magistrate**—*Prosecution on facts stated in an affidavit affirmed before a Deputy Magistrate—Penal Code (Act XLV of 1860), ss. 193, 199—Declaration by law receivable as evidence.*—A Deputy Magistrate has no power to administer an oath to a person making a declaration in the shape of an affidavit; and such person cannot, on the facts stated in such declaration, be prosecuted for committing an offence either under s. 193 or s. 199 of the Penal Code. IN THE MATTER OF THE PETITION OF ISWAR CHUNDER GUHO **[I. L. R., 14 Calc., 653**

24. ——— **False statement made by a convict in an affidavit in support of an application for revision of the order by which he was convicted**—*Criminal Procedure Code, 1882, s. 342—Penal Code, s. 193.*—*Held* that a person seeking by an application in revision to get rid of a conviction standing against him is incapable of tendering his own affidavit in support of such application, and consequently that, if he did tender such an affidavit, he could not be prosecuted for false statements which might be contained therein. *Queen-Empress* v. *Subhayya, I. L. R., 12 Mad., 200,* referred to. IN THE MATTER OF THE PETITION OF BARKAT **[I. L. R., 19 All., 200**

25. ——— **Annulment of proceedings in trial at which false evidence was given**—*Judicial proceeding.*—The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness therein, made on solemn affirmation a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient. *Held* that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding. REG. *v.* RAVJI VALAD TAGU . . . . **8 Bom., Cr., 37**

26. ——— **Proceeding in which Judge had no authority to administer oath**—*Penal Code, ss. 191, 193—Criminal Procedure Code, s. 477—"Judicial proceeding."*—A man died leaving some money due to him in the hands of the telegraph authorities. *P* wrote a letter to those authorities claiming the money as the sole heir of the deceased. This letter was sent to the District Judge for verification and orders. *P* supported his claim before the Judge by the evidence on oath of *C*. *C*'s evidence being in the opinion of the District Judge false, the District Judge, in his capacity as Sessions Judge tried him for giving false evidence, and convicted him of that offence. *Held* that, as the reference to the District Judge by the telegraph authorities of *P*'s letter for verification and the subsequent action in regard thereto did not constitute a "judicial proceeding," and as the District Judge had not any authority to administer an oath to *C*, the conviction was illegal. EMPRESS *v.* CHAIT RAM . **I. L. R., 6 All., 103**

27. ——— **Examination on oath of person by Magistrate for purpose of obtaining information in order to take proceedings**—*Whether such person a witness—Contradictory statement made by such person at trial as witness—Code of Criminal Procedure (Act V of 1898), s. 190, cl. (c)—Indian Oaths Act (X of 1873), s. 5—Penal Code (Act XLV of 1860), ss. 191 and 193.*—*Held* that, where an accused person was examined by a Magistrate for the sake of obtaining information on which proceedings could be taken, the

FALSE EVIDENCE—*continued*

1 GENERAL CASES—*continued*

a particular statement false to his own knowledge QUEEN v MAHARAJ MISSER [7 B L R., Ap, 66 · 16 W. R, Cr, 47

9 ———— Proper Court to direct prosecution for giving false evidence—*Criminal Procedure Code, 1861, s 169—Specific charge*—There is nothing in s 169 of the Code of Criminal Procedure which gives a Judge, not sitting in

specific false statement, and some direct evidence that such specific statement was false ASMEDH KOONWAR v TAYLER KHORSHED ALI v TAYLER [W. R., 1864, 15

10 ———— Affirmation for cases during one day, not for each case as called on—*Penal Code, s 193*—Where a witness was, at the beginning of the day, solemnly affirmed once for all to speak the truth in all the cases coming before the Court that day,—*Held* that he might be convicted, under s 193 of the Penal Code, of giving false

the affirmation was administered QUEEN v VENKATACHALAM PILLAI 2 Mad., 43

11. ———— Evidence not given on oath—*Hindu convert—False statement—Penal Code, ss 191, 193, 199*—A Hindu who has become a con

A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s 199 of the Penal Code, nor is the witness bound to make a declaration under s 191. QUEEN v VEDAMUTTU 4 Mad., 185

12. ———— *Penal Code, s 193—Giving false evidence—Omission to prove that accused was sworn or affirmed—Oaths Act (X of 1873), ss 6, 13, 14*—The offence of intentionally giving false evidence, referred to in s 193 of the Penal Code, may be committed, although the person giving evidence has neither been sworn nor affirmed GOBIND CHANDRA SEAL v QUEEN EMPRESS [I. L R., 19 Calc., 355

13 ———— Materiality of statement—*Penal Code, ss 191, 193*—The materiality of the subject-matter of the statement is not a substantial

FALSE EVIDENCE—*continued*

1 GENERAL CASES—*continued*

14 ———— *Penal Code, ss 191 and 192*—To constitute the offence of giving false evidence under s 191 of the Penal Code, it is not necessary
material to th
under s 192

15 ———— *Penal Code, s 191—Intention*—The words of s 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue It is sufficient to bring a case within that section if the false evidence is intentionally given,—that is to say, if the person making the statement makes it advisedly, knowing *it to be false, and with the intention of* deceiving the Court, and of leading it to be supposed that that which he states is true. QUEEN v MAHOMED HOSSEIN 16 W. R, Cr, 37

16. ———— *Untrue state-*

17 ———— *Intentionally giving false evidence at a judicial proceeding—Preliminary enquiry by a Magistrate—Penal Code (Act XLV of 1860), s 193—Criminal Procedure Code (Act V of 1898), ss 195, 476*—At a preliminary enquiry held by a Sub divisional Magistrate at the direction of the District Magistrate into the circumstances of a complaint against the police, a witness made a false statement on oath. Notice was subsequently issued calling upon the said witness to show cause why sanction should not be granted for his prosecution The Magistrate having held that the witness was bound to tell the truth at the said enquiry and having granted sanction for his prosecution under s 193 of the Penal Code,—

victed under that section QUEEN-EMPRESS v VENKATARAMANNA I. L. R., 23 Mad., 223

18 ———— Judicial proceeding, Statement made in—*Penal Code, s 193—Form of charge*—It is essential in order to sustain a charge under s 193 of the Penal Code that it should be

S C. QUEEN v FUTTEAH BISWAS [10 W. R., Cr., 37

FALSE EVIDENCE—*continued.*

1. GENERAL CASES—*continued.*

to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth. EMPRESS *v.* KASSIM KHAN. EMPRESS *v.* DAHIA

[I. L. R., 7 Calc., 121: 8 C. L. R., 300

34. ———— *Criminal Procedure Code, 1898, s. 161—Examination of witnesses by the police—Legal obligation to speak the truth—Refusal to answer questions—Liability to punishment under ss. 176, 179 and 187 of the Penal Code.*—A refusal to answer questions asked by a police-officer under s. 161 of the Code of Criminal Procedure is not punishable under ss. 176, 179, and 187 of the Penal Code. QUEEN-EMPRESS *v.* SANKARALINGA KONE . I. L. R., 23 Mad., 544

QUEEN-EMPRESS *v.* APPIGADU

[I. L. R., 23 Mad., 544 note

35. ———— *Judicial proceeding—Code of Criminal Procedure, Act X of 1882, ss. 155 and 161—Penal Code (Act XLV of 1860), s. 193.*—S. 161 of the Code of Criminal Procedure, Act X of 1882, makes it obligatory on a person examined in the course of a police investigation under Ch. XIV to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of a judicial proceeding under s. 193 of the Penal Code. QUEEN-EMPRESS *v.* PARSHRAM RAYSING

[I. L. R., 8 Bom., 216

36. ———— *Criminal Procedure Code, 1882, s. 161—Penal Code, s. 193—False statement to police officer.*—The law laid down by the Full Bench in the case of *Empress* v. *Kassim Khan, I. L. R., 7 Calc., 121,* has been altered by the provisions of s. 161 of the Code of Criminal Procedure (Act X of 1882), and a witness who makes a false statement to a police officer in reply to a question which he is bound to answer would be guilty of intentionally giving false evidence. NATHU SHEIK *v.* QUEEN-EMPRESS . I. L. R., 10 Calc., 405

37. ———— *Penal Code, ss. 191, 193—Statements to police officers investigating under Criminal Procedure Code, s 161.*—The provisions of ss. 191 and 193 of the Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. QUEEN-EMPRESS *v.* BHAGWANTIA

[I. L. R., 15 All., 11

38. ———— **Statement made in judicial proceeding before Magistrate**—*Penal Code, ss. 181, 193.*—Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181 of the Penal Code, but should commit to the Sessions under s. 193 of that Code. QUEEN *v.* NUSSUROODDEEN SHAZWAL

[11 W. R., Cr., 24

39. ———— **Statement made in the course of a "judicial proceeding"**—*Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code, s. 164—Statements made before a Magistrate under s. 164.*—*Held* that where a witness had made one statement on oath or solemn affirmation before a third class Magistrate under s. 164 of the Code of Criminal Procedure, and again another and totally inconsistent statement at the trial of the case before a Magistrate of the first class, he might properly be convicted under the second—if not under the first—paragraph of s. 193 of the Penal Code. *Queen-Empress* v. *Bharma, I. L. R., 11 Bom., 702,* considered and distinguished. QUEEN-EMPRESS *v.* KHEM . . . . I. L. R., 22 All., 115

40. ———— *Oaths Act (X of 1873), ss. 5, 14—Criminal Procedure Code (Act X of 1882), s. 164—Magistrate, power of.*—A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. QUEEN-EMPRESS *v.* ALAGU KONE

[I. L. R., 16 Mad., 421

41. ———— *Falsely denying possession of document—Witness.*—Where a witness denies on oath that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding. IN RE PREMCHAND DOWLATRAM

[I. L. R., 12 Bom., 63

42. ———— *Penal Code (Act XLV of 1860), ss. 191 and 193—Witness in trial which had to be heard de novo owing to incompetence of juror—Oaths Act (X of 1873), s. 14.*—On the trial of certain prisoners on a charge of dacoity, a witness gave false evidence, and was committed under s. 477, Criminal Procedure Code, for trial on a charge under s. 193, Penal Code. After such committal, it was discovered that one of the jurors empanelled in the dacoity case was deaf and partly blind; and thereupon, under s. 282, Criminal Procedure Code, the case was tried *de novo* before a competent jury. *Held* that the fact that the trial for dacoity had to be commenced *de novo* did not exonerate the prisoner from the obligation to speak the truth imposed by s. 14 of the Indian Oaths Act X of 1873 in the first trial, which became abortive owing to the incompetency of one of the jurors, nor prevent the statement made by the witness at the first trial from being made the subject of an offence under s. 191 or 193 of the Penal Code. QUEEN-EMPRESS *v.* VIRASAMI . . . I. L. R., 19 Mad., 375

43. ———— **Statement made in proceedings without jurisdiction**—*Penal Code, ss. 181, 193.*—A conviction under s. 181 of the Penal Code is good, though the offence falls within s. 193. ANONYMOUS . . . . 4 Mad., Ap., 18

44. ———— **False statement before Income-Tax Commissioner**—*Penal Code, ss. 181, 193.*—When an offence under s. 193 of the Penal Code is established, a conviction under s. 181

FALSE EVIDENCE—*continued.*

I. GENERAL CASES—*continued.*

[illegible]

ined on oath. There was no authority that, being so examined, the accused was bound by any express [illegible]

[illegible]

[I. L. R., 27 Calc. 475 4 C. W. N., 340

28. ———— Proceedings by District Judge without jurisdiction—*Penal Code, ss. 193, 199—Bengal Tenancy Act, 1885, s. 95* The Bengal Tenancy Act does not authorise a proceeding calling upon a person to show cause why he [illegible]

[illegible]

29. ———— Collector under Land Acquisition Act whether "a Court"—*Power of* [illegible] *of value of land—False statement—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Penal Code (Act XLV of 1860), s. 193—Land Acquisition Act (I of 1894), s. 58*—The expression "the Court" in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification [illegible]

[illegible] properly be regarded as a *Revenue Court* within the terms of s. 476 of the *Code of Criminal Procedure*, his proceedings under the *former act* are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury. The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed; a party [illegible] can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially; therefore, to subject parties who claimed the right to such a reference to a criminal prosecution, when the matters on which the Deputy Collector had formed an opinion as a revenue officer under the Land Acquisition Act were to be submitted to the determination of a Court, is obviously premature and improper, and is almost certain to [illegible]

FALSE EVIDENCE—*continued.*

I. GENERAL CASES—*continued.*

[illegible] the Civil Court of the [illegible] the Land Acquisition Act what may be found to be an exaggeration or over-estimate of the value of land cannot properly constitute a false statement which would demand a prosecution for perjury, and the fact that some time before the land was offered for sale at a much lower price is no sufficient ground for inquiring such an offence. [illegible] [illegible]

[I. L. R., 27 Calc., 000

30. ———— Inquiry under Legal Practitioners' Act—*Penal Code, ss.* [illegible] [illegible] of an attorney [illegible] of whom [illegible] and convicted [illegible] having made false statements on solemn affirmation about the same matter in the course of an inquiry into the [illegible]

[illegible]

should be charged and tried separately under s. 193 of the Penal Code. [illegible]

[I. L. R., 6 Mad., 000

[illegible]

[I. L. R., 4 Bom., 470

32. ———— Evidence not given in Court of Justice—*Penal Code, ss. 191, 193—Statement made to police officer*—It is necessary under s. 193, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police officer, would amount to the offence of giving false evidence as defined in s. 191, taking s. [illegible] of the Code into consideration. [illegible]

[illegible]

IN THE MATTER OF [illegible]

[illegible]

33. ———— Police investigation—*Penal Code, s. 191—Criminal Procedure Code, 1872, ss. 118, 119*—[illegible]

FALSE EVIDENCE—*continued.*

1. GENERAL CASES—*continued.*

to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth. EMPRESS *v.* KASSIM KHAN. EMPRESS *v.* DAHIA

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[11 W. R., Cr., 24

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43. ———— **Statement made in proceedings without jurisdiction**—*Penal Code, ss. 181, 193.*—A conviction under s. 181 of the Penal Code is good, though the offence falls within s. 193. ANONYMOUS . . . . . . **4 Mad., Ap., 18**

44. ———— **False statement before Income-Tax Commissioner**—*Penal Code, ss. 181, 193.*—When an offence under s. 193 of the Penal Code is established, a conviction under s. 181

FALSE EVIDENCE—*continued*

1 GENERAL CASES—*continued*

is illegal When the accused made on solemn affirma- [illegible]

REG *v* DAYALJI ENDARJI 8 Bom, Cr, 21

45 ——— **False statement in verified petition under s 19 of Act IX of 1869 (Income Tax Act)** – The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under s. 19 of the Income Tax Act (Act IX of 1869) to a tahsildar *Held* that the tahsildar was not an officer competent to receive such a petition and that no offence was committed. MOONEAPPA OODIAN *v* QUEEN SUBBAYA OODIAN *v* QUEEN 5 Mad., 326

46 ——— **Making false return of service of summons**—*Penal Code, s 193*—The making of a false return of service of summons is an offence punishable, not under s 181, but under s. 193 of the Penal Code and is cognizable by the Court of Session alone QUEEN *v* SHAMA CHURN ROY [8 W. R., Cr., 27

47 ——— **Statement before Collector as Revenue Officer**—*Penal Code, s 193—Judicial enquiry*—A conviction may be had for giving false evidence under s. 193 Penal Code even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg XIX of 1814) but it must be proved that the false statement was made under the sanction of the law QUEEN *v* AUDHUN ROY 14 W. R., Cr., 24

48 —— [illegible] allowance [illegible] *by Deputy* [illegible] *nal Code s* [illegible] officer and no other, to whom power is given by law to make enquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications and he cannot delegate his authority in the matter *Held* therefore, where a person had applied for a refund under Ch VI of Act I of 1879 and the Collector made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s 181 or s. 193 of the Penal Code was maintainable EMPRESS *v* NIAZ ALI I. L. R., 5 All., 17

49 ——— **False statement made before Registrar**—*Proceedings under the Registration Act 1866*—A Sub-Registrar is competent, for any purpose contemplated by Act XX of 1866, to examine any person, and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution QUEEN *v*. JUGGUT CHUNDER DUTT 6 W R, Cr, 81

50 ——— *Petitions not verified—Prosecution under the Registration Act (III of 1877), s 82, cl (a), and s 83 ss 72 and 73*—Where the accused was tried for intentionally makin [illegible] ceedin [illegible] assum [illegible] s 72 [illegible] stances will the want of verification of a petition of appeal on the part of the applicant as provided by s 73 of the Act oust the jurisdiction of the Criminal Court *Reg v Berry, 28 L J, M C 86 Queen v Fletcher L R 1 C C P, 320 Turner v Post Master General, 5 B & S, 756, Queen v Hughes, L P, 4 Q B D, 614 Queen v Smith, L R, 1 C C R, 110* followed *Held* also that, except as directed by s. 82 of Act III of 1877, the Magistrate has no authority on his own mere motion to frame a charge against the accused in consequence of evidence given in the course of the trial by the registering officer in respect of certain statements made before him during registration proceedings. QUEEN EMPRESS *v* BATESAR MANDAL I. L. R., 10 Calc., 604

51. ——— *Registration Act (III of 1877), s 82—Penal Code (Act XLV of 1860), s 193—"Judicial proceeding"—Delegation of powers by District Registrar*—It is no offence to make a false statement before a person purporting to act in execution of the Registration Act, but not legally authorized so to do RADHIKA MOHAN KURI *v*. LAL MOHAN SHA I. L. R., 20 Calc., 719

52. ——— **Statement in unsigned petition**—*Penal Code, ss 1 3 199*—A petition not bearing the signature of the accused, and therefore not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code, but a deposition on oath supporting such a petition, if false, justifies a charge under s 193 of the Code IN THE MATTER OF RAM RAWAL KOOWAR 7 C L. R., 538

53 ——— **Statement in petition not requiring verification**—*Unnecessary verification—Saville*—A petition presented under Reg XVII of 1806 not requiring verification cannot, from the fact of its being verified unnecessarily be made the subject of a prosecution for giving false evidence IN THE MATTER OF THE PETITION OF KALI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR *v* KALI CHUNDER MOZUMDAR [I. L. R., 8 Calc., 440 7 C L. R., 330

54. ——— **False statement in vakalatnamah**—*Penal Code s 193*—The prisoner, a vakeel, presented a vakalatnamah in the District Munsif's Court signed by the defendant in a civil

FALSE EVIDENCE—*continued*.

1. GENERAL CASES—*continued*.

suit authorizing the prisoner to appear for the defendant. The vakalatnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. QUEEN *v.* KEILASUM PUTTER [5 Mad., 373

55. ———— Statement in document not requiring verification—*Civil Procedure Code, 1859, ss. 119, 120.*—The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls not under s. 120, Act VIII of 1859, but under s. 119 of that Act and need not therefore, be verified. QUEEN *v.* KARTICK CHUNDER HALDAR [9 W. R., Cr., 58

56. ———— Statement in application for new trial—*Penal Code, ss. 191, 192—Verification of document as a plaint.*—*A* made an application for a new trial under s. 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (GLOVER, *J.*, dissenting) that he had not thereby committed an offence under s. 191 or 192 of the Penal Code. IN RE HARAN MANDAL [2 B. L. R., A. Cr., 1: 10 W. R., Cr., 31

57. ———— False verification of written statement—*Civil Procedure Code, ss. 51, 115—Act XLV of 1860 (Penal Code), s. 191.*—A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code. QUEEN-EMPRESS *v.* MEHRBAN SINGH [I. L. R., 6 All., 626

58. ———— Witness deposing falsely in another's name—*Penal Code, s. 193, and ss. 416, 419.*—A witness falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under s. 419 of the Penal Code. REG. *v.* PREMA BHIKA . . . . 1 Bom., 89

59. ———— Putting forward person knowing him to be some one else—*Abetment of false evidence.*—Where *C* falsely represented himself to be *U* and the writer of a document signed by *U*, and *T*, knowing that *C* was not *U*, and had not written such document, adduced *C* as *U*, and as the writer of that document,—*Held* that *T* ought to have been convicted not of intentionally giving false evidence in a judicial proceeding, but on a charge of abetting the giving of false evidence. QUEEN *v.* CHUNDI CHURN NAUTH . . 8 W. R., Cr., 5

60. ———— Statement unintentionally causing conviction of murder—*Penal Code, ss. 193, 194—Power of Sessions Judge.*—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder. QUEEN *v.* HARDYAL . . . . 3 B. L. R., A. Cr., 35

FALSE EVIDENCE—*continued*.

1. GENERAL CASES—*concluded*.

61. ———— Subornation of perjury—*Penal Code, s. 196.*—The provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence. QUEEN *v.* SUFFURUDEE [1 Ind. Jur., O. S., 122

62. ———— Intentional omission to mention adjustment of decree in application for execution—*Penal Code, ss. 193, 199—Civil Procedure Code, s. 235—Intentional omission.*—Under s. 235 of the Code of Civil Procedure (XIV of 1882), the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. *Paupayya* v. *Narasannah, I. L. R., 2 Mad., 216*, followed. Intentional omission to make such statement amounts to an offence under s. 193 of the Penal Code (XLV of 1860). S. 199 of the Penal Code (XLV of 1860) does not apply to applications for execution containing false averments. QUEEN-EMPRESS *v.* BAPUJI DAYARAM . . . . I. L. R., 10 Bom., 288

2. FABRICATING FALSE EVIDENCE.

63. ———— Fabrication of false evidence—*Penal Code, s. 193 and s. 120—Illegal concealment to fabricate evidence.*—The term "fabrication" in s. 193 of the Penal Code refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. QUEEN *v.* RAJCOOMAR BANERJEE [1 Ind. Jur., O. S., 105

64. ———— *Verification of statement in suit for rent—Act X of 1859, s. 37.*—The plaintiff brought a suit for rent claimed to be due for three years; he failed to prove his claim, and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge on appeal reversed the decree, and made an order remitting

FALSE [illegible]

is illegal. [illegible] t on a statement [illegible] Income Tax [illegible] which [illegible] believe to be incorrect [illegible] ment [illegible] in a [illegible] Code and was [illegible] power [illegible] tuting an offence [illegible] Code making a false statement [illegible]
REG. v. [illegible]

45. ——— [illegible] petition [illegible] come Tax Act).—[illegible] perjury by wilfully [illegible] verified petition presented [illegible] Tax Act (Act IX of 18[illegible]) [illegible] the tahsildar was not [illegible] such a petition [illegible] MOONYAPPA O[illegible] QUEEN [illegible]

46 ——— [illegible] service of summons [illegible] making of a false [illegible] offence punishable [illegible] of the Penal Code [illegible] Sessions alone [illegible]

47 ——— Statement [illegible] Collector as Revenue Officer [illegible] false evidence [illegible] evidence [illegible] before the Collector [illegible] Reg. XIX [illegible] false statement was [illegible] law [illegible]

48 ——— [illegible] allowance [illegible] [illegible] the Deputy Collector [illegible] and Act I of 18[illegible] and the [illegible] Collector [illegible] the application for enquiry [illegible] the Deputy Collector was not [illegible] examine the witnesses produced by the applicant on their oaths and consequently in reference to the statements of such witnesses no charge under s. 181 or s. 1[illegible] of the Penal Code was sustainable
EMPRESS v. [illegible] ALI — I. L. R., 5 All., 17

49 ——— False statement made before Registrar—*Proceedings under the Registration Act 1866*—A Sub Registrar is competent for any purpose contemplated by Act XX of 1866 to examine any person and any statement made by such person before an officer in any proceeding of enquiries under the Act if intentionally false renders such person [illegible]

[illegible]

[illegible] PYARI MOHAN [illegible] — I. L. R., 20 Calc., 710

52 ——— Statement in unsigned petition—*Penal Code s. 1[illegible] 193*—A petition not [illegible] by the accused and therefore [illegible] the [illegible] of a charge or conviction under s. 193 of the Penal Code but a deposition on [illegible] a petition if false justifies a charge under s. 193 of the Code IN THE MATTER OF [illegible] KOOWAR — 7 C L R. 536

53 ——— Statement in petition not requiring verification—*Unnecessary verification*—A petition presented under [illegible] XVII of 1866 not requiring verification cannot from the fact of its being verified unnecessarily be made the subject of a prosecution for giving false evidence IN THE MATTER OF THE PETITION OF KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR

[I. L. R., 6 Calc., 440: 7 C. L. R., 330

54 ——— False statement in vakalatnamah—*Penal Code s. 193*—The prisoner, a vakeel presented a vakalatnamah in the [illegible] Munsif's Court signed by the [illegible]

FALSE EVIDENCE—*continued.*

1. GENERAL CASES—*continued.*

suit authorizing the prisoner to appear for the defendant. The vakalatnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. QUEEN v. KEILASUM PUTTER

[5 Mad., 373

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[9 W. R., Cr., 58

56. ——— **Statement in application for new trial**—*Penal Code, ss. 191, 192—Verification of document as a plaint.*—*A* made an application for a new trial under s. 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (GLOVER, *J.*, dissenting) that he had not thereby committed an offence under s. 191 or 192 of the Penal Code. IN RE HARAN MANDAL

[2 B. L. R., A. Cr., 1: 10 W. R., Cr., 31

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[I. L. R., 6 All., 626

58. ——— **Witness deposing falsely in another's name**—*Penal Code, s. 193, and ss. 416, 419.*—A witness falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under s. 419 of the Penal Code. REG. v. PREMA BHIKA . . . . . . 1 Bom., 89

59. ——— **Putting forward person knowing him to be some one else**—*Abetment of false evidence.*—Where *C* falsely represented himself to be *U* and the writer of a document signed by *U*, and *T*, knowing that *C* was not *U*, and had not written such document, adduced *C* as *U*, and as the writer of that document,—*Held* that *T* ought to have been convicted not of intentionally giving false evidence in a judicial proceeding, but on a charge of abetting the giving of false evidence. QUEEN v. CHUNDI CHURN NAUTH . . 8 W. R., Cr., 5

60. ——— **Statement unintentionally causing conviction of murder**—*Penal Code, ss. 193, 194—Power of Sessions Judge.*—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder. QUEEN v. HARDYAL . . . . 3 B. L. R., A. Cr., 35

FALSE EVIDENCE—*continued.*

1. GENERAL CASES—*concluded.*

61. ——— **Subornation of perjury**—*Penal Code, s. 196.*—The provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence. QUEEN v. SUFFURUDEE

[1 Ind. Jur., O. S., 122

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[illegible]

FALSE EVIDENCE—*continued.*

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FALSE EVIDENCE—*continued*

2 FABRICATING FALSE EVIDENCE —*continued*

the case to the Deputy Collector to enquire under Act X of 1859, s 37, whether the plaintiff had committed perjury in the first suit the plaint in which was verified by his agent The 37th section of the Act [illegible] shall be verified [illegible] facts that, if the [illegible] ment which the [illegible] know or believe [illegible]

[illegible] ment having been made by the agent and not by the plaintiff, and besides there was no evidence that it was untrue there having been no finding in the first suit that the rent was not due TARAPERSAD ROY CHOWDHRY v GOPAL DASS DUTT

[Marsh, 72. W. R., F B, 24
1 Ind Jur, O S, 79 1 Hay, 235

65. ——— *Penal Code, s 193—* [illegible]

REG v RAMAJIRAV JIVBAJIRAV 12 Bom, 1

66 ——— *Intention to procure conviction—Penal Code s 195* —The prisoner [illegible]

67 ——— *Making it appear offence had been committed—Failure to lay* [illegible]

[illegible] making the removal appear to have been the act [illegible]

68 ——— *Statement in petition of payment on account of tenure after tenure had been set aside—Penal Code, s 193* —A certain alleged mokurari tenure having been set aside by a Civil Court the person who had claimed to hold such tenure in depositing money in Court, in a petition stated that the deposit was in respect of the mokurari tenure, whereupon he was charged and convicted under s 193 of the Penal Code with fabricating false evidence *Held* that the conviction was bad DABEE MAHTO v RAM MOHUN MOOKHOPADHYA 10 C L. R, 433

69 ——— *Attempt to commit offence—Penal Code, s 193* —*M* instigated *Z* to personate *C* and to purchase in *C*'s name certain stamped paper in consequence of which the vendor of the stamped paper endorsed *C*'s name on such paper as the purchaser of it *M* acted with the in- [illegible]

[illegible] the commission of such offence *Queen v Ramsaran Chowbey, 4 N W, 46*, distinguished and observed on EMPRESS v MULA I L R., 2 All, 105

70 ——— *Intention to use before Registrar—Use before Court—Penal Code,* [illegible]

71. ——— **Framing incorrect record—** *Public servant making false entry—Penal Code, s 218* —When a Police Superintendent called for the report from the constable on information that a theft had been committed and reported owing to the constable's negligence and the constable produced a false report to the effect that no theft had been committed and no information given to him,—*Held* he was not guilty under s 218 of the Penal Code GOVERNMENT v ABDOOL HUQ 3 Agra, Cr, 1

72. ——— *False report—Penal Code, s 218* —A kulkarni who makes a false report with reference to an offence committed in his village, with intent etc, is punishable under s 218 of the Penal Code REG v MALHAR RAM CHANDRA 7 Bom, Cr., 64

73. ——— *Penal Code, s 218—Public servant* —A public servant in charge as such of certain documents, having been required to produce them and being unable to do so fabricated and produced similar documents with the intention of screening himself from punishment *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under s. 218 of the Penal Code EMPRESS v MAZHAR HUSAIN

[I. L. R, 5 All., 553

74. ——— *Public servant —Forgery—Penal Code, s 218—Abetment* —*S* was charged with the preparation of a certain record

FALSE EVIDENCE—*continued.*

2. FABRICATING FALSE EVIDENCE —*continued.*

and was in the habit of preparing it from certain abstracts made and read to him by *D*. *D* made and read false abstracts whereby an incorrect record was prepared. The Court was of opinion that *D* could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that *S* had no guilty knowledge or intention in the matter. QUEEN *v.* BRIJ MOHAN LAL . . . **7 N. W., 134**

75. ———— *Penal Code, s. 218—Intention.*—The intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. QUEEN *v.* SHAMA CHURN ROY **[8 W. R., Cr., 27**

76. ———— *False entry in chowkidari book—Penal Code, s. 218.*—Where a chowkidar was charged under s 218, Penal Code, with having made a false entry in a chowkidari attendance book with a view to support a charge which was made against a Sub-Inspector of having made a false report regarding the length of absence from duty of another chowkidar, and thereby to cause loss or injury to the Sub-Inspector, it was held that the intention was too remote to fall within s. 218. QUEEN *v.* JUNGLE LALL **[19 W. R., Cr., 40**

77. ———— *Penal Code, ss. 192, 218—Public servant.*—A police officer, who had suppressed a document intrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. *Held* that, inasmuch as to constitute the offence of fabricating false evidence defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police officer was improperly convicted, in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. *Held* also that, such police officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code. EMPRESS *v.* GAURI SHANKAR . . **I. L. R., 6 All., 42**

78. ———— *Penal Code, s. 218—Public servant.*—A treasury accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of R500, which was in the treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the R500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the R500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury officer for the transfer of the money to the Civil Court concerned, and to effect such transfer, a cheque was prepared by the sale-mohurrir, which as originally drawn up related to the sum of R500 already mentioned. The signature of the cheque by the treasury officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of R500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's R500 to the Civil Court, as if it had been the first R500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held* that the prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that, as the prisoner, who was a public servant, made these reports and assumed to make them in due course and as a part of his duty and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code. QUEEN-EMPRESS *v.* GIRIDHARI LAL **[I. L. R., 8 All., 653**

79. ———— *Penal Code (Act XLV of 1860), s. 218—Public servant framing an incorrect record to save himself from legal punishment.*—A public servant who does that which, if done to save another from legal punishment, would bring the public servant within s. 218 of the Penal Code, has equally committed the offence punishable under s. 218 if the person whom he intends to save from legal punishment is himself. *Queen-Empress* v. *Gauri Shankar, I. L. R., 6 All. 42, quoad hoc,* overruled. *Queen-Empress* v. *Girdhari Lal, I. L. R, 8 All., 653,* referred to. QUEEN-EMPRESS *v.* NAND KISHORE **[I. L. R., 19 All., 305**

80. ———— *Penal Code (Act XLV of 1860), s. 218—Public servant framing incorrect record—Injury to the public—Police officer framing a false report.*—A report of the commission of a dacoity was made at a thana. The police officer in charge of the thana at first took down the report which was made to him, but subsequently destroyed that report and framed another and a false report of the commission of a totally different

FALSE EVIDENCE—*continued*

2 FABRICATING FALSE EVIDENCE —*continued*

the case to the Deputy Collector to enquire under Act X of 1859 s 37 whether the plaintiff had committed perjury in the first suit the plaint in which was verified by his agent The 37th section of the Act requires that the statement of claim shall be verified [illegible] nacts that if the [illegible] ment which the [illegible] know or bel eve [illegible]

Chowdhry v Gopal Dass Dutt [Marsh, 72 W R, F B, 24 1 Ind Jur, O S, 79 1 Hay, 235

65 ——————— *Penal Code s 193*—[illegible]

[illegible] Bajira 12 Bom, 1

66 ——————— *Intention to procure conviction—Penal Code s 195*—The prisoner was convicted under s 195 of the Penal Code of fabricating false evidence with intent to procure the conviction of a certain person of an offence The prisoner's act [illegible]

[illegible] v Shib Dyal 5 N W, 188

67 ——————— *Making it appear offence had been committed—Failure to lay charge—Penal Code* [illegible]

[illegible] app ar to have been the act of thieves from the outside was charged with fabricating false evidence for the purpose of its being used in a stage of a judicial proceeding under s 193 of the Penal Code It did not appear that any charge had been laid by the accused against any one in respect of the removal of the contents of the box *Held* that [illegible]

68 ——————— *Statement in petition of payment on account of tenure after tenure had been set aside—Penal Code s 193*—A certain alleged mokurari tenure having been set aside by a Civil Court the person who had claimed to hold such tenure in depositing money in Court in a petition stated that the deposit was in respect of the mokurari tenure whereupon he was charged and convicted under s 193 of the Penal Code with fabricating false evidence *Held* that the conviction was bad Dabee Mahto v Ram Mohun Mookhopadhya 10 C L R, 433

69 ——————— *Attempt to commit offence—Penal Code s 193*—*M* instigated *Z* to personate *C*, and to purchase in *C*'s name certain stamped paper in consequence of which the vendor of the stamped paper endorsed *C*'s name on such paper as the purchaser of it *M* acted with the in- [illegible]

70 ——————— *Intention to use before Registrar—Use before Court—Penal Code, s 196*—*L* brought a suit upon a bond and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling *L* to get the bond registered *L* was convicted under s 196 of the Penal Code *Held* that if the letter was fabricated for use before the Registrar it was no valid objection to the conviction Lakshmaji v Queen Empress I L R, 7 Mad, 289

71 ——————— **Framing incorrect record—** *Public servant making false entry—Penal Code, s 218*—When a Police Superintendent called for the report from the constable on information that a theft had been committed and reported owing to the constable's negligence and the constable produced a false report to the effect that no theft had been committed and no information given to him —*Held* he was not guilty under s 218 of the Penal Code Government v Abdool Huq 3 Agra, Cr, 1

72 ——————— *False report—Penal Code s 218*—A kulkarni who makes a false report with reference to an offence committed in his village with intent etc is punishable under s 218 of the Penal Code Reg v Malhar Ram Chandra 7 Bom, Cr, 64

73 ——————— *Penal Code, s 218—Public servant*—A public servant in charge as such of certain documents, having been required to produce them and being unable to do so fabricated and produced similar documents with the intention of screening himself from punishment *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under s 218 of the Penal Code Empress v Mazhar Husain [I L R, 5 All, 553

74 ——————— *Public servant —Forgery—Penal Code s 218—Abetment*—*S* was charged with the preparation of a certain record

FALSE EVIDENCE—*continued.*

3. CONTRADICTORY STATEMENTS —*continued.*

no evidence is given to show which statement is true, it cannot, under s. 172, Act XXV of 1861, be said that an offence has been committed under the cognizance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. QUEEN *v.* NOMAL

[4 B. L. R., A. Cr., 9 : 12 W. R., Cr., 69

89. ——— *Statements inconsistent with previous one—Penal Code, s. 193.*—The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made,—*Held* that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence. *Held* also that neither the Judge nor jury had any right to assume that an explanation could not have been given consistent with both the statements. QUEEN *v.* KOLA 4 B. L. R., A. Cr., 4 : 12 W. R., Cr., 66

90. ——— *Plea of guilty on one charge, Effect of.*—Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. QUEEN *v.* HOSSEIN ALI . 8 B. L. R., Ap., 25

91. ——— *Legality of conviction.*—The prisoner, who, as a witness in a former case, had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (NORMAN and CAMPBELL, *JJ.*, doubting) the conviction was right. *Held* also (CAMPBELL, *J.*, differing) the evidence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate. QUEEN *v.* ZAMIRAN . . B. L. R., Sup. Vol., 521

[6 W. R., Cr., 65

92. ——— *Alternative statements—Perjury.*—*Per* NORMAN, *J.*—*Quære*—Notwithstanding the decision of the Full Bench in *Queen* v. *Zamiran, B. L. R., Sup. Vol., 521 : 6 W. R., Cr., 35,* as to the correctness of conviction for perjury upon alternative statements. QUEEN *v.* MATI KHOWA . . 3 B. L. R., A. Cr., 36

[12 W. R., Cr., 31

93. ——— *Criminal Procedure Code (Act X of 1872), s. 455, sch. iii—Penal Code (Act XLV of 1860), s. 193.*—Where a person was convicted of giving false evidence upon an alternative charge in the form given in sch. iii of the Criminal Procedure Code,—*Held* by the majority of the Court (JACKSON and PHEAR, *JJ.*, dissenting) that the conviction was good, notwithstanding the jury had not distinctly found which of the two statements charged was false. *Held per* JACKSON, *J.*, that such a charge is bad, and further that an alternative finding upon such charge is invalid. *Held per* PHEAR, *J.*, that although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative is true. QUEEN *v.* MAHOMED HOOMAYOON SHAW

[13 B. L. R., F. B., 324 : 21 W. R., Cr., 72

Contra, QUEEN *v.* BIDU NOSHYO

[13 B. L. R., 325 note : 11 W. R., Cr., 37
12 W. R., Cr., 11

94. ——— *Proof of truth of each branch of charge.*—To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. QUEEN *v.* GONOWRI . 22 W. R., Cr., 2

95. ——— In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. NATHU SHEIKH *v.* QUEEN-EMPRESS

[I. L. R., 10 Calc., 405

96. ——— *Intentionally giving false evidence by contradictory statements.*—A conviction and sentence founded on one statement as being contrary to another without any proof or finding that the second statement was false cannot be maintained. HARI CHARAN SINGH *v.* QUEEN-EMPRESS

[I. L. R., 27 Calc., 455 : 4 C. W. N., 249

97. ——— *Validity of conviction—Statements which cannot both be true.*—It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. *Reg.* v. *Jackson, 1 Lewis, C. C., 270; Reg.* v. *Wheatland, 8 C. & P., 238;* and *Rex.* v. *Harris, 5 B. & Ald., 926,* referred to. S. 455 of Act X of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held* therefore, where three persons were committed for trial jointly charged with "having on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject,

FALSE EVIDENCE—*continued*

2 FABRICATING FALSE EVIDENCE —*concluded*

offence—to which he obtained the signature of the

s 204 and s 218 of the Penal Code QUEEN EMPRESS v MUHAMMAD SHAH KHAN [I L R., 20 All, 307

81 ——— *Penal Code (Act XLV of 1860), s 192—Fabricating false evidence —False entry made by a police officer in a special diary —Held* that a police officer who made a false entry in the special diary ...

... as the document in which the alleged false entry was made was not one which was admissible in evidence *Empress* v *Gauri Shankar, I L R, 6 All, 42* and *Queen* v *Keilasum Putter 5 Mad, 373* referred to QUEEN-EMPRESS v ZAKIR HUSAIN [I L R, 21 All, 159

82 ——— *Penal Code (Act XLV of 1860), s 218—"Charged," Meaning of, in that section—Criminal Procedure Code (Act V of 1898) s 4 cl (f)—Cognizable offence—Offence under Gambling Act (Bengal Act II of 1867)* —The District Superintendent of Police gave a warrant under the Gambling Act (Bengal Act II of 1867) to D a sub inspector, to arrest persons found gambling

not restricted to the narrow meaning of "enjoined by a special provision of law" An offence under the Gambling Act being an offence for which the District Superintendent of Police may arrest or by warrant direct an arrest is a cognizable offence within the meaning of s 4 cl (f), of the Criminal Procedure Code The words 'a police officer" in that clause do not mean "any and every police officer", it is sufficient if the Legislature by any law limits the power of arrest to any particular class of police officers QUEEN EMPRESS v DEODHAR SINGH [I L R., 27 Calc, 144

3 CONTRADICTORY STATEMENTS

83. ——— **Circumstances and intention of contradictory statement**—*Penal Code, s 193* —The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s 193, Penal Code The circumstances under which, and the intention with which the particular statement relied on by the prosecution is made, must in each case be considered before it can be held that the

FALSE EVIDENCE—*continued*

3 CONTRADICTORY STATEMENTS —*continued*

offence has been committed QUEEN v SOONDUR MOOHOOREE 9 W R, Cr, 25

QUEEN v DENONATH BUJJUR 9 W. R, Cr., 52

84. ——— **Weight to be given to contradictory statements** —To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential But, as legitimate evidence for this pur...

... that it is an admission of the accused person inconsistent with his innocence As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge With respect to the kind or amount of confirmatory proof required it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony QUEEN v ROSS 6 Mad., 342

85 ——— **Alternative charge**—*Statements made before Civil and Criminal Courts*— Where a person makes one statement before the Magistrate and a directly different statement before the Civil Court his commitment on an alternative charge, after the consent of the Civil Court has been obtained under s 169 of the Code of Criminal Procedure is strictly legal QUEEN v OOTTUR NARAIN SINGH 8 W R, Cr, 79

86 ——— *Inconsistent statements in judicial proceeding* —Where a person makes two contradictory statements in the course of a judicial proceeding he may be tried and convicted of giving false evidence on a single charge if there is evidence to show which statement is false REG v GANGOJI BIN PANDJI 5 Bom, Cr, 49

87. ——— *Penal Code, s 72 —Alternative finding* —Proof of contradictory statement on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding of the offence of giving false evidence, under s 72 of the Penal Code and ss 242, 381, and 482 of the Criminal Procedure Code The English law upon the subject stated. QUEEN v PALANY CHETTY [4 Mad., 51

88 ——— *Statement inconsistent with previous one—Criminal Procedure Code (Act XXV of 1861), s 172* —Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and

FALSE EVIDENCE—*continued.*

3. CONTRADICTORY STATEMENTS—*continued.*

101. ———————— *Statement made to police-officer investigating case—Penal Code (Act XLV of 1860), ss. 191, 193—Criminal Procedure Code (Act X of 1882), s. 161.*—An accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police-officer investigating a case of arson and the other having been made when he was examined as a witness before the Joint Magistrate when the case was being enquired into. The two statements were contradictory, and no evidence was given to show which of them was false. It was not proved that the statement made to the police-officer was made in answer to questions put by him, and the only evidence given at the trial with regard to the inquiry upon which the police officer was engaged was to the effect that an enquiry was being made about the burning of a house. The jury acquitted the accused, and the case was referred to the High Court by the Sessions Judge, who disagreed with the verdict of acquittal. *Held* that the verdict was right. Before a conviction in such a case can be sustained, it must, having regard to the provisions of s. 161 of the Criminal Procedure Code, be clearly proved by the evidence that the statement made to the police-officer was a statement in answer to questions put to the accused by the investigating police-officer, and in the absence of such evidence, even though the statement were proved to be false, a conviction could not be sustained. *Held*, further, that in such a case it is also necessary for the prosecution to establish that the police-constable was making an investigation under Ch. XIV of the Criminal Procedure Code. QUEEN-EMPRESS *v.* BAIKANTA BAURI

[I. L. R., 16 Calc., 349

102. ———————— *Form of charge—Statement made to a police-officer during a police-investigation—Contradictory statement made before a Magistrate holding a preliminary inquiry—Penal Code (Act XLV of 1860), s. 193—Separate charges.*—Where a person has made two contradictory statements, one to a police-officer making an investigation under Ch. XIV of the Code of Criminal Procedure (Act X of 1882) and the other to a Magistrate holding a preliminary inquiry, he cannot be charged, and still less convicted, on an alternative charge. In such a case, if there is no other evidence at the trial but the contradictory statements made by the accused, separate charges cannot be framed. QUEEN-EMPRESS *v.* MUGAPA

[I. L. R., 18 Bom., 377

103. ———————— *Penal Code (Act XLV of 1860), s. 193—Fabricating false evidence—Report made by amin executing Civil Court's decree that he had been obstructed—Similar report to police—Subsequent contradictory deposition in Court—Alternate charges—Form of charge.*—*Held* that a report made by an amin of a Civil Court deputed to give possession of certain property in execution of a decree as to his having been obstructed in so doing to the Court executing the decree, and a similar report made to the police, would not, even if false, amount to the fabrication of false evidence within the meaning of s. 193 of the Indian Penal Code, and consequently, where such amin was charged in the alternative with making the two reports as above, and also a third and inconsistent statement in respect of which he might have been charged under s. 193, that he was wrongly charged, and that it was necessary to prove the falsity of the third statement. QUEEN-EMPRESS *v.* AJUDHIA PRASAD . . I. L. R., 17 All., 436

4. PROOF OF CHARGE.

104. ———— **Retractation of statements**—*Locus pœnitentiæ for witness.*—*Held* by the majority of the Court (*dissentiente* JACKSON, J.) that there ought to be a *locus pœnitentiæ* for witnesses who have deposed falsely to retract their false statements. QUEEN *v.* GULLIE MULLICK

[W. R., 1864, Cr., 10

105. ———————— **Proof of charge**—*Uncorroborated evidence of single witness—Penal Code (Act XLV of 1860), s. 193.*—A person cannot be convicted in the mofussil of giving false evidence upon the uncorroborated evidence of a single witness. CAMPBELL, J., dissenting. QUEEN *v.* LALCHAND KOWRAH . . . B. L. R., Sup. Vol., 417

[1 Ind. Jur., N. S., 83 : 5 W. R., Cr., 23

QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY

[5 W. R., Cr., 77

106. ———————— *Uncorroborated evidence of single witness.*—A conviction for perjury should not be sustained on the bare testimony of one witness. QUEEN *v.* KHOAB LALL .

[9 W. R., Cr., 66

107. ———————— *Evidence of single witness—Evidence to establish fact of statement.*—The evidence of one witness in cases of perjury is sufficient to establish the factum of the statement which is charged as being false. QUEEN *v.* ISSUR CHUNDER GHOSE . . . 14 W. R., Cr., 53

108. ———————— *Comparison of signatures—Testimony of single witness.*—Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence. QUEEN *v.* BAKHOREE CHOWBEY . . 5 W. R., Cr., 98

5. TRIAL OF CHARGE.

109. ———————— **Joint trial**—*Penal Code, ss. 193, 196—Using evidence known to be false—Separate trial.*—Where several persons are accused of having given false evidence in the same proceeding, they should be tried separately. *A, S, B, D,* and *P* were jointly tried: *A* in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document and on three charges of using evidence known to be false; *S, B, D,* and *P* on charges of giving false evidence in the

FALSE EVIDENCE—*continued.*

3 CONTRADICTORY STATEMENTS —*continued*

made contradictory statements upon oath," and thereby committed an offence punishable under s 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons instead of several and specific in regard to each of [illegible]

a charge should be allowed to stand the Court of Session should have prepared a fresh charge against each of the accused persons specifically *setting forth* the statement alleged to be false, and should then [illegible]

was false EMPRESS *v* NIAZ ALI

[I. L R, 5 All., 17

98. ——————— *Charge in alter* [illegible]

zance, and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same charge" At the trial the accused asserted the truth of the former of these two statements, and denied having [illegible]

s. 193 of the Penal Code (XLV of 1860) on contradictory statements because he only made one deposition in which there was no discrepancies; and,

FALSE EVIDENCE—*continued*

3 CONTRADICTORY STATEMENTS —*continued.*

similarly he could not be charged under s 182 of the Penal Code, for he only once gave information to a public servant *Held* also that, having regard to ss 225, 232, and 537 of the Criminal Procedure Code (X of 1882), the accused, convicted upon such a [illegible]

EMPRESS *v* RAMJI SAJABARAO

[I. L R, 10 Bom, 124

99 ——————— *Validity of—Conviction on—Penal Code (Act XLV of 1860),* [illegible]

100. ——————— *Penal Code, s 193—Criminal Procedure Code, sch. V, No XXVIII (4)—Assignment of false statement not necessary—English law*—In a charge under [illegible]

one statement upon oath at one time, and a directly contradictory statement at another *Queen* v *Zamiran, B L R, Sup Vol, 521 6 W R, Cr, 65,* [illegible]

sumption in favour of a reconciliation of the two statements should be made, and it must be found [illegible]

lowed the law of England in regard to perjury *Trimble* v *Hill, L R., 5 Ap, Cas, 342,* and *Kathama Natchiar* v *Dorasinga Tever, L R, 2 I A, 159,* referred to. QUEEN-EMPRESS *v* GHULET

[I. L. R., 7 All., 44

FALSE PERSONATION—*concluded.*

6. ———————— *Intention of falsely personating.*—It is necessary to a conviction for false personation, under s. 205 of the Penal Code, that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual held, under the circumstances of the case, to be insufficient to show any intention of falsely personating such person. QUEEN v. NARAIN ACHARJ . 8 W. R., Cr., 80

7. ———————— *Evidence as to identity of heirs of estate.*—Where the main question was whether, in fact, the heir to an estate, a minor in possession through the manager under the Court of Wards, had been, as the plaintiff alleged him to have been, put forward by false personation, a Divisional Court of appeal decided in favour of the defence, and dismissed the suit. Pending this decision, a Full Bench disposed of questions of law as to the admissibility in evidence in this suit of the judgment and record in a prior suit; in which it had been found, as a fact, that there had been at one time in existence an heir born of the parentage which the defence in this suit alleged to be that of the minor defendant. It was disputed in the present suit whether the minor defendant was the same individual whom his alleged mother, the defendant in the former suit (there being the same plaintiff in both suits), stated to be her son; also whether, if that identity were proved, the suit would be barred as *res judicata.* This latter question was decided in the negative by the Full Bench, which held the judgment in the former suit not to be conclusive upon the present one, but also held the record to be admissible. There was no appeal from that decision; and on an appeal from the decree of the Divisional Court, the Judicial Committee affirmed on the facts the decree made. PALAKDHARI SINGH v. COLLECTOR OF GORAKHPUR [I. L. R., 15 All., 261

FALSE STATEMENT IN APPLICATION FOR LICENSE.

See BENGAL MUNICIPAL ACT, 1884, s. 133. [I. L. R., 22 Calc., 131

"FAMILY," MEANING OF—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS . 4 C. W. N., 671 note

See LUNATIC . I. L. R., 23 Calc., 512

FAMILY CUSTOM.

See CASES UNDER CUSTOM.

See EVIDENCE ACT, s. 32, CL. 7. [10 B. L. R., 263

See CASES UNDER HINDU LAW—CUSTOM.

FAMILY DWELLING-HOUSE.

See CRIMINAL TRESPASS. [6 B. L. R., Ap., 80

FAMILY DWELLING-HOUSE—*concluded.*

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.
[B. L. R., Sup. Vol., 172
5 W. R., 218
6 W. R., Mis., 275
8 W. R., 239
I. L. R., 10 Calc., 244

See HINDU LAW—FAMILY DWELLING-HOUSE.

See INJUNCTION—UNDER CIVIL PROCEDURE CODES . 6 B. L. R., 571

See LIMITATION ACT, 1877, ART. 127 (1859, s. 1, CL. 13) . 12 B. L. R., 349 [25 W. R., 37

See PARTITION—MODE OF EFFECTING PARTITION . I. L. R., 3 Calc., 514 [I. L. R., 26 Calc., 516

"FASLI" YEAR.

See DEED—CONSTRUCTION. [I. L. R., 18 All., 388

FEES.

See COURT FEES, AND CASES UNDER COURT FEES ACTS.

See CASES UNDER PLEADER—REMUNERATION.

———— of Counsel, Receipt for—

See STAMP ACT, SCH. II, ART. 15. [I. L. R., 16 All., 132

———— on succession, Non-payment of—

See BENGAL TENANCY ACT, s. 16. [I. L. R., 24 Calc., 241

FERGUSON'S ACT (9 GEO. IV, C. 33).

See LAND TENURE IN BOMBAY. [4 Bom., O. C., 1

FERRIES ACT, XXXV OF 1850 (BOMBAY).

———— Illegal conviction under.—On a reference by a Sessions Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries Act for conveying passengers for hire from Uran to Bombay was reversed, as the act charged did not constitute an offence under any section of the Act. REG. v. MALHARI BIN SHIVJI . 3 Bom., Cr., 41

FERRY.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.
[I. L. R., 19 Calc., 253
L. R., 19 I. A., 48

See JURISDICTION OF CIVIL COURT—FERRIES.

FALSE EVIDENCE—concluded

5 TRIAL OF CHARGE—concluded

same judicial proceeding as to such payments The Court (STRAIGHT, J) being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together set aside the convictions and ordered a fresh trial of each of the accused separately EMPRESS v ANANT RAM

[I L R, 4 All, 293

110 ——— *Examining wit*

our persons
ence in the
while pro
fessing to try each accused separately heard the evi

FALSE IMPRISONMENT

See WRONGFUL CONFINEMENT

[8 Mad, 38

——— **Wrongful arrest under decree already satisfied**—*Mistake of officers of the Court—Cause of action—Good faith—Limitation Act XV of 1877 s 29 and sch II art 19*—On the 27th June 1883 the plaintiff was arrested by a bailiff of the Small Cause Court at Bombay under a writ of arrest for the amount of a decree obtained by the defendant on the 2nd May 1883 against the plaintiff On arrest the plaintiff informed the bailiff that the money due under the decree had already been paid as was the fact Plaintiff could not produce the receipt of payment and the bailiff refused to raise the arrest until payment was made The plaintiff thereupon paid the money under protest and was set at liberty The mistake was subsequently discovered and the money was refunded to the

cate of non payment was issued In conformity with the usual practice of the Court the chief clerk of the Court on receipt of the certificate issued the writ of arrest under the seal of the Small Cause Court and the plaintiff was arrested In March 1884 the plaintiff presented a petition to the High Court for leave to sue as pauper and claimed R25 000 from first defendant as damages for the wrongful arrest When the petition came on for enquiry into the pauperism of the plaintiff the presiding Judge was of opinion that it disclosed no cause of action and the plaint was returned to the plaintiff to be amended but at the same time allowed to be filed The plaintiff subsequently desired to add as party defendants the cashier and the chief clerk of the Small Cause Court, and on 5th July 1884 took out a summons calling upon the defendants to show cause why his amended plaint should not be received on the file of the Court in place of his first petition It was contended for the cashier and the chief clerk of the Small Cause Court that the suit against them was barred by limitation *Held*, as regards the first

FALSE IMPRISONMENT—concluded

defendant that the plaint should be rejected as

sonment having taken place under a warrant of the Court issued in regular manner and such Court being of competent jurisdiction the plaintiff had no cause of action as against the first defendant the error was wholly and entirely the error of the officers of the Small Cause Court *Held* also as regards the

the plaintiff s imprisonment FISHER v PEARSE

[I L R., 9 Bom, 1

FALSE PERSONATION

1 ——— **Personation before Registrar**—*Registration Act (XX of 1866) ss 93 and 94—Penal Code s 419*—A vendor proceeded in company with three persons to Dacca to register her deed of sale Falling ill on the way the three com

parent on the part of the accused to injure or defraud any one the convictions should have been under ss 93 and 94 of Act XX of 1866, and not under s 419 of the Penal Code QUEEN v LUTHI BEWA

[2 B L R., A Cr, 25

IN RE LUTHI BEWA 11 W R., Cr, 24

2 ——— *Personating party required to complete conveyance*—Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property were held guilty under s 94 of the Registration Act XX of 1866 QUEEN v SOLEEMOODEEN 7 W R, Cr, 99

3 ——— **Penal Code, s 205**—*Personating imaginary person*—Under s 205 of the Penal Code it is criminal to personate an imaginary person QUEEN v BITTOO KAHAR

[1 Ind Jur, O S, 123

EX PARTE SUPPAKON 1 Mad., 100

5 ——— *Personating imaginary person*—To constitute the offence of false personation under s 205 of the Penal Code it is not enough to show the assumption of a fictitious name it must also appear that the assumed name was used as a means of falsely representing some other individual *Reg v Bittoo Kahar 1 Ind Jur, O S, 123,* dissented from QUEEN v KADAR RAVATTAN

[4 Mad., 18

FERRY—*continued.*

ferry,—*Held* that there is nothing in the law of Bengal as it was before the acquisition by the British Government or in the Regulations before or after 1793 to show that any person is entitled to claim a monopoly of a right of ferry by prescription or by any other means than a grant from the Crown. To such a monopoly Part IV (ss. 26, 27, 28) of the Limitation Act of 1877 relating to the acquisition of ownership by prescription is not applicable. The franchise of a ferry is not necessarily appurtenant to land, but where a right of ferry was claimed as appurtenant to certain villages,—*Held* that the grant of such right by the Crown would not be destroyed by mere non-user without waiver, nor by the running of an opposition ferry. The franchise would continue as long as the grant continued, and until the person who set up an opposition ferry could show a Crown grant or give evidence from which a Crown grant could be presumed, the cause of action would remain. The disturbance of a right of ferry is in the nature of a nuisance (*Yard* v. *Ford, 2 Saunders, 172*), and the cause of action in the case of the violation of this right is a continuing wrong within s. 23 of the Limitation Act. NITYAHARI ROY *v.* DUNNE . . . . I. L. R., 18 Calc., 652

9. ——— Management of ferry—*Beng. Reg. VI of 1819, s. 13, cl. 2.*—Cl. 2, s. 13, Regulation VI of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept and is in a dangerous condition, he should proceed under s. 4. QUEEN *v.* DEEYANUTOOLLAH . . . 7 W. R., Cr., 32

10. ——— Proprietary rights, Interference with—*Dispossession.*—There are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom by running a boat, if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as if it were on the same line. Preventing parties from crossing in a person's ferry and driving his men away amount to dispossession. KISHOREE LALL ROY *v.* GOKOOL MONEE CHOWDHRAIN

[16 W. R., 281

11. ——— Suit to re-open ferry—*Bengal Act I of 1866, s. 2.*—A suit to re-open a ferry which had been included in a settlement of an estate obtained by plaintiff from Government, but which had been closed by orders of the Assistant Magistrate, was held not to be maintainable, the ghaut where plaintiff wished to re-open it being within two miles of the place at which a public ferry was established. RAM JEWAN SINGH *v.* COLLECTOR AND MAGISTRATE OF SHAHABAD . . . . 15 W. R., 132

12. ——— Rival ferry—*Interference with existing ferry.*—A rival ferry cannot be set up so as to interfere with proprietary rights in an existing ferry, that is to say, under circumstances involving direct competition with such ferry. NARAIN SINGH ROY *v.* NURENDRO NARAIN ROY. NURENDRO NARAIN ROY *v.* NARAIN SINGH ROY . 22 W. R., 269

13. ——— Stipulation in lease of land that no ferry is to be made—*Right of private ferry.*—It is quite competent to a lessor, when granting a lease of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation. JUGGUT CHUNDER CHOWDHRY *v.* BHURUT CHUNDER CHOWDHRY . . . . 23 W. R., 237

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See ATTORNEY AND CLIENT.
[4 W. R., 86
2 Ind. Jur., N. S., 160
1 N. W., 1
11 B. L. R., 60 note
I. L. R., 3 Calc., 473

See FRAUD—WHAT CONSTITUTES FRAUD AND PROOF OF FRAUD.
[I. L. R., 11 Bom., 78

See ONUS OF PROOF—DEEDS, SUIT TO ENFORCE OR SET ASIDE.
[I. L. R., 18 Calc., 545
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See TRUSTEE . . Bourke, O. C., 292
[6 Mad., 293

See VENDOR AND PURCHASER—INVALID SALES . . 1 B. L. R., A. C., 95
[2 N. W., 153
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See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL . 24 W. R., 366
[8 C. L. R., 4

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . . I. L. R., 1 Calc., 55
[I. L. R., 3 Calc., 806
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FINANCIAL RESOLUTION, 2004, 14th JULY 1871.

See COURT FEES ACT, SCH. I, ART. 11.
[11 B. L. R., Ap., 39

FINE.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.
[I. L. R., 20 Calc., 687

See ARMS ACT, 1860 . 5 Mad., Ap., 24
[I. L. R., 1 Bom., 308

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49 . I. L. R., 18 Bom., 400

See CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE.

FERRY—*continued.*

——— **Infringement of right of—**

See RIGHT OF SUIT—FERRY, SUIT RELATING TO I. L. R., 4 Calc., 599

——— **Lease of Government—**

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—GENERALLY [I. L. R., 2 All, 411

——— **Meaning of—**

See BENGAL MUNICIPAL ACT, 1884, ss. 155, 156 I. L. R., 27 Calc., 317

——— **Plying boat for hire near public—**

See CRIMINAL TRESPASS [I. L. R., 1 All., 527

See PENAL CODE, s 188 [I. L. R., 1 All., 527

——— **Plying unsound boat on—**

See CAUSING DEATH BY NEGLIGENCE [I. L. R., 16 All., 472

——— **Right of—**

See FISHERY, RIGHT OF . 5 N. W., 95

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION [I. L. R., 26 Calc., 188
3 C. W. N., 49, 148
4 C. W. N., 813

See SPECIFIC RELIEF ACT, s 9 [I. L. R., 13 Mad., 54

1. ——— **Right of ferry**—*Right of pri-*

2 ——— *Right of owner of both banks of a river*—The mere fact of being the owner of both banks of a river does not give the right of ferry SOFIR MERDHA v NOBO KISHORE [2 W. R., 298

FERRY—*continued*

4 ——— *Change in starting point owing to change in course of river*—The

5. ——— *Right to land at a ghaut as part of right of ferry—Form of suit*—A plaintiff may recover possession of a ferry of which he has been dispossessed by the defendant,

6. ——— *Dispute concerning ferry including land and water over which it plies—Possession, Order of Criminal Court as to*—The right to a ferry, *i e*, the right to carry passengers to and fro, cannot be treated apart from

subject-matter of dispute is a ferry including the land and water upon which the right of ferry is exercised. HURBULLUBH NARAIN SINGH v. LUCHMESWAR PROSAD SINGH I. L. R., 26 Calc., 188
[3 C. W. N., 48

But *see* HURBULLUBH NARAIN SINGH v. BAJRANG DASS 3 C. W. N., 148

7. ——— *Rights of private ferry—Invasion of right of ferry by order of Magistrate—Beng Reg VI of 1819.*—In a suit to maintain the old boundaries of a ferry which had been invaded by an order of the Magistrate extend-

boats plying for hire at, or in the vicinity of, a public ferry, without the previous sanction of the Magistrate or Joint Magistrate, thus making persons dependent on the public ferry and liable to whatever toll may be levied on the public ferry RAM GOBIND SINGH v. MAGISTRATE OF GHAZEEPORE [4 N. W., 146

8. ——— **Infringement of rights of ferry**—*Right to restrain party starting second*

FERRY—*continued.*

ferry.—*Held* that there is nothing in the law of Bengal as it was before the acquisition by the British Government or in the Regulations before or after 1793 to show that any person is entitled to claim a monopoly of a right of ferry by prescription or by any other means than a grant from the Crown. To such a monopoly Part IV (ss. 26, 27, 28) of the Limitation Act of 1877 relating to the acquisition of ownership by prescription is not applicable. The franchise of a ferry is not necessarily appurtenant to land, but where a right of ferry was claimed as appurtenant to certain villages,—*Held* that the grant of such right by the Crown would not be destroyed by mere non-user without waiver, nor by the running of an opposition ferry. The franchise would continue as long as the grant continued, and until the person who set up an opposition ferry could show a Crown grant or give evidence from which a Crown grant could be presumed, the cause of action would remain. The disturbance of a right of ferry is in the nature of a nuisance (*Yard* v. *Ford*, *2 Saunders*, *172*), and the cause of action in the case of the violation of this right is a continuing wrong within s. 23 of the Limitation Act. NITYAHARI ROY *v.* DUNNE . . . . I. L. R., 18 Calc., 652

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10. ———— Proprietary rights, Interference with—*Dispossession.*—There are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom by running a boat, if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as if it were on the same line. Preventing parties from crossing in a person's ferry and driving his men away amount to dispossession. KISHOREE LALL ROY *v.* GOKOOL MONEE CHOWDHRAIN [16 W. R., 281

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13. ———— Stipulation in lease of land that no ferry is to be made—*Right of private*

FERRY—*concluded.*

ferry.—It is quite competent to a lessor, when granting a lease of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation. JUGGUT CHUNDER CHOWDHRY *v.* BHURUT CHUNDER CHOWDHRY . . . . 23 W. R., 237

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[4 W. R., 86
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See FRAUD—WHAT CONSTITUTES FRAUD AND PROOF OF FRAUD.
[I. L. R., 11 Bom., 78

See ONUS OF PROOF—DEEDS, SUIT TO ENFORCE OR SET ASIDE.
[I. L. R., 18 Calc., 545
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See VENDOR AND PURCHASER—INVALID SALES . . 1 B. L. R., A. C., 95
[2 N. W., 153
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FIERI FACIAS, WRIT OF SALE UNDER—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL . 24 W. R., 366
[8 C. L. R., 4

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . . I. L. R., 1 Calc., 55
[I. L. R., 3 Calc., 806
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See CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE.

FINE—*continued*

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT [I. L. R., 20 Calc., 676

See RAILWAYS ACT s 113 [I. L. R., 18 Bom., 440
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See CASES UNDER SENTENCE—FINE

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See CASES UNDER SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE

See VILLAGE CHOWKIDARS ACT, s 8 [I. L. R., 23 Calc., 421

See WHIPPING I. L. R., 12 Bom., 63
[I. L. R., 16 Bom., 357
3 C. W. N., 307

——— Distribution of—

See ACT XIII OF 1867 [8 B. L. R., Ap., 7

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES 1 B. L. R., A. C., 186

——— for continuing offence—

See BOMBAY MUNICIPAL ACT, 1888, s 472 [I. L. R., 22 Bom., 766

——— for neglect to take out certificate.

See TAX 2 B. L. R., Ap., 40

——— for non-attendance before Collector in partition-proceedings.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY [8 B. L. R., 230

——— for suffering premises to be in a filthy state.

See BENGAL MUNICIPAL ACT, 1864 s 67. [8 B. L. R., Ap., 9 : 16 W. R., Cr., 70

——— Realization of—

See ACT XXI OF 1856 [8 B. L. R., Ap., 47

See CATTLE TRESPASS ACT, s 22 [I. L. R., 22 Calc., 139

1. ——— Compensation—*Criminal Procedure Code, 1861, Ch XIV* —A fine cannot be awarded as compensation in a case falling under Ch XIV, Code of Criminal Procedure QUEEN v NIJANUND . . . . 3 W. R., Cr., 60

2. ——— Excise Act XXI of 1856—*Power of Magistrate—Criminal Procedure Code,* [illegible]

[illegible] W. R., Cr., [illegible]

FINE—*continued*

3 ——— Cattle Trespass Act, 1857— [illegible]

DURGARAM MADHAVRAM 7 Bom., Cr., 55

4 ——— Cattle Trespass Act, I of 1871, s 22—*Fine besides compensation* —S 22 of Act I of 1871 does not provide for a fine in addition to compensation ANONYMOUS 7 Mad., Ap., 24

BHAGIRATHI NAIK v GANGADHAR MAHANTY [I. L. R., 27 Calc., 992

5 ——— Death caused by rash and negligent act—Compensation to widow of deceased—*Criminal Procedure Code, s 545* —An order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal IN RE LUTCHMAKA [I. L. R., 12 Mad., 352

6. ——— License tax—*Act XXIX of 1867, s 15—Amount of fine* —Under s 15, Act XXIX of 1867, the fine to be imposed for non payment of the tax could not be less than the amount stated in the notice QUEEN v BISSESSUR SEIN [9 W. R., Cr., 62

7. ——— ——— *Act XXIX of 1867, s 3—Previous fine* —Under s 3, Act XXIX of 1867, a person once fined for not taking out a license was not liable to a second fine or to any further demand for the tax IN THE MATTER OF DOORGA CHURN GIREE . 9 W. R., Cr., 64

8 ——— Omission to give notice to party against whom order is made—*Order* [illegible]

9 ——— Levy of fine—*Compensation to complainant—Civil Procedure Code, 1872, s 308—Levy of fine—Procedure* —The proper course of procedure under s 308 of the Code of Criminal Procedure was to impose a fine, and out of the fine realized to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section MOHESH MUNDUL v BHOLA NATH MUNDUL . . 3 C. L. R., 404

10 ——— Costs, order for—*Compensation to complainant—Criminal Procedure Code, 1872 s 308—Court Fees Act, 1870, s 31* —*A, B,* and *C* [illegible]

FINE—*continued.*

he said that *A* was sentenced to fine and imprisonment, and therefore no appeal lay; and that, as the case was one in which the police could not arrest without warrant, the Magistrate had power to award costs under s. 31 of the Court Fees Act, 1870, but that these costs must be limited to costs out of pocket. MOHESH MUNDUL *v.* BHOLANATH BISWAS

[3 C. L. R., 405 note

11. ——— **Fine, Amount of**—*Criminal Procedure Code, 1861, s. 63—Fines inflicted by Magistrate.*—The description of fine which it was the object of s. 63 of the Criminal Procedure Code to prohibit was a fine which it would be impossible or very difficult for the accused person to pay or wholly disproportioned to the character of the offence. *Quære*—Whether s. 63 has any application to fines inflicted by a Magistrate. IN THE MATTER OF THE PETITION OF ABDOOR RUHMAN . 7 W. R., Cr., 37

12. ——— **Fine for continuing offence**—*Beng. Act VI of 1866.*—Sagur Dutt was convicted before a Justice of the Peace for using a warehouse, etc., in the town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for his said offence was fined R300, and adjudged to pay a further fine of R25 for every day after the conviction on which the offence was continued. *Held* that the conviction was bad. IN THE MATTER OF SAGUR DUTT. QUEEN *v.* JUSTICES OF THE PEACE FOR CALCUTTA

[1 B. L. R., O. Cr., 41 : 18 W. R., Cr., 44 note

IN RE LOVE . . . 9 B. L. R., Ap., 35
[18 W. R., Cr., 44

IN THE MATTER OF THE PETITION OF THE CHAIRMAN OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* ANEESOODDEEN MEAH

[12 B. L. R., Ap., 2
20 W. R., Cr., 64

QUEEN *v.* TARINEE CHURN BOSE

[21 W. R., Cr., 31

KRISTODHONE DUTT *v.* CHAIRMAN OF COMMISSIONERS FOR SUBURBS OF CALCUTTA

[25 W. R., Cr., 6

13. ——— *Daily payment of fine, order of—Illegality of such order.*—An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. *In the matter of Sagar Dutt, 1 B. L. R., O. Cr., 41; In re Love, 9 B. L. R., Ap., 35 : 18 W. R., Cr., 44; Kristodhone Dutt* v. *Chairman of the Municipal Commissioners for the Suburbs of Calcutta, 25 W. R., Cr., 6,* referred to. RAM KRISHNA BISWAS *v.* MOHENDRA NATH MOZUMDAR

[I. L. R., 27 Calc., 565

14. ——— *Offence under Act XXVI of 1850.*—Where accused was convicted under Act XXVI of 1850 of disobedience of an order made by the Municipal Commissioners of Puna and was sentenced to pay a fine of twenty rupees and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court as being illegal. REG. *v.* JAGUNNATH BHAT BIN APPA BHAT

[5 Bom., Cr., 103

15. ——— **Fine for future default**—*Order for payment of monthly maintenance.*—Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be rigorously imprisoned for the term of fifteen days for every breach of the order, under s. 316 of the Code of Criminal Procedure, the High Court quashed the latter part of the order as being irregular and bad in substance. ANONYMOUS . . . . . 5 Mad., Ap., 34

16. ——— **Power of Court to dispose of fine.**—The Court had no power to dispose of fines inflicted upon prisoners; such power existed in Government alone. QUEEN *v.* GOLUCK DASS

[1 Hyde, 282

17. ——— **Power of High Court to award fine to prosecutor on conviction for felony**—*Felony.*—The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. REG. *v.* HOSSEIN JAN . . . . 2 Ind. Jur., N. S., 190

18. ——— **Order of part of fine to witness**—*Proof of loss.*—An order directing the payment to a witness of a portion of the amount of fine levied on an accused held to be illegal in the absence of proof that the witness suffered any loss owing to the conduct of the accused. QUEEN *v.* KARTICK CHUNDER HALDAR . . . 9 W. R., Cr., 58

19. ——— **Order for part of fine to ameen**—*Deputation to restore landmarks.*—The Joint Magistrate was held not competent to direct, under s. 44 of the Code of Criminal Procedure, that a portion of a fine inflicted under s. 434 of the Penal Code be paid to an ameen for the purpose of paying the expense of his deputation to restore the landmarks which had been destroyed by the opposite party. QUEEN *v.* MOORUT LALL . . 6 W. R., Cr., 93

20. ——— **Order for payment of municipal taxes out of fine**—*Power of Magistrate.*—A Deputy Magistrate had no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him. QUEEN *v.* BROJO KISHORE DUTT . . . . . 8 W. R., Cr., 17

21. ——— **Fine for contempt of Court**—*Omission to state reasons for.*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. IN THE MATTER OF THE PETITION OF PANCHANADA TAMBIRAN

[4 Mad., 229

FINE—*continued*

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT [I. L. R, 20 Calc., 676

See RAILWAYS ACT, s 113 [I. L. R., 18 Bom, 440
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1. —— Compensation—*Criminal Procedure Code, 1861, Ch XIV*—A fine cannot be awarded as compensation in a case falling under Ch XIV, Code of Criminal Procedure QUEEN *v* NIJANUND . . . . 3 W. R., Cr, 60

2 —— Excise Act XXI of 1856—*Power of Magistrate—Criminal Procedure Code, 1861, s 22*—A Magistrate may impose a fine exceeding R1,000 under the Excise Act, XXI of 1856, s 22 of the Code of Criminal Procedure notwithstanding QUEEN *v* SUROOP CHUNDER DUTT [7 W. R., Cr, 29

3 —— Cattle Trespass Act, 1857—

of the Cattle Trespass DURGARAM MADHAVRAM 7 Bom, Cr, 55

4 —— Cattle Trespass Act I of 1871, s. 22—*Fine besides compensation*—S 22 of Act I of 1871 does not provide for a fine in addition to compensation ANONYMOUS 7 Mad., Ap, 24

BHAGIRATHI NAIK *v* GANGADHAR MAHANTY [I L R, 27 Calc, 992

5 —— Death caused by rash and negligent act—Compensation to widow of deceased—*Criminal Procedure Code, s 545*—An order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal IN RE LUTCHMAKA [I. L R, 12 Mad, 352

6. —— License tax—*Act XXIX of 1867, s 15—Amount of fine*—Under s 15 Act XXIX of 1867, the fine to be imposed for non payment of the tax could not be less than the amount stated in the notice QUEEN *v* BISSESSUR SEIN [9 W R., Cr, 62

7. —— —— *Act XXIX of 1867, s 3—Previous fine*—Under s 3, Act XXIX of 1867, a person once fined for not taking out a license was not liable to a second fine or to any further demand for the tax IN THE MATTER OF DOORGA CHURN GIREE . 9 W. R, Cr, 64

8 —— Omission to give notice to party against whom order is made—*Order* [illegible]

CHURN GHOSE [illegible]

9 —— Levy of fine—*Compensation to complainant—Civil Procedure Code, 1872, s 308—Levy of fine—Procedure*—The proper course of procedure under s 308 of the Code of Criminal Procedure was to impose a fine, and out of the fine realized to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section MOHESH MUNDUL *v* BHOLA NATH MUNDUL . . 3 C L R., 404

10 —— Costs, order for—*Compensation to complainant—Criminal Procedure Code, 1872 s 308—Court Fees Act, 1870, s 31*—*A*, *B*, and *C* [illegible] Joint Magis

FIRM—*concluded.*

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.
[B. L. R., Sup. Vol., 904
25 W. R., 118

FISHERY.

——— **Infringement of—**

See CRIMINAL TRESPASS.
[9 B. L. R., Ap., 19
I. L. R., 2 Calc., 354

See JURISDICTION OF CIVIL COURT—FISHERY RIGHTS.
[I. L. R., 2 Bom., 19

——— **Rent of, Suit for—**

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[I. L. R., 24 Calc., 449

——— **Right of—**

See BENGAL PRIVATE FISHERIES PROTECTION ACT, s. 3 . 4 C. W. N., 247

See LIMITATION ACT, 1877, s. 26 (1871, s. 27) . . I. L. R., 3 Calc., 276
[I. L. R., 5 Calc., 945
I. L. R., 9 Calc., 698

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION.
[I. L. R., 12 Calc., 537
I. L. R., 13 Calc., 179

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.
[I. L. R., 23 Calc., 55, 557

See RESUMPTION—RIGHT TO RESUME.
[1 W. R., 116

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECTS OF ACQUISITION.
[I. L. R., 4 Calc., 797, 961
2 W. R., Act X, 19
23 W. R., 432

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 12 Bom., 221
I. L. R., 18 Calc., 80
I. L. R., 19 Calc., 544

See THEFT . . 19 W. R., Cr., 47
[20 W. R., Cr., 15
I. L. R., 5 Mad., 390
I. L. R., 10 Bom., 193
I. L. R., 15 Calc., 338, 390 note, 392 note, 402

1. ——— **Nature of right**—*Incorporeal hereditament.*—Jalkar, or the right of fishery, may exist in India as an incorporeal hereditament, and as a right to be exercised upon the land of another. FORBES *v.* MIR MUHAMMAD HOSSEIN
[12 B. L. R., P. C., 210: 20 W. R., 44

2. ——— **Immoveable property**—*General Clauses Consolidation Act (I of 1868), s. 3—Transfer of Property Act (IV of 1882), s. 106.*—A jalkar, or right of fishery, as being a benefit arising out of land covered by water, comes within the definition of "immoveable property" set out in the General Clauses Act (I of 1868), and is therefore immoveable property under s. 106 of the Transfer of Property Act (IV of 1882). RAM GOPAL BYSACK *v.* NURUMUDDIN *alias* NOOR MAHAMED MUNDUL . I. L. R., 20 Calc., 446

FISHERY—*continued.*

3. ——— **Right to soil beneath water**—*Right to jalkar.*—The right to a jalkar by no means involves a right to the soil when the jalkar is either dried or filled up by accumulation of soil. RADHA MOHUN MUNDUL *v.* NEEL MADHAB MUNDUL . . . . . . 24 W. R., 200

4. ——— **Right to soil and water in one person**—*Interest in the soil.*—Though the right of jalkar does not imply any interest in the soil, yet where it is found as a fact that both water and land are the property of the zamindar as such, the two rights are not to be separated. CHUNDER COOMAR ROY *v.* BURODA KANT ROY
[W. R., 1864, 63

5. ——— **Right to tank**—*Fishing in tank.*—The exercise of the right of fishing in a tank is no proof of ownership in the tank. ERTOZAH HOSSEIN *v.* HUREE PERSHAD SINGH
[5 W. R., 281

6. ——— **Right in the soil**—*"Interest in land"—Road Cess Act (Beng. Act X of 1871).*—A jalkar does not impart any interest in the soil itself, and therefore a patni of a jalkar is not an "interest in land" within the meaning of the definition in the District Road Cess Act. DAVID *v.* GRISH CHUNDER GUHA
[I. L. R., 9 Calc., 183: 11 C. L. R., 305

7. ——— *Settlement of jalkar.*—There is no such broad proposition of law as that the settlement of a jalkar implies no right in the soil. RAKHAL CHURN MUNDUL *v.* WATSON & Co. . . I. L. R., 10 Calc., 50

8. ——— *Jalkar drying up—Right of holder of jalkar.*—When a jalkar dries up, the dried land does not, as a matter of course, become the right of the holder of the jalkar. BISSEN LALL DOSS *v.* KHYRUNISSA BEGUM . 1 W. R., 79

9. ——— *Drying up of jhil.*—By pottah certain land was leased, and a right of jalkar or fishery in a bhil or lake was granted on payment of certain jamma. The bhil became permanently dried up. *Held* that the grant being merely of the fishery, the lessee acquired no interest in the soil, and the lessor was entitled to re-enter on the land formerly covered with the water of the bhil. SUROOP CHUNDER MOZOOMDAR *v.* JARDINE, SKINER & Co. . Marsh., 334: 2 Hay, 468

10. ——— **Change in course of river**—*Right of owner of soil.*—If a river merely changes its course, the old dry course of the river must be taken to have become private property; and as incident to and part of the same, the owner of the soil is entitled to all bhils or ponds, gulfs, or damoores

FINE—*continued*

22. ———— **Procedure to enforce fine**—*Madras Act V of 1865*—The procedure to be followed in enforcing the fines from persons convicted under Act XXIV of 1859 (Police Act) was that laid down in Madras Act V of 1865 ANONYMOUS [3 Mad., Ap, 9

23 ———— **Levy of fine**—*Distress—Criminal Procedure Code, 1861, s 61— Court"*—In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and ... office of a Judge or Magis... ecessor, ...he same ...OOMAR

[9 W. R, Cr, ... (F B)

24 ———— *Liability for fine ... default*—An offender who ...

... and sale of any moveable property belonging to him which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not (*dissentiente*, SETON KARR, J) QUEEN v MODOOSOODUN DEY 3 W R., Cr, 61

25 ———— *Recovery of, from immoveable property—Criminal Procedure Code,* ...

... applied only during the lifetime of the offender, ... whether the fine could after his death be recovered under s 70 of the Penal Code from his immoveable property, the Court was of opinion that the law had ... for the distress and sale of the move...

26 ———— *Realization of fine after death of person fined—Moveable property—Immoveable property—Penal Code (Act XLV of* ...

... could not be enforced by distress *Reg* v ... S 386 of the ...

27 ———— **Refund of fine**—*Imprisonment after payment of fine*—A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter, to a further time of imprisonment He paid a portion of the fine, but, that fact not having been communicated to the jailor, underwent the entire further term of imprisonment *Held* that under these circumstances the Court had no power to order the fine to be refunded REG v NATHA MULA [4 Bom, Cr, 37

FINE—*concluded*

28 ———— *Recovery of fine when ordered to be refunded—Portion of fine paid as compensation to complainant—Sentence of fine set aside—Recovery of compensation from complainant—Procedure—Criminal Procedure Code (1882), ss 545 and 547*—On a sentence of fine being ... ordered under s 545 of the Code of ... ie should ...ant, and was set aside in revision by an order of the High Court, which directed that the fines should be refunded *Held* that the sum which had been paid to the complainant was recoverable under this order as part of the original fine, and that it was recoverable by process under s 547 of the Code and not by suit in a Civil Court MUTASADDI v MANI RAM [I L R, 19 All, 112

FIRE

———— **caused by spark from engine**

See RAILWAY COMPANY 14 B L R., 1

———— **Loss by**—

See BILL OF LADING 6 Bom, O C, 71
[7 Bom, O. C, 188
I L R, 4 Calc, 736

See CARRIERS ACT, s 6
[I L R, 24 Calc, 786
I. L R., 26 Calc, 398

FIRE-BALL, POSSESSION OF—

See ATTEMPT TO COMMIT OFFENCE
[3 B. L. R, A. Cr, 55

FIRM.

———— **Liability to tax.**

See MADRAS MUNICIPAL ACT 1884, s 103
[I L. R, 14 Mad, 140

———— **Members of**—

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSONS BY WHOM RIGHT MAY BE ACQUIRED 25 W R., 117
[I L. R., 4 Calc., 957
I. L R, 11 Calc, 501

———— **Suit against**—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS 1 Bom., 85

———— **Suit by**—

See LIMITATION ACT 1877, s 22
[I L R., 17 Bom, 413

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS I. L. R., 17 Bom., 413
[I L. R., 14 All., 524

FISHERY—*continued.*

State and the community, it must be established by clear and strong proof. BAGRAM *v.* COLLECTOR OF BHULLOOA. COLLECTOR OF RUNGPORE *v.* RAMJADUB SEIN . . . **W. R., 1864, 243**

24. ——— Right of fishery in navigable river.—The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river. CHUNDER JALEAH *v.* RAM CHURN MOOKERJEE **[15 W. R., 212**

25. ——— *Right of Government.*—*Semble*—The Government may have an exclusive right of fishery in a navigable river. ACHUMBIT JHA *v.* JEWUN . . . . **11 C. L. R., 11**

26. ——— *Jalkar—Private and public rights.*—A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown and established by very clear evidence, as the presumption is against any such private right. *Quære*—Whether such right can be created at all. A mere recital in quinquennial papers that a person is the owner of jalkar rights in a zamindari permanently settled with him by Government is not sufficient to give to such person a right of fishery in a public navigable river; any right granted under such word "jalkar" would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a jhil. PROSUNNO COOMAR SIRCAR *v.* RAM COOMAR PAROOEY **[I. L. R., 4 Calc., 53**

27. ——— Right of fishery in tidal river—*Prescription.*—The right of the public to fish in tidal waters in British India may be curtailed by an exclusive privilege acquired by grant or prescription by certain persons within certain limits. Such an exclusive privilege, being an infringement of the general rights of the public, could be acquired by a period of enjoyment which would suffice for the acquisition of on easement against the Crown. VIRESA *v.* TATAYYA . . **I, L. R., 8 Mad., 467**

28. ——— Right of fishery in tidal navigable river—*Grant of rights by Crown—Grant, where there is no title by prescription, must be proved—Evidence as to nature and extent of grant.*—The exclusive right of fishery in tidal navigable rivers may be granted by the Crown to private individuals. Such a right must ordinarily be proved either by proof of a direct grant from the Crown or by prescription. In the absence of title by grant or prescription in persons alleging themselves to be the holders of a jalkar under an ijara, the mere payment of rent by fishermen to former ijaradars does not estop such fishermen from disputing the rights of the alleged holders; but such payment for the use of the jalkar right is strong evidence of the rights of the alleged holders of the ijara, and of acquiescence in their title. In the case of a grant of a jalkar, in ascertaining what the boundaries of the jalkar are, or what rights of fishery are contained within those boundaries, whether the subject of the grant be in tidal navigable rivers or not, the Courts should be guided by the same rules of evidence as would be applicable for the purpose of determining the nature and extent of any other grant. *Per* PRINSEP and PIGOT, *JJ.*—Unless the boundaries given in a grant of a jalkar clearly indicate to the contrary, a grant of a jalkar would not ordinarily include the right of fishery in tidal navigable rivers. HORI DAS MAL *v.* MAHOMED JAKI **[I. L. R., 11 Calc., 434**

29. ——— *User—Prescription.*—Plaintiffs claimed right to catch fish in a tidal river at a certain place by putting up stake nets across the river. This right was alleged to be based on custom which was not denied by defendants, and user for thirty years was proved. The claim was decreed. *Held* that plaintiffs were not bound to prove sixty years' exclusive user to support their claim. NARASAYYA *v.* SAMI . . **I. L. R., 12 Mad., 43**

30. ——— *Right of Government in navigable rivers and fishery therein—Grant by Government of right to private individuals.*—As regards this side of India, the bed of a tidal navigable river is vested in the Crown; and the right of fishery in such river, as also the bed of the river itself, may be granted by Government (whether it be in the exercise of their prerogative as the Crown or as representing the public) to private individuals to be held by them as private property, subject to the right of navigation and such other rights as the public has in such rivers. *Döe d. Seebkristo* v. *East India Co., 6 Moore's I. A., 267; Gureeb Hossein Chowdhree* v. *Lamb, S. D. A., 1859, p. 1357; Bagram* v. *Collector of Bhulloa, Gap Number, W. R. (1864), p. 243; Chunder Jaleah* v. *Ram Churn Mookerjee, 15 W. R., 212; Baban Mayacha* v. *Naya Shravucha, I. L. R., 2 Bom., 19; Prosunno Coomar Sircar* v. *Ramcoomar Paroee, I. L. R., 4 Calc., 53;* and *Hari Das Mal* v. *Mahomed Jaki, I. L. R., 11 Calc., 434,* referred to. Value as evidence of the thakbast map in such a case discussed. *Syam Lal Sahu* v. *Luchman Chowdhry, I. L. R., 15 Calc., 353,* and *Syama Sunderi Dassya* v. *Jagobundhu Sootar, I. L. R., 16 Calc., 186,* referred to. SATCOWRI GHOSE MONDAL *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 22 Calc., 252**

31. ——— Right of fishing in the sea—*Right of suit—Right of the Crown—Public rights.*—Rights of the Crown and of the public in the waters and the subjacent soil of the sea discussed. The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. BABAN MAYACHA *v.* NAGU SHRAVUCHA . . **I. L. R., 2 Bom., 19**

32. ——— Adjunct of right of fishery—*Right of ferry.*—A right to the jalkar of a river—that is, right to the produce of the water, such as

FISHERY—*continued*

n which water remains, but which do not communicate with the river except in the time of floods and he can claim a settlement with the Government in respect of any jalkar in the same GRAY v ANUND MOHUN MOITRO . W. R., 1864, 108

11 ——— *Jalkar—Navigable river*—The jalkar, or right of fishing, in a navigable river is not affected by reason of the river having merely changed its course *Gray* v *Anund Mohun Moitro, W R, 1864, 108*, followed *Sibessury Dabee* v *Lukhy Dabee, 1 W R., 88*, distinguished TARINI CHURN SINHA v WATSON & Co . I. L R, 17 Calc, 963

12 ——— *Joint right of fishery*—A co-proprietor cannot be sued for trespass for fishing in a jalkar in which he and the other proprietors were entitled to fish, merely because the jalkar, by a change in the course of the river, ran over the land which was allotted to the plaintiff under a butwara In such a suit the plaintiff cannot obtain a share of the fish on the ground that he had a share in the jalkar GOBIND CHUNDER SHAHA v ABDOOL GUNNY . 6 W. R., 41

13. ——— Drying up of river—*Land accreting subject to right of fishery*—In a suit to [illegible]

[illegible] what was once its bed and was connected with the river by a narrow inlet, reversed the decree on the ground that it was possible this communication [illegible]

14. ——— Diversion of flow of stream —*Increase and decrease in flow of water*—It matters not whence the water in which *A* has a right of fishery comes *A's* right is not lessened nor *B's* increased, because a portion of the water formerly flowing in *A's* channel has been diverted from it, and because the water of *B's* river now flows through it NOBIN CHUNDER ROY CHOWDHRY v RADHA PEAREE DEBIA . 6 W. R., 17

15 ——— Rights of jalkar in flooded [illegible]

[illegible] DABEE . . . . 1 W. R., 88

FISHERY—*continued*

16 ——— Restriction on fishery rights by owners of bed of river—*Limiting area of water*—The owners of the bed of a river when dry are not entitled so to use that bed as to injure the jalkar rights which others have in it when full by restricting the area over which the water may flow SRIKANT BHUTTACHARJI v KEDAR NATH MOOKERJEE [6 C. L R., 242

17. ——— Interference with right— [illegible]

[illegible] years without complaint *B's* right of fishery must be deemed subject to *A's* right to keep up the bund RAM DASS SURMAH v SONATUN GOOHOO [W. R., 1864, 275

18. ——— Jalkar rights in pergunnah —*Right of owner of pergunnah*—A proprietor of the entire jalkar rights of a pergunnah is entitled to fish in any natural water course, or any jhil or pond not made by human agency KHOOROONAMOYE CHOWDHRAIN v JOY SUNKER CHOWDHRY [W R., 1864, 267

19 ——— Presumption of right of fishery from long possession of tank —Where a person is found to have been from of old in possession of a tank, it may be presumed that he is entitled to the fish therein although there be no actual proof that he has asserted his property in the fish by fishing HUR PERSHAD ROY v BADREE NARAIN GIR [1 N. W, 14

20 ——— Exercise of right of fishery from permanent settlement—*Open channels in river*—A party owning the right of fishery in a river from the time of the permanent settlement is at liberty to exercise that right in the open channels and also in all closing or closed channels abandoned by the river up to the time when the channels become finally closed at both ends *i e*, so long as fish can pass to and fro KRISHNENDRO CHOWDHRY v SURNOMOYI [21 W. R., 27

[illegible] indefeasible LUCKHIMONY DASSEE v KORUNA KANT MOITRO . . 3 C. L. R., 509

22 ——— Dispute as to fishery rights —*Possession—Title*—In a dispute about jalkars between the proprietors of a neighbouring estate, where the title deeds of the two parties do not specially mention the particular pieces of land or water in contest, the title of the parties must depend on the fact as to which of them has been in possession SHAMA SOONDUREE DEBIA v COLLECTOR OF MALDAH [12 W. R., 164

23 ——— Right of fishery in navigable river, Proof of—*Private against public right*—When the exclusive jalkar right in a navigable river is set up against the ordinary rights of the

FOREIGN COURT, JUDGMENT OF —*continued.*

decree by the Subordinate Judge, a notice under s. 248 of the Civil Procedure Code was served on the judgment-debtor, calling on him to show cause why the decree should not be executed, and an order was forthwith issued for the attachment of his property. The judgment-debtor appeared and objected that the copy of the record was not properly certified, and therefore that the whole of the execution-proceedings were bad. The Subordinate Judge ordered that the record be sent back to the Cooch Behar Court through the District Judge in order that a certificate might be given in proper form, and directed that the other points raised should be decided after the return of the papers. On appeal it was urged that the order of the Subordinate Judge was made without jurisdiction, but the District Judge rejected the appeal. The judgment-debtor appealed to the High Court. *Held* that the Subordinate Judge acted properly in sending the record back to the Cooch Behar Court to be properly certified, and also that he should have set aside the execution-proceedings as being altogether void, but, as that formed no portion of the grounds of appeal urged in the lower Appellate Court, the appeal should be dismissed. GANEE MAHOMED SARKAR *v.* TARINI CHARN CHUCKERBATI

[I. L. R., 14 Calc., 546

5. ———————— *Suits in British Court on judgments and decrees of Courts established in recognized foreign States—Territorial jurisdiction of each separate State in personal actions—Civil Procedure Code (1882), ss. 431 and 434—Right of suit.*—Jurisdiction, being properly territorial and attaching, with certain restrictions, upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after his withdrawal thence, living in another State. As to land within the territory, jurisdiction always exists, and may exist over moveables within it, and exists in questions of status or succession governed by domicile. But no territorial legislation can give jurisdiction, which a Court of a foreign State ought to recognize, over an absent foreigner owing no allegiance to the State so legislating. In a personal action, to which none of the above causes of jurisdiction apply, a decree pronounced by a Court of a foreign State, *in absentem,* the latter not having submitted himself to its authority, is by international law a nullity. Not to the Courts of the State in which the cause of action has arisen, nor in cases of contract to those of the *locus solutionis,* should resort be had by the plaintiffs, but to the Courts of the State in which the defendant resides, the Courts of the latter State having jurisdiction in all personal actions. *Ex-parte* decrees for money were made in the territories of the ruling Chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories, but had, before suit brought, relinquished his employment, had left the State, and was then, at the time when he was sued, resident in another State of which he was the domiciled subject. *Held* that these decrees were a nullity by international law, and could not receive effect in a British Indian Court. *Becquet* v. *Macarthy, 2 B. & Ad., 951,* distinguished. The judgment of BLACKBURN, *J.*, in *Schilsby* v. *Westenholz, L. R., 6 Q. B., 155,* referred to and explained. There is no ground for supposing, as did one of the Courts below, that no suit will lie upon the judgment of a recognized foreign Indian State. GURDYAL SINGH *v.* RAJA OF FARIDKOT . . I. L. R., 22 Calc., 222

[L. R., 21 I. A., 171

6. ———————— *Private international law—Suit in British Court on foreign judgment—Territorial jurisdiction—British subject—Domicile—Nationality—Decree of foreign Court as evidence in Court in British India—Civil Procedure Code (XIV of 1882), s. 13.*—A foreign Court has no jurisdiction over a person who is a British subject domiciled and residing in British India, who was not within the territorial jurisdiction of that Court either at the time when a suit was brought against him or previously, and who never subjected himself by any act of his, such as by appearing and defending the suit, to the jurisdiction of that Court. A decree passed by a foreign Court against such a person cannot be given effect to in a Court in British India. Even if there be in such a case any special territorial legislation giving jurisdiction to the foreign Court, such legislation cannot be recognized by a Court in British India. Nationality is determined by birth on the soil, and not by citizenship by descent. There is a distinction between a case in which a defendant puts forward a foreign judgment as a bar to a suit under s. 13 of the Code of Civil Procedure, and a case in which a plaintiff seeks to enforce a foreign judgment. In the former, it may fairly be supposed that the parties submitted to the jurisdiction of the foreign Court. *Gurdyal Singh* v. *Raja of Faridkot, I. L. R., 22 Calc., 222 : L. R., 21 I. A., 171,* followed. CHRISTIEN *v.* DELANNEY

[I. L. R., 26 Calc., 931
3 C. W. N., 614

7. ———————— *Decree "in absentem"—Submission to jurisdiction—Suit on judgment of foreign Court.*—The plaintiff brought a suit in the French Court at Karikal against the defendant, a British subject, resident in British India. The defendant employed a vakil to defend the suit, but, on the case coming on for hearing, the vakil stated he had no instructions, and an *ex-parte* decree was passed. An application by the defendant to have the decree set aside was held to be time-barred. The plaintiff now brought a suit on the judgment of the French Court to recover the amount decreed to him. *Held* that the suit was not maintainable for the reason that the decree had been passed against the defendant *in absentem* by a foreign Court, to which he had not submitted himself. *Semble*—Even if the foreign judgment had not been entirely invalid as against the defendant, the British Court would have had jurisdiction to disallow an item of claim allowed by the foreign Court on account of prospective damages which was unsupported by evidence. SIVARAMAN CHETTI *v.* IBURAM SAHEB

[I. L. R., 18 Mad., 327

8. ———————— **Suit in foreign judgment—** *Judgment not for an ascertained sum of money—*

FISHERY—*concluded.*

fish, etc —does not necessarily carry with it a right of ferry GOPEE THAKOORAEE *v* SHEO SEVUK MISSER [5 N. W, 95

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See CASES UNDER MORTGAGE—FORECLOSURE

——— Suit for—

See JURISDICTION—SUITS FOR LAND—FORECLOSURE I L R, 4 Calc, 283

FOREIGN AND NATIVE RULERS

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS [I L R., 21 Bom, 351

FOREIGN COURT.

——— Private International Law—*Suit in British Court on foreign judgment—Territorial jurisdiction—British subject—Domicile—Nationality—Decree of Foreign Court as evidence in Court in British India—Civil Procedure Code (XIV of 1882), s 13*—A foreign Court has no jurisdiction over a person who is a British subject domiciled and residing in British India, who was not within the territorial jurisdiction of that Court either at the time when a suit was brought against him or previously, and who never subjected himself by any act of his, such as by appearing and defending the suit, to the jurisdiction of that Court A decree passed by a

cannot be recognized by a Court in British India Nationality is determined by birth on the soil, and not by citizenship by descent There is a distinction between a case in which a defendant puts forward a foreign

Singh v Raja of Faridkot I L R, 22 Calc, 222 L R, 21 I A, 171, followed CHRISTIEN *v* DELANNEY I L R, 26 Calc, 931

FOREIGN COURT, JUDGMENT OF—

See COMPANY—WINDING UP—GENERAL CASES 8 Bom., O C, 200 [I. L R, 9 Bom, 346

See DEBTOR AND CREDITOR [I. L. R, 16 Mad., 85

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT [I. L. R., 7 Calc., 82

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES [I. L. R., 15 Bom, 216

FOREIGN COURT, JUDGMENT OF—*continued*

See RES JUDICATA—COMPETENT COURT—GENERAL CASES [I. L R., 13 Bom, 224

1. ——— Execution of decree of foreign Court—*Objections to foreign judgments.*—

they are not open to impeachment on the ground of want of jurisdiction, whether over the cause the sub-

[15 W. R., 500

2. ——— *Suit against person in representative capacity*—The plaintiff obtained a judgment in a French Court against the father (now deceased) of the defendant Plaintiff sued defendant on that judgment as representative of his father in the French Court The defendant pleaded that the bond on which that judgment was obtained was not genuine Judgment was given for the plaintiff in the French Court with costs The plaintiff brought the present suit on that judgment The

proof of assets received by a representative of a

3. ——— *Procedure in giving effect to foreign judgment—Proof of service*

upon a strict proof of the validity and service of summonses and other processes alleged to have emanated from a foreign Court, and made a foundation for a liability to be enforced here by Courts that have no cognizance of the case on its merits EDULJI BURJORJI *v.* MANEKJI SORABJI PATEL [I L R., 11 Bom, 241

4 ——— *Execution of decree—Foreign decree—Execution in British India of decrees of Courts of Native States—Evidence—Certified copies of foreign judicial records—*

FOREIGN COURT, JUDGMENT OF —*continued*

an account in the District Co irt of South Canara *Held* that as the foreign judgment on which the action purported to be brought was not a judgment for an ascertained sum of money, it constituted no foundation for an action SMITH r COELHO

[I L R., 22 Mad , 382

9 ——— *Su t on a foreign judgment—Civil Procedure Code (Act XIV of 1882) s 14 as amended by Act VII of 1888*—A suit will lie on a judgment of a Court in a Native State MAYARAM v RAVJI I L R , 24 Bom , 86

10 ——— *Native Co rts Suit on decree of—Suits in India on ju lgments f Courts in India—Jurisdiction of Small Cause Court—Civ l Procedure Code (Act X of 1877) s 434*—No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State The Courts of British India cannot enforce the decrees of any Native Courts except as provided by s 434 of the Civil Procedure Code Act X of 1877 Under that sectio i the decrees of certain Native Courts may be executed in British India as if they had been made by the Courts of British India A suit will not lie in the Courts of I dia upon the judgment of any Court in British India Th e only exception to this rule is in

action or the propriety of the decision *Quære*—

[I L R , 6 Bom , 292

11 ——— *Judgment of Co rt of Native State—Jurisd ction of Civil Court*—The Civil Courts of British Ind a have jurisdictio i to en tertain suits brought upon the judgments of Courts of Native States. *Bhavan sl ankar Shevakram v Pursadri Kalidas I L R , 6 Bom 292* dissented from SAMA RAYAR v ANNAMALAI CHETTI

[I L R , 7 Mad , 164

12 ——— *Parties—Members of firm not resident in place where judgment was ol tained*—*A* obtai ied a decree against *B* and *C* in

... were members of one firm. *Held* that the suit

FOREIGN COURT, JUDGMENT OF —*cont nue l*

would not lie against *D E F G* upon the foreign judgment LAKSMANAN v KARUPPAN

[I L R , 6 Mad., 273

13 ——— *Native State—Cause of action—Jurisdiction—Objection to juris diction on appeal*—*K* sued *C* who resided in British India upon a bond executed by *C* in favour of *K* within the territory of P a N tive State, and ob tained a decree

K sued *C* upon

British Indian

crees of the lov

jurisdiction and that *K* could sue upon the judgment of that Court in the Court at T KALIYUGAM CHETTI v CHOKALINGA PILLAI

[I L R , 7 Mad , 105

14 ——— *Limitation—Cause*

PROMOTHONATH GHOSH

[2 Ind. Jur , N S , 233 8 W R., 32

15 ——— *Limitation—Cause of action*—The remedy by suit in a foreign Court con tinues open for the period prescribed by the law of that Court without reference to our own Law of Li mitation of suits A foreign judgme t is conclusive as bet veen the parties when it cannot be questioned upon the ground of fraud or want of jurisdiction or that it was unduly obtained Suits on foreign judgments may be maintained within six years from the time tl e cause of action (the judgment) arose ' BOLORAM GOOY v KAMEENEE DOSSEE

[4 W R., 108

16 ——— *Jurisdiction of foreign Court—Residence of defendant—Construc*

appeared to defend the suit at Kandy and was not at the date of that suit or subsequently even temporarily resident in Ceylon but he was a partner in a firm which carried on business at Kandy a id he was interested in lands at that place which he ha l visited once or twice *Held* that the Court at Kandy had no jurisdiction over the defendant NALLAKARUPPA SETTIAR v MAHOMED IBURAM SAHEB

[I L R., 20 Mad , 112

17 ——— *Jurisdiction of foreign Court—Notice Want of*—The defendants,

appear at the trial and had no actual notice of the

FOREIGN STATE—*concluded.*

There had been no formal sanad; but on the true construction of the official correspondence, as to which the Courts below had differed, the Government first continued the possession of the ancestor for life, and afterwards conferred the inheritance, as to one moiety of the estate, upon the defendant, who was one of the sons of the original holder, and, as to the other moiety of the estate, upon the plaintiffs, who were the four brothers of the defendant, then living. The claim made by the plaintiffs, having been founded on a different title, was dismissed by the High Court. But this dismissal was accompanied by a declaration that the above grant had been made. This was now altered into a declaratory decree to the same effect with the direction that inquiry be made as to who were entitled to the plaintiffs' moiety, and further directions were reserved. GOBIND RAO *v.* SITARAM KESHO . . . **I. L. R., 21 All, 53**
[L. R., 25 I. A., 195
2 C. W. N., 681

FOREIGN TERRITORY, OFFENCE COMMITTED IN—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 5 Mad., 23
I. L. R., 13 Mad., 423

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

See WRONGFUL CONFINEMENT.
[I. L. R., 19 Bom., 72

FOREIGNERS.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 19 Bom., 741
I. L. R., 22 Bom., 54

See WARRANT OF ARREST.
[I. L. R., 18 Bom., 636

———— **Suit against—**

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.
[I. L. R., 17 Bom., 662

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERAL CASES.
[I. L. R., 17 Bom., 662

————**Act III of 1864, Validity and application of**—*Powers of legislation of the Governor General in Council—Indian Councils Act (Stat. 24 & 25 Vict., c. 67), s. 22—Criminal Procedure Code (1882), s. 491—Arrest—Habeas corpus—Stat. 31 Car. II, c. 2.*—On the 3rd July 1894, certain foreigners, resident in Bombay, having been arrested by the police and sent to jail under warrants issued under ss. 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (X of 1882) and under Stat. 31 Car. II, c. 2 (Habeas Corpus Act), calling on

FOREIGNERS—*concluded.*

the Superintendent of the Jail to show cause why they should not be set at liberty. In the affidavits filed in showing cause against the rule the only reason suggested for their arrest was that they were connected with loose women residing in a certain district of Bombay. It was contended for the prisoners that their arrest and imprisonment were illegal (1) inasmuch as Act III of 1864 was *ultra vires* of the Indian Legislature; (2) that the Act, being intended only to secure the "peace and security" of British India, was in this case improperly applied. *Held* (1) that Act III of 1864 was not *ultra vires* of the Governor-General of India in Council; (2) that it was rightly applied in the case of the foreigners in question, although their residing in Bombay may not have been likely to have affected or endangered the peace and security of British India. *Per* STARLING, *J.*—S. 3 of Act III of 1864 gives the fullest power to the Government to order any foreigner to remove himself from British India. The Government is the sole judge of what is necessary for the peace and security of British India, and, if it acted in accordance with the letter of the Act, the Court could not inquire into the sufficiency of its reasons for so acting. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY . **I. L. R., 18 Bom., 636**

FOREST ACT.

See MADRAS FOREST ACT.

FOREST ACT (VII OF 1865).

———— **Wrongfully cutting timber**—*Liability of Government for expense of carriage of such timber.*—Where timber had been cut and sold by a person who had no authority to do so, and was confiscated by Government under Act VII of 1865,—*Held* that Government was justly liable for the expense of conveying the timber from the place where it was lying, but was not equitably chargeable with the expense of cutting the timber, which was a wrongful act. DEPUTY COMMISSIONER OF NOWGONG *v.* NOTHERAM BHUAYA . . . **21 W. R., 435**

FOREST ACT (VII OF 1878).

———— **s. 10.**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . **I. L. R., 21 Bom., 396**

———— **s. 45**—*Drift and stranded timber, Right of Government, under s. 45, to collect and store, with obligation to notify—Meaning of "jalkar"—Test of res judicata—Civil Procedure Code (1882), s. 13—Construction of decree.*—The object of Ch. IX of the Indian Forest Act, 1878, is to regulate the rights of owners, and not to deprive them of their property in drift and stranded timber and wood. S. 45 of that Act does not divest the owner of, or transfer to the Government, any right therein. Nor does anything in the Act affect the right of the Government to take possession and dispose of timber and wood whereof they are the undisputed owners. But, upon certain conditions only, the Government have a right to the possession of any drift and stranded

FOREIGN COURT, JUDGMENT OF —concluded

24 ———————— *Objection to jurisdiction Waiver of—Cause of action* —If a party sued in a foreign tribunal which has no jurisdiction except by virtue of its own peculiar laws protests against the assumption of jurisdiction by that tribunal but defends the suit to escape the inconvenience of

PARRY & Co *v.* APPASAMI PILLAI [I L R., 2 Mad, 407

FOREIGN COURT, JURISDICTION OF—

— **Proceedings of—**

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE [I L R, 17 Mad, 14

See EVIDENCE ACT, s 86 [I L R, 14 Calc, 546 I L R., 27 Calc, 639

———— **Contract, Suit on**—*Making of contract—Cause of action* —*A*, a Hindu British subject neither domiciled resident nor possessing pro

got a decree in his favour *B* then sued *A* in the subordinate Court of Madura for enforcement of this decree *A* pleaded that the Pudukotta Court had no jurisdiction to pass the decree sued on, and that he had had no notice of the suit It was found on regular appeal, that *A* had had notice and decided that the Pudukotta Court had jurisdiction *Held*, on special appeal that the Civil Court of Pudukotta had no jurisdiction to try the suit That the mere making of a contract within the jurisdiction of a

———— **Record of—**

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R, 12 All, 595

See CASES UNDER FOREIGN COURT JUDGMENT OF I L R, 2 Mad., 400, 407

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R., 16 Mad, 405

FOREIGN OFFENDERS (FUGITIVES)

See EXTRADITION . 8 Bom., Cr, 13

FOREIGN STATE

———— **Promissory note executed in—**

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS I L R, 17 Mad, 262

1 ———— **Civil Procedure Code, 1882,**

the Code of Civil Procedure do not mean individual

its political or territorial rights which must from

rule of intestate succession laid down in s 5 of the Succession Act (Act X of 1865) does not apply The State must be regarded as a *quasi* corporation which continues to exist as a State so long as it is recognized as such by Her Majesty whatever the rule of succession to it may be and whatever may be its form of government Case in which it was found on the facts that certain immoveable property situated in British India which had formerly belonged to the State of Cherrapoonjee having been granted by a former Raja of that State to the defendant was still the property of the State on the ground that the Raja was not competent to alienate it and that the defendant's plea of adverse possession and limitation was not supported by the evidence HAJON MANICK *v* BUR SINGH I L. R, 11 Calc., 17

2 ———— **Lapse to the British Government of a foreign State in ceded territory—** *Grant of lands therein—Construction of official correspondence—Obari, or abatement of revenue on the estate* —The State of Jalaun, in the territory ceded in 1804 by the Peishwa lapsed in 1840 to the British

rected the continuance of the entire estate to the loyal members of his family *Held* that no proprietary interest in the estate had been shown to have belonged to the ancestors when Jalaun was a principality that all that could be claimed by the defendants was derived from the Government which after the lapse of the State, had the right at their discretion to control the descent of the estate, and had exercised this discretion

FOREST ACT (VII OF 1878)—*concluded.*

which it possessed previously to 1823." The accused was khot of the village of Asgoli in the Ratnagiri District. He was charged, under s. 75, cl. (*c*), of the Indian Forest Act (VII of 1878), with the offence of cutting down two teak trees without obtaining the permission of Government as required by the rules framed by Government under the Forest Act. He contended that he was absolute owner of the trees under Dunlop's proclamation. He was convicted, and applied to the High Court under its revisional jurisdiction. *Held* that the conviction must be reversed. The land on which the trees in question were growing was the khoti khasgi land of the accused, and he was therefore entitled to the benefit of Dunlop's proclamation, by virtue of which the trees thereon became his property. *Held* also that Dunlop's proclamation could not be withdrawn by Government. *Collector of Ratnagiri* v. *Vyankatrav Narayan Surve, 8 Bom., A. C., 1*, followed. *Per* FULTON, J.—Khasgi land, of which the khot was actually in possession, was clearly within Dunlop's proclamation, and it granted the right to teak and other trees in khasgi lands held by vatandar khots. . . . . It is clear, too, that the right to trees, having once been conceded, could not be withdrawn by the proclamation of 1851, and it *seems* also manifest that the contention is untenable that the benefit of the first proclamation did not extend to the case of trees planted after its cancellation in 1851. Even though the khot may not be the proprietor of the soil in khoti khasgi lands, he is certainly the holder of an interest in it, and that interest, having in 1823 been increased by the concession of all trees which he might grow thereafter, could not subsequently be reduced by the withdrawal of the right to such trees. IN RE ANTAJI KESHAV TAMBE . . I. L. R., 18 Bom., 670

See SECRETARY OF STATE FOR INDIA *v.* SITARAM SHIVRAM . . I. L. R., 23 Bom., 518

——— s. 78—*Refusal to serve as member of a panch—Penal Code (Act XLV of 1860), s. 187.*—A person was convicted under s. 187 of the Indian Penal Code for refusing, when called on by a forest guard, to serve as one of a panch for the purpose of drawing up a panchnáma with reference to certain wood alleged to have been illegally cut in a reserved forest. *Held* that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first three paragraphs of s. 78 of the Indian Forest Act (VII of 1878), nor was the purpose for which he was called upon to give his assistance one of the purposes mentioned in cls. (*a*) to (*d*) of the section. He was therefore not legally bound to assist the forest guard. QUEEN-EMPRESS *v.* BABAJI . . . I. L. R., 22 Bom., 769

——— s. 81.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.
[I. L. R., 20 Bom., 764

——— s. 172.

See PENAL CODE, s. 182.
[I. L. R., 10 Bom., 124

FOREST OFFICER.

See BOMBAY LAND REVENUE ACT, s. 3.
[I. L. R., 20 Bom., 803

See BOMBAY REVENUE JURISDICTION ACT, s. 11 . I. L. R., 20 Bom., 803

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.
[I. L. R., 20 Bom., 764

FOREST RIGHTS.

See KHOTI TENURE.
[I. L. R., 4 Bom., 264

FOREST SETTLEMENT OFFICER.

See MADRAS FOREST ACT, s. 4.
[I. L. R., 17 Mad., 193

See PENSIONS ACT, s. 4.
[I. L. R., 17 Mad., 193

——— Jurisdiction of—

See MADRAS FOREST ACT, s. 10.
[I. L. R., 20 Mad., 279

"FORFEIT," MEANING OF—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.
[I. L. R., 20 Calc., 676

FORFEITURE OF PROPERTY.

See CASES UNDER ABSCONDING OFFENDER.

See ACT OF STATE . 12 B. L. R., 167

See BOMBAY LAND REVENUE ACT, s. 153.
[I. L. R., 16 Bom., 455

See BOMBAY REVENUE JURISDICTION ACT, s. 4 . I. L. R., 16 Bom., 455

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[12 B. L. R., 238
I. L. R., 1 Bom., 559
I. L. R., 9 Bom., 108
I. L. R., 15 All., 382
I. L. R., 17 Mad., 392

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 1 All., 503

See CASES UNDER LANDLORD AND TENANT—FORFEITURE.

See LEASE—CONSTRUCTION.
[I. L. R., 17 Calc., 826
I. L. R., 20 Calc., 273

See MESNE PROFITS—RIGHT TO AND LIABILITY FOR . 2 Agra, Mis., 6

FOREST ACT (VII OF 1878 —*continued*

timber and wood collected by their officers, which, however, may be claimed by the true owner, who may be a person holding a jalkar or water right, comprehending those things The conditions are that the officers of Government shall store the timber in the manner and issue the notifications, required by the Act In case of such procedure not being followed, and the wood being treated as the property of the Government, the latter are, in the event of the wo d being found not to belong to them in no better position than any other trespasser The title to collect given to the Government by the Act is coupled with, and dependent upon, the duty of giving notice to the public, in order that the true owner, whether he be a person from whom the wood has drifted away or the owner of a jalkar or however he may be entitled, may claim the drifted timber in the manner, and within the time, prescribed by the Act There is no presumptive ownership of the Government save where their officers collect and hold for the true owner in the first instance, subject to the statutory duty of giving notice The Government having taken possession of drift timber in the river Teesta as having

he showed ha l been decreed in 1882 to his predeces-

above suit The rule is that where a final decree is

drift and stranded timber was included in the jalkar decreed in 1882 was, in their Lordships' opinion, established by intrinsic evidence in the record of that suit They concurred with the High Court that correspondence and orders by officers, of dates subsequent to the former decree, could not be received as aids to its construction But the record showed that the right was in controversy before the Judge, and that he meant to include it in the jalkar, which he decreed The zamindar's clai n was therefore judged to be established. AMRITESWARI DEBI *v* SECRETARY OF STATE FOR INDIA I. L R., 24 Calc , 504 [L. R., 24 I. A., 33 1 C. W. N , 249

———— ss 52, 73—*Sub-Assistant Conservator of Forests—Suspicion of theft—Seizure and detention of timber—Want of a valid pass*—A Sub

mission of a forest offence arising from the want of a valid pass According to s 52 of the Indian Forest Act (VII of 1878), a forest officer cannot justify the detention of goods on the ground of an offence against the forest laws, if he has not taken

FOREST ACT (VII OF 1878)—*continued*

the course which that section requires of bringing the matter before a Magistrate WAMAN RAMCHANDRA GAUNDE *v* DIPCHAND BALKISAN

[I. L. R., 15 Bom., 229

———— s. 54 and s 25—*Conviction of offence under Forest Act—Subsequent order for confiscation of boats—Confiscation a punishment —When such order should be made.*—Certain accused persons were tried summarily and convicted under s 25 of the Indian Forest Act, and sentenced to pay fines By a subsequent order under s 54 of the same Act their boats were confiscated *Held* that under the terms of s 54 an order of confiscation cannot be regarded as an order incidental on the conviction The confiscation is by the terms of that section declared to be a punishment, for it is in addition to any other punishment prescribed for the offence. That, being a punishment, the order should have been passed simultaneously with the other punishment for the offence of which the accused have been convicted *Empress* v *Nathu Khan, I L. R , 4 All , 417,* referred to AINUDDI SHEIKH *v* QUEEN-EMPRESS I. L. R., 27 Calc., 450

———— ss. 54, 58—*Offence under Act—Order confiscating produce* —No order confiscating forest produce which is the property of Government in respect of which a forest offence has been committed is necessary or can be made All that need be done is to direct a forest officer to take charge of such forest produce An order directing the confiscation of forest produce not belonging to Government, in respect of which a forest offence has been committed, can only be made at the time the offender is convicted EMPRESS *v* NATHU KHAN

[I. L. R., 4 All., 417

———— s. 58

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES

[I. L. R., 4 All., 417

———— s. 69—*Cattle Trespass Act (I of 1871), s 11—Cattle straying in a reserved forest —Seizure by forest officer of such cattle.*—S 11 of the Cattle Trespass Act (I of 1871) having been applied to forests by s 69 of the Indian Forest Act (VII of 1879) the seizure by a forest officer of cattle found straying in a reserved forest is legal, even though no damage has actually been done QUEEN-EMPRESS *v* BABAJI LAXMAN

[I L. R., 22 Bom , 933

———— ss. 75 and 76- *Khoti tenure—Khoti khasgi land—Right to cut trees—Dunlop's proclamation—Right of Government to rescind proclamation—Crown grant, Construction of*—In 1824, by a proclamation, known as Dunlop's proclamation, it was declared that the owners of land in the Ratnagiri District, on which teak and other forest trees were growing or should thereafter be grown,

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mation which declared that the "Government resumed, in regard to forest, all the seignorial rights

FORFEITURE OF PROPERTY—*continued.*

8. ——— **Forfeiture of land subject to rent**—*Act XXV of 1857—Right to arrears of rent due at time of forfeiture.*—Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to rent, the person entitled to the rent is not entitled to recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may susequently accrue. NEELMONEY SINGH DEO *v.* GOVERNMENT. NEELMONEY SINGH DEO *v.* CHUTTERDHUN SINGH . . **Marsh., 308: 2 Hay, 226**

9. ——— **Queen's Proclamation, Effect of**—*Conviction for rebellion—Act XI of 1857, s. 1—Remission of punishment.*—Where *N* and *M* were convicted of rebellion under Act XI of 1857, s. 1, and sentenced, the former to be transported for life and to have all his property confiscated and the latter to have all his property confiscated, the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to other property of the convicts the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1858), coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated. *Held* also that the property in question, being Government paper, was liable to confiscation; and lastly, that *N*'s widow was not entitled to maintenance out of the property confiscated by the State. GUNGA BAEE *v.* HOGG . **2 Ind. Jur., N. S., 124**

10. ——— **Retrospective effect of forfeiture after conviction**—*Attachment in execution—Act XI of 1857, s. 1—Penal Code, s. 121.*—In execution of a decree against the defendant, the plaintiff, on 17th July 1871, attached certain property in Calcutta belonging to the defendant. On 26th July 1871, the defendant was convicted, under s. 1 of Act XI of 1857 and also under s. 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and forfeiture of all his property. The offence for which he was convicted was committed in September 1861. *Held* that the forfeiture took effect from the date of the commission of the offence, and therefore any attachment subsequently made was invalid. GANESHLALL *v.* AMIR KHAN

[8 B. L. R., 83: 17 W. R., 80

11. ——— **Effect of forfeiture**—*Confiscation under Act X of 1858.*—The confiscation of a village under Act X of 1858 cancels the rights of the tenants, and the fact that they were permitted to retain their holding on rent and enjoy the produce of the trees for some years subsequent to the confiscation, does not revive the rights which are absolutely avoided by the confiscation. TEEKUM SINGH *v.* DULLO . . . . **2 Agra, 324**

12. ——— *Act X of 1858—Power of Government to cancel tenures and eject raiyats.*—Act X of 1858 gave Government the power as to landed property acquired by confiscation thereunder (if it thought fit to exercise it) of ejecting raiyats. As to under-tenures, the words are of still stronger import. But it must be held rather to confer a power to cancel than absolutely and without act done to annul the tenures. DOORGA PERSHAD *v.* ZORAWUR . . . . **2 N. W., 75**

13. ——— *Act X of 1858, s. 7—Under-tenures.*—The Legislature did not intend to include in the term "under tenures," in s. 7 of Act X of 1858, the holdings of raiyats, but employed that term in the sense in which it is commonly used in this part of India, as applying to tenures of a proprietary character inferior to the zamindari, but superior to the khastkaree tenure. Consequently such holdings were by that Act made voidable, but not absolutely void. The power of avoiding such holdings expired with the Act. BASIT ALI *v.* MAN SINGH . . . **2 N. W., 110**

14. ——— **Procedure in forfeiture**—*Criminal Procedure Code, 1861, ss. 131, 132.*—The procedure prescribed in ss. 131 and 132 of Act XXV of 1861 must be followed before an order confiscating property is made. BEHARY SHAHA *v.* NUBBY KHAN . . . **9 W. R., Cr., 13**

15. ——— **Evidence of forfeiture**—*Order of confiscation—Attachment, Evidence of.*—An order of confiscation or an order sanctioning confiscation is not equivalent to an actual confiscation by way of attachment or seizure. A list of confiscated houses is not by itself proof of actual attachment. DEO KARUN *v.* MAHOMED ALI SHAH

[3 N W., 328

16. ——— **Power of Magistrate to seize property of convict.**—A Magistrate has no power to seize the property of a person convicted where he has not been directed to pay a fine. ANONYMOUS

[4 Mad., Ap., 28

17. ——— **Charges on forfeited property**—*Debts and liabilities.*—General debts and liabilities are not charges against property forfeited upon conviction of felony. HURRY DOSS BANERJEE *v.* HOGG . . . **1 Ind. Jur., O. S., 86**

18. ——— **Offences for which forfeiture may be enforced**—*Penal Code, s. 62.*—S. 62 of the Penal Code, which provides for forfeiture of property of offenders, limits it to cases where the parties shall have been transported or sentenced to imprisonment for at least seven years. QUEEN *v.* KRIPAMOYEE CHASSANEE

[8 W. R., Cr., 35

19. ——— *Penal Code, s. 62.*—Where a zamindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge,

FORFEITURE OF PROPERTY—*continued.*

See CASES UNDER RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

See WILL—CONSTRUCTION

[I. L. R., 20 Calc., 15

———— of rebel's property

See CASES UNDER LIMITATION—ACT IX OF 1859, s 20

1. ——— Confiscation—*Absconding of fender—Beng Reg XI of 1796, Sale under—Construction of Regulation* —Regulation XI of 1796, being a highly penal statute, should be construed strictly As it makes no express provision for the case of joint proprietors of land, or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the Legislature intended to authorize the confiscation of the property of any person other than the delinquent A sale under Regulation XI of 1796 does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims JUGGOMOHUN BUKSHEE v ROY MOTHOORANATH CHOWDHRY

[7 W. R., P. C., 18 : 11 Moore's I. A., 223

2 ———— *Beng Reg XI of 1796—Forfeiture against some members of joint Hindu family* —Under Regulation XI of 1796, the Governor General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature who should abscond or conceal themselves so as not to be found upon process issued against them After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been regularly and legally done, unless such presumptions were rebutted by sufficient evidence Where a forfeiture under Regu

rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance GOLAB KOONWAR v COLLECTOR OF BENARES

[7 W. R., P. C., 47 : 4 Moore's I. A., 246

3 ———— *Seizure and attachment under Act XXV of 1857 and IX of 1859—Confiscation of rebel's property* —The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859, pointed out

seizure within the meaning of s 20, Act IX of 1859, is such a taking possession of the property forfeited as is referred to in s 7, Act XXV of 1857, not merely formal but actual BYJNATH SINGH v SOLANO 14 W. R., 114

FORFEITURE OF PROPERTY—*continued*

4. ———— Attachment against forfeited property—*Act XXV of 1857—Priority to Government* —Judgment creditors having *bonâ fide* attachments upon property at the time that the property of their debtors become forfeited to Government under Act XXV of 1857 are entitled in priority to Government ODIT DASS v GOVERNMENT

[Marsh., 259 2 Hay, 117

5 ———— *Right of decree-holder* —A decree holder is not entitled to have his decree satisfied by sale of the judgment debtor's properties which have been confiscated by Government for rebellion unless he can show that they were attached in execution of his decree before the confiscation An attachment cannot be presumed to have existed or continued from the fact that there was a proclamation of sale before confiscation RADHA BIBEE v GOVERNMENT 2 Hay, 562

6. ———— *Withholding of payment of annuity—Act IX of 1859, s 18* —Plaintiff joined with the rebels and took a leading part with them A reward was set upon him as a rebel leader, and after a time he was captured.

make attachment of rebels' property, it was with reference to the nature of the property equivalent to

7. ———— Forfeiture of share in joint Hindu family property—*Mitakshara law—Act XXV of 1857, s 3* —*B S*, the father of the plaintiff and in possession of immoveable property subject to the Mitakshara law inherited from his ancestor, was on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to Government On the 16th April 1858, *B S* was arrested, and being tried and con-

did not, on the death of *B S*, become entitled to his estate THAKOOR KAPILNATH SAHI v GOVERNMENT . 13 B. L. R., 445: 22 W. R., 17

FORGERY—*continued.*

entitled to the title of "Luskur," filed a sanad before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 464 of the Penal Code. *Held* on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute "an intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code. JAN MAHOMED *v.* QUEEN-EMPRESS. WARIS MEAH *v.* QUEEN-EMPRESS

[I. L. R., 10 Calc., 584

7. ———— **Using forged document**—*Copy of document, Production of.*—A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it. QUEEN *v.* NUJUM ALI

[6 W. R., Cr., 41

8. ———— **Intention, Proof of**—*Making false document.*—A conviction for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made. QUEEN *v.* RAMGOPAL DHUR . . . 10 W. R., Cr., 7

9. ———— **False assertion of title**—*Dishonest and fraudulent intent.*—A prosecutor in a case of forgery, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title, and that accused asserted the title dishonestly or fraudulently in the sense in which these terms are used in the Penal Code. QUEEN *v.* KISHEN PERSHAD . . . 2 N. W., 202

10. ———— **Attempting to use fabricated evidence**—*Knowledge of forgery—Intention to use fabricated evidence.*—Where a prisoner produced as evidence an account book, one page of which had been fraudulently abstracted and another substituted for it,—*Held* that he was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered. QUEEN *v.* MODHOOSOODUN SHAW . . . 7 W. R., Cr., 23

11. ———— **Intention to defraud**—*Wrongful gain or wrongful loss—Avoidance of litigation.*—*A* signed *B*'s name to petitions presented by *C* to the mamlatdar requesting his summary assistance, under Regulation XVII of 1827, for the recovery of rents from *B*'s tenants. *Held* that, even if *A* had no authority from *B* to sign his name and if *A* wished to deceive the mamlatdar into the belief that it was *B* himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to *A* or *B*, *A*'s act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government. REG. *v.* BHAVANISHANKAR

[11 Bom., 3

12. ———— **Intention to injure**—*Penal Code, s. 463.*—To constitute the offence of forgery as defined by s. 463 of the Penal Code, it is not sufficient to prove that in making the document in respect of which the offence is charged, the accused knew that the document might injure, but it must be proved that it was his intention that it should injure another. FEDA HOSSEIN *v.* EMPRESS

[10 C. L. R., 184

13. ———— **Forgery of copy of document**—*Penal Code, s. 463.*—The forgery of the copy of a document for the purpose of the same being used in evidence comes within the definition of forgery as contained in s. 463 of the Penal Code. ESSAN CHUNDER DUTT *v.* PRANNAUTH CHOWDHRY

[W. R., F. B., 71: Marsh., 270: 2 Hay, 236

14. ———— **Unauthorized use of name as agent**—*Signing vakalatnamah in name of decree-holders.*—The signing of a vakalatnamah in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code. QUEEN *v.* GYANEE RAM

[6 W. R., Cr., 78

15. ———— **Antedating a document**—*Penal Code, ss. 463, 464.*—Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and cl. 1, s. 464 of the Penal Code. QUEEN *v.* SOOKMOY GHOSE . . . . 10 W. R., Cr., 23

16. ———— **Falsification of record in order to conceal negligence**—*Fraud—Penal Code (XLV of 1860), ss. 463, 464.*—Falsification of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464 of the Penal Code (Act XLV of 1860). EMPRESS *v.* SHANKAR . . . I. L. R., 4 Bom., 657

17. ———— **Falsification of book to conceal frauds committed**—*Penal Code, ss. 463, 466.*—The subsequent falsification of a roznamcha book kept in the office of a Deputy Inspector of Schools by the mohurrir in charge thereof, for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to fall within the definition of

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who added a sentence of forfeiture of the rents and profits of the prisoner's estates under s 62 of the Penal Code, the High Court set aside the sentence under s 62 as too severe That sentence should be inflicted for offences of the most atrocious kind or for offences committed under the most aggravated circumstances QUEEN v MAHOMED AKIR *alias* TOTAH MEAH 12 W R., Cr, 17

20 ———— Sale of forfeited property—*Condition of sale—Act of State—Right of suit against Government*—Where a sale of landed property, which has been executed by the Government was made by Government without any restriction

highest bidder In selling the property of rebels which it had confiscated the Government does not perform an act of State, but stands in the situation of an individual selling his property by auction and a suit may therefore be properly brought against the Government by the purchaser, if the Government refuses to give up possession or transfer the possession to another SHEO LALL BOHREE v MAHOMED [13 W R, P. C., 4

21 ———— *Rights of auction purchaser*—Rights acquired by a purchaser at auction from Government of the confiscated property of a rebel cannot be defeated or lessened by any subsequent act of the Government ESHREE PERSHAD v DEBEE CHURN 2 N W, 470

22 ———— Order for confiscation passed subsequently and not at time of conviction—When a person has been tried and convicted in the Court of a Special Commissioner an order of confiscation of his property should be made at the time of the trial, and not subsequently IZZUTTOOLNISSA BEEBEE v HUSNA KOOUR [1 N W., 101: Ed. 1873, 151

23. ———— Order of confiscation by independent Chief—*Cognizance by English*

be respected by English Courts of Justice The fact of such confiscation, if disputed, must be ascertained by the Court in the same manner as are all other facts which are in issue between the parties SHOAY ATT v SHOAY DOANG 14 W R., 218

24 ———— Order of forfeiture, Irregularity in making—*Criminal Procedure Code, 1861, s 184*—An order of forfeiture under s 184, Code of Criminal Procedure, if substantially legal cannot be disturbed for an immaterial error of procedure BAIJOO BOUL v. GUGUN MISSER QUEEN v. GUGUN MISSER 8 W. R, Cr, 61

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See APPEAL IN CRIMINAL CASES—PROCEDURE B L R., Sup Vol, 426
See CHEATING I L R., 12 Mad., 114

———— Abetment of—

See ATTEMPT TO COMMIT OFFENCE [I. L. R, 16 All., 409

———— Committal by Civil Court for—

See CRIMINAL PROCEEDINGS [I L R, 16 Bom, 729
I L R., 18 Bom, 581

See CASES UNDER SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION

1. ———— Requisites for offence—*Penal Code, s 29—False document*—To constitute the offence of forgery, the simple making of a false document is sufficient It is not necessary that the document should be published or made in the name of a really existing person A writing which is not legal evidence of the matter expressed may yet be a document within the meaning of s 29 of the Penal Code if the parties framing it believed it to be and intended it to be, evidence of such matter QUEEN v SHIFAIT ALI [2 B L R, A Cr, 12 10 W R., Cr, 61

2. ———— *Penal Code, ss 463 467—Criminal Procedure Code 1869 s 195*—The word "forgery" is used as a general term in s 463 of the Penal Code (Act XLV of 1860), and that section is referred to in a comprehensive sense in s 195 of the Criminal Procedure Code (Act X of 1882) so as to embrace all species of forgery and thus includes a case falling under s 467 of the Penal Code QUEEN EMPRESS v. TULJA [I L R, 12 Bom., 36

3 ———— "Valuable security"—*Settlement of accounts—Penal Code s 30*—A settlement of accounts in writing though not signed by any person is a "valuable security" within the definition of s 30 of the Penal Code EX PARTE KAPALAVAYA SARAYA 2 Mad., 247

4 ———— *Copy of lease—Penal Code, ss 30 467*—A copy of a lease is not a valuable security within the meaning of s 30 of the Penal Code, and therefore a conviction under s 467 for fabricating such a document cannot be supported REG v KHUSAL HERAMAN [4 Bom., Cr, 28

5 ———— *Deed of divorce—Penal Code, s 30*—A deed of divorce is a "valuable security" within the meaning of s 30 of the Penal Code The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s 471 of that Code QUEEN v AZIMOODEEN [11 W. R., Cr, 15

6 ———— *Penal Code, ss 24, 25, 464, 467, 471—Using as genuine a forged document with intent to defraud—Sanad conferring a title of dignity*—The accused, in order to obtain a recognition from a settlement officer that they were

FORGERY—*continued.*

sent to his employer for the purpose of showing the application of the money. He was charged (1) with criminal breach of trust as a servant (s. 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan; (2) with forgery (s. 467) in respect of the challan; and (3) with using a forged document (s. 471) in respect of the same document. The accused was convicted on all these charges. It was contended that the charge under ss. 467 and 471 were bad, as there was no evidence to support them, and even admitting the alteration of the challan such alteration did not come within the term "forgery" as used in the Penal Code, not having been made with the intention of causing any wrongful gain or wrongful loss, but with the intention of screening the offence of criminal breach of trust which had been previously committed. *Held*, further, that it is not necessary for the purpose of constituting the offence of forgery that the false document should be made with the intention of committing a fraud or dishonesty in the future, and that, if the intention with which a false document is made be to conceal a fraudulent act which has been previously committed, the intention cannot be other than to commit fraud, and the offence of forgery as defined in s. 463 is committed. The word "fraudulently" as used in s. 464 must not be taken as being the same as "dishonestly" and implying wrongful gain or wrongful loss, but must be taken to mean as "with intent to defraud." *Empress of India* v. *Jiwanand, I. L. R., 5 All., 221,* and *Queen-Empress* v. *Girdhari Lal, I. L. R., 8 All., 653,* dissented from. *Queen-Empress* v. *Vithal Narain Joshi, I. L. R., 13 Bom., 515 note,* and *Queen-Empress* v. *Sabapati, I. L. R., 11 Mad., 411,* followed. *Held* therefore that upon the facts of the case there was ample evidence to show that the accused had abetted the forgery of the challan and had used the sum, and that he had been properly convicted of all the offences charged against him, except that of the actual forgery, and that he should have been convicted of abetment of that offence. LOLIT MOHAN SARKAR *v.* QUEEN-EMPRESS . **I. L. R., 22 Calc., 313**

28. ——— **Document with illegible seal and signature**—*Using forged document—Penal Code, ss. 466, 471.*—A conviction may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon. QUEEN *v.* PROSONNO BOSE **[5 W. R., Cr., 96**

29. ——— **Alteration of Collectorate challan**—*Penal Code, s. 467.*—The fraudulent alteration of a Collectorate challan is the forgery of a document as described in s. 467 of the Penal Code. QUEEN *v.* HURISH CHUNDER BOSE **[W. R., 1864, Cr., 22**

30. ——— **Forging copy of document which is unavailable when forged**—*Penal Code, s. 467.*—The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under s. 467 of the Penal Code. REG. *v.* NARO GOPAL **[5 Bom., Cr., 56**

31. ——— **Falsification of document with intent to deceive**—*Penal Code, s. 468.*—*Held* that, where a person's object was to deceive his employer by falsifying account books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 168 of forgery with intent to cheat, instead of under s. 465 of simple forgery. QUEEN *v.* BANESSUR BISWAS . . . . . . **18 W. R., Cr., 46**

32. ——— **Fraudulent using of document as genuine**—*Penal Code, s. 471.*—There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471 of the Penal Code. QUEEN *v.* JAHA BUX **[8 W. R., Cr., 81**

33. ——— **Using document knowing it to be forged**—*Penal Code, s. 471.*—To support a conviction of the offence under s. 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged. QUEEN *v.* BHOLAY PRAMANICK . **17 W. R., Cr., 32**

34. ——— **False alteration of police diary**—*Penal Code, s. 471.*—The false alteration of a police diary by a head constable was held to fall under s. 471 of the Penal Code, as the forgery of a document made by a public servant in his official capacity. QUEEN *v.* RUGHOO BARICK **[11 W. R., Cr., 44**

35. ——— **Evidence of fraudulent use of document**—*Penal Code, s. 471—Requisites for findings for conviction.*—Where the accused was charged under s. 471 of the Penal Code with having, in a suit brought against him by the kamdar of his sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing, or having reason to know, it to be a forged document, and it appeared the accused was in possession of the property, and the document in question purported to be a deed of gift from his father,—*Held* it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when he used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. KHOORSHED KAZI *v.* EMPRESS . . . . **8 C. L. R., 542**

36. ——— *Penal Code, ss. 464, 470, 471—Using a "forged" document—Using "false" evidence—"Dishonestly"—"Fraudulently"—Act XLV of 1860, ss. 24, 25, 196.*—The vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed after the alteration be designated a

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forgery as given in the Penal Code. QUEEN v JAGESHUR PERSHAD 6 N. W., 56

18 ——— **Proof of deception**—*Making false document—Penal Code, s 464*—It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document before the accused can be found guilty under s 464 of the Penal Code of making a false document QUEEN v NUJEEBUTOOLLAH [9 W R., Cr., 20

19 ——— **False entries in account book**—*Penal Code, s 464*—The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money

20. ——— **Ignorance of contents of document**—*Penal Code s 464—Absence of deception*—Where the accused, a mohurrir in a registry office, was charged with making false endorsements of registration on the back of certain deeds, which endorsements were signed by the Registrar, it was held that, before he could be convicted of forgery under part 3, s 464 Penal Code, it must be shown that the Registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing QUEEN v DWARKANATH GHOSE 20 W. R., Cr., 49

21. ——— **Misrepresentation in document by false description**—*Penal Code, s 464*—A misrepresentation by false description of one's position in life falls under the heading of cheating, and not under that of forgery Where, therefore, a document purported to have been signed by *G L*, a patwari, and it was said that it had been signed by *G L*, but at a time when *G L* was not a patwari, it was held that the document was not a forgery within s 464, Penal Code JOY KURN SINGH v MAN PATUCK 21 W. R., Cr, 41

22. ——— **Fabricating false evidence**—*Penal Code, ss 192 and 464—Alteration of date of document*—Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently" within cl 2, s 464 of the Penal Code, but fabricating false evidence within s 192 IN RE EKBAR ALI EMPRESS v EKBAR ALI I. L R., 6 Calc, 482

23 ——— **Altering office report to screen negligence.**—Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Penal Code QUEEN v LAL GUMUL [2 N. W., 11

24. ——— **Making false entries in account book with the intention of concealing criminal breach of trust**—*Act XLV of 1860 (Penal Code), ss 24, 25, 465*—Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account book

Code *Queen* v *Jageshur Pershad, 6 N W, 56,* and *Queen* v. *Lal Gumul, 2 N W, 11,* followed. EMPRESS v JIWANAND I. L R, 5 All, 221

25. ——— **False entry in public record**—*Penal Code, ss 192, 465, 466*—S 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s 465 of the Penal Code *Held* on appeal that the accused ought properly to have been convicted under s 192 of the Code, the provisions of that section not being confined to false evidence to be used in judicial proceedings IN THE MATTER OF JUGGUN LALL 7 C. L. R, 356

26 ——— **Fabrication of a receipt as a voucher to cover a contemporaneous embezzlement**—*Penal Code s 471—Using a forged document*—A postmaster misappropriated a certain sum of money, at the same time made a false document purporting to be a receipt signed by the person to whom the money was payable He was convicted of using a forged document under s 471 of the Indian Penal Code. It was contended that no forgery had been committed, because the receipt was made merely to cover the embezzlement *Empress of India* v *Jiwanand, I L R, 5 All, 221* *Held* that the conviction was right A debtor who fabricates a release to screen himself from liability to pay the debt cannot be said not to be guilty of forgery because he intended by the fabrication to cover a dishonest purpose QUEEN-EMPRESS v SABAPATI I L R, 11 Mad., 411

27. ——— **Fabrication of a document to conceal a contemporaneous or past embezzlement**—*Penal Code, ss 463, 464, 467, and 471—"Dishonestly"—"Fraudulently"*—An accused person who was in the service of zamindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a kist received from them a certain sum of money with no specific instruction as to its application On receipt of that money, he paid a portion only of it into the Collectorate on account of the

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debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for R18, the whole amount due. It subsequently appeared that the receipt was one for R8, which the debtor had altered by adding the figure "1," so as to make it appear that the receipt was for R18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him, that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim, and that therefore he ought not to have been convicted of an offence under s. 471 of the Penal Code. QUEEN-EMPRESS *v.* HUSAIN . **I. L. R., 7 All., 403**

42. ———— *Penal Code, s. 471—Act XLV of 1860, ss. 24, 25—Fraudulently using as genuine a forged document—"Dishonestly"—"Fraudulently."*—In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent used by the prisoner had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471. QUEEN-EMPRESS *v.* SHEO DAYAL . . . . **I. L. R., 7 All., 459**

43. ———— **Possession of counterfeit seals, etc.**—*Intention to commit forgery—Penal Code, ss. 472, 473.*—Counterfeit seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. QUEEN *v.* KRISTO SOONDER DEB **[2 W. R., Cr., 5**

44. ———— *Penal Code, s. 473—Intent to commit forgery.*—Where several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that, under s. 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals in their possession were for the purpose of committing one particular forgery. QUEEN *v.* GOLUCK CHUNDER . **13 W. R., Cr., 16**

45. ———— **Attempt to commit forgery**—*Abetment of forgery.*—To prepare, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. REG. *v.* PADALA VENKATASAMI **[I. L. R., 3 Mad., 4**

46. ———— *Penal Code (Act XLV of 1860), ss. 465 and 511.*—A person cannot be convicted of an attempt to commit an offence under s. 511 of the Penal Code, unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document, and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 of the Penal Code for attempting to commit forgery. *Held* that the conviction was wrong, and must be set aside. IN THE MATTER OF THE PETITION OF RIASAT ALI *alias* BABU MIYA *alias* BODIUZZUMA. EMPRESS *v.* RIASAT ALI *alias* BABU MIYA *alias* BODIUZZUMA **[I. L. R., 7 Calc., 352 : 8 C. L. R., 572**

47. ———— *Suspicious document used in a case—"Responsibility of pleader in conduct of case—"Guilty knowledge"—Penal Code (Act XLV of 1860), s. 471—Sanction for prosecution.*—Sanction was given for the prosecution of a pleader who in the conduct of a case had presented to the Court for his clients a document of suspicious appearance and which his clients were charged with having forged. The sanction was granted by the Sessions Judge on the ground that the document bore on its face such marks of concoction that the pleader's suspicions must have been aroused at the first sight of it, and that, had he examined it, as he ought to have done, he would either have rejected it or have advised his client to produce it in Court at his own risk. On appeal to the High Court,—*Held* that the sanction should be revoked. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution it should be shown that he had been a party (principal or accessory) to the concoction of the document, or that he had the knowledge that it was concocted. The mere fact that his suspicions ought to have been aroused by the sight of the document was not *primâ facie* evidence that he knew, or had reason to believe, the document to be forged. IN RE RANCHHODDAS **[I. L. R., 22 Bom., 317**

48. ———— **Abetment of forgery by writing out the deed**—*Unregistered document purporting to be a valuable security—Penal Code (Act XLV of 1860), ss. 109, 114, and 467.*—The accused was not only the writer, but also took an active part in the preparation of a document, the alleged executant of which was dead before the date

FORGERY—*continued.*

"fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s 471 of the Penal Code Further, that their use of it did not render them liable to conviction under s 196 of that Code. EMPRESS OF INDIA v. FATEH

[I. L. R, 5 All, 217

37. ———— Public servant framing incorrect record—*Act XLV of 1860 (Penal Code), ss 218, 463, 471* —A public servant, in charge as such of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under s 218 of the Penal Code, nor, such

38 ———— Unnecessary use of forged document—*Penal Code, ss 109, 471—Fraudulent intention* —Where a person, in the course of an action brought against him to gain possession of a ... ie purpose of ... be no neces... arly fraudu... without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction, and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged IN THE MATTER OF DHUNUM KAZEE EMPRESS v DHUNUM KAZEE

[I. L. R., 9 Calc, 53: 11 C L. R, 169

39. — — Intention ...

clerkship then vacant in that office An endorsement on his application, recommending him for the post and purporting to have been made by the Subdivisional Officer of *B*, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Subdivisional Officer at *B*, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Subdivisional Officer, having

... posted in the local post office, the accused fabricated a third document, purporting to be a letter from the Subdivisional Officer to the Postmaster asking him to stop the despatch of the demi official letter The accused was charged with, and convicted in the Sessions Court of, the offence of forgery, under s 464

40.———————— *Penal Code, s. 465, and ss 24 and 25—"Dishonestly"—"Fraudulently"* —A Treasury Accountant was convicted of offences under ss 218 and 465 of the Penal Code under the following circumstances A sum of R500, which was in the Treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques After the withdrawal of the R500, but before such withdrawal had been discovered, the representative of the payee applied for payment The prisoner then upon two occasions wrote reports to the effect that the R500 in question then stood at the payee's

... for the transfer of the money to the Civil ...

... to *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the R500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's R500, that under these circumstances he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s 24 or s 25 of the Penal Code, and that therefore his guilt under s 465 had not been made out, and the conviction under that section must be set aside QUEEN EMPRESS v GIRDHARI LAL

[I. L. R, 8 All, 653

41. ———————— *Penal Code* ... *genuine a* ... *dulently."* ... ed to the ... might be ... until the

FORGERY—*continued*

of the document, and the person who really had an interest under the document was convicted under s 82 of the Registration Act (III of 1877) But

the accused was a party to or took any part in the actual forgery of the document or that he was present on the occasion when it was forged the proper section to convict him under would be s $\frac{109}{467}$ that is of abetment of forgery and not s $\frac{114}{467}$ An unregistered document though it may not be a valuable security until the registration is completed still purports to be a valuable security within the meaning of s 467 of the Penal Code *Queen Empress* v *Ramasami I L R 12 Mad, 148* approved of KASHI NATH NAEK v QUEEN EMPRESS
[I L R, 25 Calc, 207
1 C W N, 681

49 ———— *Penal Code*

and inserted the false page in his character roll he was rightly convicted of abetment only *Queen Empress* v *Shoshi Bhushan I L R 15 All 210* ... I L R 13 ... *Queen Empress* ... to QUEEN ...
I L R, 21 All., 113

50 ———— Intention—*Penal Code s 466*—Where a document is made for the purpose of

ing the document HARADHAN MAITI v QUEEN EMPRESS
I L R., 14 Calc, 513

51 ———— Cheating by personation—*Penal Code ss 415 419 463*—*A* falsely represented himself to be *B* at a university examination got a hall ticket under *B*s name and headed and signed answer papers to questions with *B*s name *Held* that *A* committed the offences of forgery and cheating by personation QUEEN EMPRESS v APPASAMI
I L R., 12 Mad., 151

52 ———— Using a forged document—*Penal Code s 471*—*Fraudulent intention.*—The accused passed the Public Service Examination in 1883 and in a certificate given him by the educational authorities of his having passed his age was correctly stated as 23 The accused sent a copy of this certificate to the Collector with a petition for

Code. QUEEN EMPRESS v VITHAL NARAYAN
[I L R, 13 Bom, 515 note

53 ———— *Cheating*—*Fraudulen* ... *Code* (*Act XLV* ... —In construing ... the primary an ... the accused must be looked at *Queen Empress* v *Girdhari Lal I L R 8 All 653* cited Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Registrar with his application for permission to appear a certificate to the effect *inter alia* that he is of good moral character and has submitted himself to a test examination by and furnished exercises to the person signing the certificate sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination Such certificate has to be signed by one or other of the persons mentioned in the rules amongst them being the head master of a high school under public management On such certificate being sent to the Registrar and the prescribed fee paid that officer forwards a receipt to the candidate with his roll number thereon which is also an authority for him to appear at the examination and enter the examination hall A private student forwarded to the Registrar with his application for permission to appear a certificate in the prescribed form purporting to be signed by the head master of a high

applicant appeared took his seat in the hall at the desk allotted to him and commenced the examination Upon charges being preferred against the applicant of using as genuine a forged document (s. 471) and attempting to cheat (ss. 415 and 511)—*Held* that his primary object or intention was by falsely inducing the Registrar to believe that the certificate was signed by the head master of a Government school under public management to be permitted to sit for the Entrance Examination and that such intention could not be held to be 'fraudulent' or 'dishonest' within the meaning

FRAUD—*continued.*

1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*continued.*

6. ——— *Proof of allegation of fraud.*—A plaintiff who charges another with fraud must himself prove the fraud, and he is not relieved from this obligation because the defendant has himself told an untrue story. MAHOMED GOLAB *v.* MAHOMED SULLIMAN . I. L. R., 21 Calc., 612

7. ——— *Allegation of fraud and collusion.*—Where a party alleges the fraud or collusion of the opposite party as a ground of relief, general allegations of it will not be sufficient, but the instances upon which such allegations are founded must be stated, as it is unreasonable to require the opposite party to meet a general charge of that nature without giving him a hint of the facts from which it is to be inferred. JOOMNA PERSHAD SOOKOOL *v.* JOYRAM LALL MAHTO . 2 C. L. R., 26

8. ——— *Charge of fraud—Alteration in nature of fraud charged.*—It is a well-known rule that a charge of fraud must be substantially proved as laid, and that, when one kind of fraud is charged, another kind cannot, on failure of proof, be substituted for it. In a suit by the Official Assignee to recover a sum which it was alleged had been improperly and fraudulently paid away from the estate of an insolvent, the plaint as presented alleged the fraudulent concealment of the payment from the Assignee. Afterwards when all the evidence had been taken and it had been established that the assignee knew of the payment, this was amended to the statement that, if he did know of it, he had no power to consent to it, and that his consent would not be binding, the payment being a fraud upon the Court. *Held* that the amendment at the stage when it was made was not permissible. The High Court having decreed the claim on a finding of fraud different from either of the above,—*Held* that on this ground alone the judgment might have been reversed. *Montesquieu* v. *Sandys, 18 Ves. Jun., 302,* followed. ABDUL HOSSEIN ZENIAL *v.* TURNER [I. L. R., 11 Bom., 620 L. R., 14 I. A., 111

9. ——— *General allegations of fraud—Plaint, Amendment of—Evidence of fraud—Objection taken for first time in special appeal.*—Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances of the alleged fraud, it ought to be immediately, on presentation, rejected or returned for amendment, as it does not disclose a cause of action. The plaintiff sued to recover damages caused by the defendant's fraud during his management of the plaintiff's estate from 1870 to 1884. The plaint disclosed no specific instances of the fraud imputed to the defendant. The Court of first instance, without going into evidence, rejected the plaintiff's claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances

FRAUD—*continued.*

1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*continued.*

of the alleged fraud. *Held* that the amendment could not then be allowed, and the suit must fail. When fraud is charged, the evidence must be confined to the allegations. KRISHNAJI *v.* WAMNAJI [I. L. R., 18 Bom., 144

10. ——— *Oral evidence.*—Oral evidence of witnesses deposing in general terms is not sufficient to establish fraud on the part of a former patnidar in converting mal lands of the patni in excess of 100 bighas into rent-free lands, so as to entitle the present patnidar to resume them as invalid lakhiraj. SHIBSOONDUREE DEBIA *v.* MAHOMED ALI . . . W. R., 1864, 137

11. ——— *Suit by minor to recover share of consideration paid for lease.*—Suit for the recovery of a minor's share of the consideration paid for a maurasi lease granted by the minor's co-proprietors on their own behalf and as his guardians, in order to raise money required for the expenses of the joint estate, which lease was cancelled (on the suit of the minor when he came of age), so far as his share was concerned. *Held* that the plaintiff was not entitled to recover without proof of fraud, and that the evidence tendered by the plaintiff (namely, the record of the case instituted by the minor for the cancelment of the lease) was not admissible to prove the allegation of fraud. DOORGA CHURN BHUTTACHARJEE *v.* SHOSHEE BHOOSHUN MITTER [5 W. R., S. C. C. Ref., 23

12. ——— **Fraudulent transaction**—*Decree obtained after compromise of appeal.*—A decree of an Appellate Court obtained after a compromise and an agreement not to prosecute the appeal was held to be an adjudication obtained not only with great impropriety, but in effect by fraud. RAJMOHUN GOSSAIN *v.* GOURMOHUN GOSSAIN [4 W. R., P. C., 47 : 8 Moore's I. A., 91

13. ——— *Non-payment of debt.*—The mere non-payment of a debt does not necessarily prove collusion between the debtor and his vendor to defraud the creditor. Fraud must not be presumed without good and probable grounds. KISHENDHUN SURMAH *v.* RAMDHUN CHATTERJEE [6 W. R., 235

14. ——— *Taking benami lease.*—The mere taking a benami lease, unaccompanied by any other circumstance of suspicion, does not *per se* constitute fraud. MUNNOOLALL *v.* REET BHOOBUN SINGH . . . 6 W. R., 283

15. ——— *Purchaser obtaining assent of beneficial as well as ostensible owner to make his title good.*—There is no fraud in a purchaser securing the assent both of the ostensible and beneficial owners to his purchase, so as to acquire a good title. KALEE MOHUN PAUL *v.* BHOLANATH CHAKLADAR . . . . 7 W. R., 138

16. ——— *Sale for arrears of rent—Benami purchase—Act VIII of 1835.*—Plaintiff sued for possession on a declaration of his itmamee right to a portion of a talukh, for which his

FRANCE, LAW OF—

See FRENCH LAW

FRANCHISE, RIGHT OF—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 31
[I L R., 19 Calc , 192, 195 note, 198

FRAUD

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS

See CASES UNDER LIMITATION ACT 1877 s 18 (1871 s 19)

See CASES UNDER LIMITATION ACT 1877 ART 95 (1871 ART 95 1859 s 10)

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL.
[Bourke, A O C, 1 2 Hyde, 289 Cor, 83
1 Hay, 461
6 W R., 252
16 W R 80
I L R, 7 Calc, 199

See RES JUDICATA—ESTOPPEL BY JUDGMENT I L R, 11 Bom, 708
[I L R., 17 Mad, 384
L R., 21 I A, 93
I L R., 19 Bom., 821

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS
[23 W R., 82
I L R, 5 Bom, 73
13 C L R., 1
I L R 10 Calc, 63
I L R, 16 Calc, 194

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—FRAUD

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—FRAUD
[22 W R, 221
I L R., 11 Bom, 620

See CASES UNDER VENDOR AND PURCHASER—FRAUD L. R., 14 I. A., 111

See CASES UNDER VENDOR AND PURCHASER—INVALID SALES

FRAUD—*continued*

——— Suit to set aside sale on account of—

See CIVIL PROCEDURE CODE s 244—QUESTIONS IN EXECUTION OF DECREE
[I L R., 5 Mad, 217
I L R., 9 Bom, 468
I L R., 15 Calc, 179
I L R., 17 Calc., 769
[illegible]

1

[illegible] 3 C W N, 385, 405
4 C W N, 538

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS

See CASES UNDER RIGHT OF SUIT—FRAUD

1 WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD

1 ——— Imputations of fraud—*Disposal of allegations of fraud*—Imputations of fraud should be disposed of at the hearing and should not be left open to be disposed of by the master on the taking of accounts LALLBHAI VALLABHAI *v* KAVASJI NANABHAI 8 Bom, O C, 209

2 ——— Proof of fraud—*Presumption*—Fraud and dishonesty are not to be presumed on conjecture however probable IMDAD ALI *v* KOOTHY BEGUM 6 W R., P C, 24 3 Moore's I A, 1

3 ——— It is often the case that fraud cannot be established by positive proofs and on the other hand it is not to be presumed from circumstances of mere suspicion It is generally shown by such circumstantial evidence as overcomes the natural presumption of honesty and fair dealing, and satisfies a reasonable mind that such presumption has been displaced MATHURA PANDAY *v* RAM RUCHA TEWARI
[3 B L R., A C, 108 11 W R., 482

4 ——— *Suit to set aside* [illegible]

[illegible] pears to deal with the property is written or signed by the owner of the property he can only get rid of its effect by showing facts which would establish fraud in its inception or show that it was not intended to be operative according to its purport. RAJ NARAIN *v* ROWSHUN MULL 22 W R., 124

KUBEEROODIN *v* JOGUL SHAHA 25 W R., 133

5 ——— *Allegation of* [illegible]

FRAUD—*continued*

2 ALLEGING OR PLEADING FRAUD
—*continued*

SOOKHNA MEDHEE *v* GUNDHOORAM MUNDLE
[12 W R, 264

34 ——— *Suit seeking protection from fraud admitted by parties*—A suit founded on an admission of fraud and seeking protection from the conseque ces of that fraud cannot be maintained. ALOOKSOONDERY GOOPTO *v* HORO LAL ROY 6 W R, 287

35 ——— *Avoidance of deed fraudulently made*—A person who has deliberately executed a deed by which his own property is

[15 W R, 273

36 ——— *Avoidance of deed fraudulently made—Possession*—But where there was no transfer of possession under the deed there is a *locus penitentiæ* and he is entitled to relief, the property being prejudicially affected by other acts LALL MAHOMED *v* FURHUTOONISSA
[15 W R, 312

37 ——— *Setting up one s own fraud to invalidate deed*—A party cannot set up his own fraud to invalidate a deed executed by him NAUTH SAHOY *v* JUGDUM SAHOY
[2 Hay, 499

38 ——— *Fraud of person through whom party claims*—Where the agreement which formed the basis of a suit was found to have been entered into by the plaintiff and the defendant s ancestors in furtherance of a fraud it was held that the defendant was at liberty to show what the real circumstances were under which the agreement was entered into even though it disclosed the fraud of his own ancestor GOLAM KOODSEE CHOWDHRY *v* JOKOORBUNNISSA KHATOON 19 W R, 238
See SREENATH ROY *v* BINDOO BASHINEE DEBIA
[20 W R, 112

39 ——— *Pleading one s*

wards the validity of that act Nor does a statement made by persons in a suit and intended as a fraud on a third party amount to an estoppel as between them or prevent either of them showing the real truth of the transaction See *Phool Bibee* v *Goor Surun Dass, 18 W R 485 Sreenath Roy* v *Bindoo Bashinee Dabee 20 W R 112 Bykunt Nath Sen* v *Goboolla Sikdar, 24 W R, 39, Debia Choudhrain* v *Bimola Soondaree Debia 21 W R, 422* MUKIM MULLICK *v* RAMJAN SIRDAR
[9 C L R., 64

40 ——— *Fraudulent execution of document—Showing real nature of transaction*—Where a person who has executed a document (*e g* a kabuliat) for his own advantage under false pretences is sued upon it, he is not precluded from showing the real nature of the transaction ASHRUF SIRDAR *v* BHUBO SOONDUREE
[25 W R., 40

41 ——— *Sham transaction—Fraudulent conveyance—Suit for possession by purchaser of land—Defence that the sale to plaintiff was a sham transaction to defraud creditors*—The plaintiff sued for possession of certain land which he alleged he had purchased from the defendant under a registered sale deed, dated 10th November 1876 The defendant pleaded that the deed was a sham deed and without consideration and had been executed by him merely to save the land from his creditors *Held* that the plea was good and that it was open to the defendant to defend his possession by showing that the real transaction between himself and the plaintiff was to defraud whether a third party or his creditors generally BABAJI *v* KRISHNA I L R, 18 Bom, 372

42 ——— *Right to plead fraud—Collusive decree—Execution—Suit to declare property liable to attachment in execution of a decree—Plea that the decree was collusive—Civil Procedure Code (Act XIV of 1882) s 283*—*A* obtained a money decree against *B* and in execution attached property in the possession of *C*, who claimed to have purchased it for value from *B* previously to the date of the decree The attach

and sale under the decree *C* contended that the decree sought to be executed was a collusive one *Held* that *C* could not be allowed to impeach the decree between *A* and *B* GULIBAI *v* JAGANNATH GALVANKAR I L R., 10 Bom., 659

43 ——— *Civil Procedure Code (Act XIV of 1882), s 283—Suit to establish right to attach in such suit to s where defendant sons is tainted with fraud*—*F* owned a house in Surat On the 21st August 1882 he was adjudged a bankrupt by the Supreme Court of the Straits Settlements within whose jurisdiction he was then carrying on business as a merchant On the 20th February 1884 he executed a conveyance of the house to C, the trustee in bankruptcy, for the benefit of his scheduled creditors, of whom the defendant was one The defendant held a mortgage on the house for advances made by him to *F* *C* had an agent in India one *N*, with whom the defendant was a partner in business On the 20th November 1884 the plaintiffs obtained a decree for R78 000 against *F* and another person, and in execution of this decree they attached the house in question as the property of *F* Prior to the attachment, the defendant in consideration of the mortgage-debt due to him had obtained a transfer of the house from *C* with possession. No further consideration was paid by him at the time of the transfer

FRAUD—*continued*

1 WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*continued*

mother obtained an itmamee pottah Afterwards the original superior tenure having been sold for arrears of rent under Act VIII of 1835 the father of defendant No. 1 purchased those rights and interests in the name of the defendant and then obtained from the zamindar a pottah and settlement of the talukh as one coming under the provisions of Regulation VIII of 1819 He then fell into arrears, the talukh was sold under the Regulation last cited, and he purchased it benami *Held* that the legal inference from these facts was that the conduct of the father of the defendant No 1 was fraudulent SOOBUL CHUNDRA PAUL v ATTUR ALI [11 W R., 32

17. ———————— *Over-valuation of*

18 ———————— *Presumption of fraud— Property left to endowment instead of for the support of the widows of the family* —The defendants having pleaded that certain Government paper, in which plaintiff claimed a share had been appropriated by a memorandum of agreement, to the service of an idol, and the agreement was substantiated by very strong evidence and shown to have been acted upon by all the parties for years the Privy Council held that it could not be set aside

y, merely aside was have been RADHA

MOHUN MUNDUL v JADOOMONEE DASSEE [23 W. R., 369

19 ———————— *Mortgagor and Mortgagee—Constructive fraud* —Mere silence on the part of a prior mortgagee on hearing that the mortgagor is mortgaging the property a second time is not such conduct as will amount to constructive fraud, and deprive him of his right to priority as

ere he unt

led the second mortgagee to think that the property was not encumbered and to advance his money on the security of it, which the second mortgagee would not have done had he been aware of the existence of the prior mortgage, such silence was held to be

FRAUD—*continued*

1 WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*concluded.*

20 ———————— *Vendor and purchaser—Omission of purchaser to take possession —Sale by him to another—Effect of want of possession* —*A* sold certain land to *B* by a sale-deed dated 15th July 1871 The deed was optionally registrable, and was not registered *A* continued in possession after the date of the sale *A* sold the same land to the plaintiff by a deed of sale dated 1st February 1872 The deed was registered its registration being compulsory It was unaccompanied with possession In 1882 *B* obtained possession of the land from the sons of *A* and sold it to the defendant by a sale deed dated 14th October 1882 This deed was registered and accompanied with possession In 1883 the plaintiff sued for possession of the land in dispute *Held* that the defendant's vendors, by merely omitting to take possession of the land on his purchase, was not guilty of any positive fraud or of any concealment or negligence so gross as to amount to fraud that would entitle the plaintiff to relief against him SHIVRAM v SAYA I. L. R., 13 Bom., 229

21 —— —— *Fiduciary relationship—Onus of proof of fraud—Accounts, Proof of falsity of*—It is only in cases where one person stands in a fiduciary relation to another that the law requires the former to exercise extreme good faith in all his dealings with the latter, and scrutinizes those dealings with more than ordinary care and caution In the absence of any special confidence reposed by one person in another it lies on him who alleges fraud to prove it Where accounts are impeached on the ground of fraud, two or three instances of particular items which can be taken as false and fraudulent must be brought to the notice of the Court before it can be called upon to order the accounts to be re-opened from the first *Williamson* v *Barbour, I L R, 9 Ch D, 529,* followed. BOO JINATBOO v SHA NAGAR VALAB KANGE I. L. R., 11 Bom., 78

2 ALLEGING OR PLEADING FRAUD

22 ———— **Pleading fraud**—*Defrauded parties* —A party cannot allege or plead his own fraud nor can his representatives, nor a private purchaser from him do so, unless they are themselves the defrauded parties and seek relief from the fraud LUCKEE NARAIN CHUCKERBUTTY v TARAMONEE DOSSEE 3 W. R., 92

PURIKEET SAHOO v RADHA KISHEN SAHOO [3 W R., 221

ROWSHUN BEEBEE v KUREEM BUKSH [4 W R., 12

BHOWANEE PERSHAD v OHEEDUN 5 W. R., 177

23. ———————— *Estoppel—Party pleading fraud of ancestor* —The plaintiff claiming through the heir of *A* is not at liberty to plead the fraud of *A* as against the defendant in possession, although he claims under the fraudulent conveyance

FRAUD—*continued.*

3. EFFECT OF FRAUD—*continued.*

55. ———————— *Decree obtained by fraud—Judgments in rem—Judgments inter partes—Evidence Act, 1872, s. 44.*—Where a decree in a suit has been obtained by means of the fraud of one party against the other, it is binding on parties and privies and on persons represented by the parties so long as it remains in force, but it may be impeached for fraud and may be set aside if the fraud is proved. In the case of judgments *in rem* the same rule holds good with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and collusion of both the parties to the suit, it is binding upon the parties. It is also binding upon the privies of the parties, except probably where the collusive fraud has been on a provision of the law enacted for the benefit of such privies. But persons represented by, but not claiming through, the parties to the suit may, in any subsequent proceeding, whether as plaintiff or defendant, treat the previous judgment so obtained by fraud and collusion as a mere nullity, provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where the previous judgment is a judgment *in rem. Quære*—As to the proper construction of s. 44 of the Evidence Act (I of 1872). AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY . . . I. L. R., 6 Bom., 703

56. ———————— *Sale in execution of decree—Cancellation of sale—Power of Court to refuse to confirm sale.*—The purchaser at a sale by public auction did, by the exercise of fraud and collusion with the agent of the execution-creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution-creditor and the purchaser. *Held* by KERNAN, *J.*, that the party defrauded ought not to be referred to bring a regular suit. The question ought to be decided at once on motion in the original cause. *Held* by MUTTUSAMI AYYAR, *J.*, that fraud was a valid ground of relief on petition when it related to the mode in which the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale. SUBBAJI RAU *v.* SRINIVASA RAU

[I. L. R., 2 Mad., 264

See RAMAYYAR *v.* RAMAYYAR

[I. L. R., 21 Mad., 356

57. ———————— *Construction 1341 of 17th June 1842—Purchase of decree.*—The plaintiff purchased lands which had been pledged to the defendant on a bond, and subsequently, in order to prevent their being taken in execution of a decree obtained by the defendant for the amount of the bond, the plaintiff purchased the decree from the defendant, who notwithstanding took out execution against the lands and sold them as though the decree had never been sold. In a suit by the plaintiff to recover possession of the lands and for reversal of the execution-sale,—*Held* it was no defence that the plaintiff had not notified this purchase of the decree to the Court in compliance with Construction 1341 of 17th June 1842. SITARAM SAHU *v.* MOHAN MANDAR

[B. L. R., Sup. Vol., 345: 3 W. R. 90

58. ———————— *Benami transaction for purpose of defrauding creditors—Deed of conveyance not in real purchasers' name—Collusive suit by nominee against real owner—Decree obtained by fraud—Subsequent suit by real owner against nominee for possession—Right of party to fraud to set fraudulent decree aside—Collusive transaction when held binding, and when set aside—Limitation Act, 1877, art. 93—Suit to set aside decree on ground of fraud.*—In 1874 the plaintiff *P* bought a house from *G*, but caused the conveyance to be executed by *G*, in the defendant *C*'s name. This was done with the object of protecting the property against the claims of the plaintiff's creditors. The plaintiff occupied the house, ostensibly as tenant to the defendant for a nominal rent. In 1880 the defendant brought a suit against the plaintiff to recover possession of the house, and obtained an *ex-parte* decree. He applied for execution of the decree, but allowed the execution-proceedings to drop. In 1883 he made a fresh application for execution. Thereupon the plaintiff filed the present suit for a declaration of his title to the house in question, and of his right to retain possession, alleging that the defendant was a mere benamidar; that the sale-deed and the *ex-parte* decree were sham and collusive transactions in fraud of the plaintiff's creditors; and that the defendant was merely a trustee for him. *Held* that the plaintiff was bound by the decree passed in 1880 in the defendant's favour, though it was a collusive decree. The plaintiff could not get the judgment set aside which the defendant had obtained against him by his own contrivance. The plaintiff alleged that the defendant held in trust for him, the object of that trust being to protect the plaintiff's property in fraud of his creditors. Even if such a trust enforceable by the Courts could arise out of such a *turpis causa*, the question was whether this continued to subsist and would be enforced, when the original relations of the parties had become merged in the decree obtained by the defendant against the plaintiff. The general principle is that where a defendant has suffered a judgment to pass against him, the matter is then placed beyond his control. *Held* also, upon the general principle of *res judicata*, that the plaintiff was estopped from raising the question of fraud in the present suit, which he might and ought to have urged in the former litigation. *Held* further that the suit, if regarded as one for setting aside a decree obtained by fraud, was barred by limitation, such fraud as there was being as well known to the plaintiff in 1880 as in 1883, when the present suit was filed. A party to a collusive decree is bound by it, except possibly when some other

FRAUD—*continued*

2 ALLEGING OR PLEADING FRAUD —*continued*

his (the owner's) creditors and the fraud has been carried out the owner cannot succeed in a suit to recover possession HONAPA v NARSAPA [I L R, 23 Bom, 406

49 ——————— *Suit to set aside collusive decree—Right of suit*—The plaintiff was a Hindu who in order to prevent his undivided son from obtaining his share of the family property made and delivered to the defendant certain promissory notes unsupported by consideration the agree

proceedings in Court were carried on by them collusively the present plaintiff supplying the necessary funds The son then sued for his share of the property and having with the aid of his father (who had meanwhile lost his confidence in the defendant) successfully impeached the sale as collusive obtained a decree which was executed It had been agreed that the defendant should hold the land at the disposal of the plaintiff but he now refused to surrender to him his share The plaintiff accordingly sued to recover his share of the property and for a declaration that the collusive decree against him and the subsequent proceedings in execution thereof were not binding on him *Held* that it is not competent to a party to a collusive decree to seek to have it set aside and that the plaintiff accordingly was not entitled to relief VARADARAJULU NAIDU v SRINIVASULU NAIDU I L R., 20 Mad., 333

50 ——————— *Power of Court at instance of innocent party to treat decree of*

Court cannot stand it has jurisdiction to treat that decree as a nullity and render its effect nugatory NISTARINI DASSI v NUNDO LALL BOSE [I L R, 26 Calc, 891 3 C W N, 670

51. ——————— *Evidence Act (I of 1872) ss 40 and 44—Existence of a previous judgment inter partes—Relevent fact—Competency of any party against whom such judgment obtained to prove in a suit between the same parties that it was obtained by fraud*—In a suit brought by *A* against *B* for khas possession of a tank the plaintiff put in a decree based on a compromise in a previous suit between him and the defendant to prove his right to khas possession The defence (*inter alia*) was that the decree was a fraudulent one *Held* that under s 44 of the Evidence Act (I of 1872) the defendant could show that the decree

FRAUD—*continued*

2 ALLEGING OR PLEADING FRAUD —*concluded*

was obtained by fraud RAJIB PANDA v LAKHAN SENDH MAHAPATRA I L R, 27 Calc, 11 [3 C W N, 660

See SRIRANGAMMAL v SANDAMMAL [I L R, 23 Mad, 216

3 EFFECT OF FRAUD

52 ——————— **Effect of fraud**—*Fraudulent joint conveyance where one party really has an interest in the property*—A declaration of title cannot be granted to the purchaser under a kobala from two parties where the conveyance has been found to be fraudulent and collusive even though one of the parties really had an interest in the property and transferred it in the same conveyance The conveyance cannot be upheld in part the effect of fraud being to make it wholly void ALTAMOONISSA BIBEE v SAGE 11 W R, 335

upon *L* proposed that a share in a village called

S thereupon sued *L* and *A* on the bond claiming to enforce a lien on Chand Khera *A* set up as a defence to the suit that *S* had agreed to substitute Kelsa for Chand Khera in the bond and produced *S*'s letter as evidence of the agreement *Held* that *L*'s fraud vitiated *S*'s agreement to substitute the security of Kelsa for the security of Chand Khera in the bond, and *S* was entitled, notwithstanding *A* might have purchased the latter property in good faith to the enforcement of the lien created thereon by the bond SAFDAR ALI KHAN v LACHMAN DAS [I L R., 2 All., 554

54 ——————— *Misrepresentation—Kabuliat—Contract of tenancy*—Three plots of land were let to *A* under one kabuliat *A* relinquished two plots but admitted being in possession of one alleging that the kabuliat had been obtained by fraud and misrepresentation *Held* that as the lease was an entire contract one portion

S C KOYLASH CHUNDER BOSE v ANARULLAH SHEIKH 9 C L R., 467

FREIGHT—*concluded.*

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 16 Bom., 389
[I. L. R., 26 Calc., 142
4 C. W. N., 313

See INTERPLEADER SUIT.
[I. L. R., 18 Bom., 231

FRENCH LAW.

See COURT FEES ACT, SCH. I, ART. 11.
[I. L. R., 20 Calc., 575

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 23 Mad., 458

——— Statement as to—

See EVIDENCE ACT, s. 38.
[I. L. R., 26 Calc., 931

FRESH SUIT.

See CASES UNDER RIGHT OF SUIT—FRESH SUITS.

FULL BENCH.

See REFERENCE TO FULL BENCH.

——— Question of law referred to—

See PRIVY COUNCIL, PRACTICE OF—PRACTICE AS TO OBJECTIONS.
[I. L. R., 1 Calc., 226
L. R., 3 I. A., 7 : 25 W. R., 285

FULL BENCH RULING.

See REVIEW—GROUND OF REVIEW.
[I. L. R., 6 All., 292

See REVIEW—REVIEWS AFTER TIME.
[B. L. R., Sup. Vol., 892
6 W. R., 100
7 W. R., 405, 408
9 W. R., 102
10 W. R., 415
I. L. R., 8 Calc., 700

1. ——— **Effect of Full Bench ruling**—*Retrospective effect.*—A Full Bench ruling, as it makes no new law, but merely expounds what the law is, must have retrospective as well as prospective effect. JUGROOPA CHOWDHRAIN *v.* BUNWAREE TEWAREE . . . . . 20 W. R., 351

2. ——— *Decree for maintenance—Decision contrary to decree.*—A decree declaring a Hindu female entitled to maintenance from her father-in-law was held to bind the latter, notwithstanding a later Full Bench ruling to the effect that a daughter-in-law was not entitled to such maintenance. NUND MOHUN CHUTTORAJ *v.* ROHINEE DEBIA . . . . . 22 W. R., 293

3. ——— *Question of limitation—Application in execution of decree—Decision contrary to order on application.*—The decree in a suit for possession of immoveable property situate

FULL BENCH RULING—*concluded.*

in the districts of Shahabad and Gya was affirmed on appeal by the Judicial Committee of the Privy Council on the 28th July 1871. On the 31st December 1877, an application was made to the Shahabad Court for execution, and this application was on appeal held by the High Court, on the 13th September 1880, to be barred by limitation. In the meantime an application for execution was, on the 22rd August 1879, made in the Gya Court. This application was admitted on the 12th June 1880, and no appeal was preferred. In the meantime the order of the 13th September 1880 became, under a later Full Bench decision, an incorrect view of the law. *Held,* on appeal from an order made in proceedings held upon the application of the 23rd August 1879, that the decree-holder was entitled to proceed with the execution of the decree, and that the judgment-debtor was not entitled to refer to the order of the High Court, dated 13th September 1880, to show that it was inoperative. BHOOBOONA ALUMBABI KOER *v.* JOBRAJ SINGH . . . . . 11 C. L. R., 277

FURLOUGH.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL . . I. L. R., 2 Calc., 117

FURTHER INQUIRY.

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 437.

See NUISANCE UNDER CRIMINAL PROCEDURE CODES I. L. R., 24 Calc., 395
[I. L. R., 25 Calc., 425

G

GAMBLING.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 7 Mad., 301

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE . I. L. R., 14 Mad., 364

——— Articles used for purpose of—

See MADRAS POLICE ACT, 1888, s. 42.
[I. L. R., 19 Mad., 209

——— Suit to recover notes lost by—

See TROVER . . . 6 B. L. R., 581

1. ——— **Person "found gaming" in common gaming-house**—*Act XIII of 1856, s. 57.*—*Held* on the evidence that there was sufficient to show that the house in which the prisoners were arrested was a common gaming-house. A person is "found gaming" within the meaning of s. 57 of Act XIII of 1856 who, having been seen gaming by an inspector of police, is shortly afterwards, in a place adjoining the room in which he was seen gaming, apprehended by police constables acting under

FRAUD—*continued*

3 EFFECT OF FRAUD—*continued*

interest is concerned that can be made good only through his *Ahmedbhoy Habibhoy* v *Vulleebhoy Cassumbhoy, I. L. R, 6 Bom, 703,* and *Venkatramanna* v. *Viramma, I L. R, 10 Mad, 17,* followed *Paran Singh* v *Lalji Mal, I L R, 1 All, 403,* dissented from A decree fraudulently obtained may be challenged by a third party who stands to suffer by it either in the same or in any other Court; but, as between the parties themselves to a collusive decree, neither of them can escape its conseque

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proceeded to the length of sham deeds passed between the parties, or even of false declarations made by them in litigation for their common benefit, the Courts may displace the apparent by the real ownership In cases in which the transaction was still inchoate, or the grantor still retained a *locus pœnitentiæ,* the formal act has been relieved against by reference to the real intention of the parties The violation or infringement of the law had not in such cases been completed, and a suspensive condition was annexed to the initial acts of which Courts of Equity could take advantage but, apart from this, a man cannot confine the operation of his deed within the limits of an intended fraud The purpose having been once answered, especially, by defeat of a third person's rights asserted in Court, a claim for reconveyance would be properly dismissed CHENVIRAPPA BIN VIRBHADRAPPA v PUTTAPPA BIN SHIVBASAPPA

[I. L. R., 11 Bom., 708

59. ——— *Right of suit*—

No 2, had colluded with the decree-holder, defendant No. 1, and given false evidence, and that the decrees had been obtained thereby *Held* that the plaint disclosed a good cause of action KRISHNABHUPATI v RAMAMURTI . . . I. L. R, 16 Mad., 198

60. ——— *Debtor and creditor—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal re-*

conveyance set aside, and to have the defendant restrained by injunction from executing the decree *Held* (by SUBRAMANIA AYYAR, J) (1) that the plaintiff was not entitled to relief in respect of the promissory note and the decree, although she was not personally a party to the fraud, inasmuch as she claimed through *A* by whose contrivance and collusion the defendant was enabled to obtain the decree, (2) that the plaintiff was not entitled to have the sale set aside, inasmuch as there had been at least a partial carrying into effect of the illegal purpose in a substantial manner RANGAMMAL v VENKATACHARI . . I. L. R., 18 Mad, 378

In the same case on appeal *held* (by COLLINS, C J, and BENSON, J) that the plaintiff was not entitled to relief, for *A*, if alive, could not have claimed to have his own fraudulent acts set aside, and the plaintiff was in no better position than he would have been *Quære*—Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud RANGAMMAL v VENKATACHARI

[I. L. R, 20 Mad, 323

61. ——— *Money advanced on hundi—Fraudulent misrepresentation—Suit before due date of hundi—Right of suit*—The

agreements should not be applied to debts evidenced by hundis, promissory notes, or other negotiable instruments, if the facts show that the loans were contracted on the faith of fraudulent misrepresentations made by a debtor to a creditor BABOOLALL v JOY LALL . . . I. L. R, 24 Calc, 533

FRAUDULENT PREFERENCE.

See CASES UNDER DEBTOR AND CREDITOR

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR

"FRAUDULENTLY," MEANING OF—

See FORGERY . I. L. R, 19 Calc., 380
[I. L. R, 15 All., 210
I. L. R., 25 Calc, 512

FREIGHT.

See BILL OF LADING
[Bourke, O. C, 171, 309
Bourke, A. O. C, 100
1 Ind. Jur., N. S, 230
I. L. R., 5 Bom, 313

See CHARTER PARTY . 8 B. L. R., 340
[I. L. R, 23 Bom, 551

GAMBLING—*continued.*

14. ———— s. 11—*Coin—Instrument of gaming.*—A coin is not an instrument of gaming within the meaning of s. 11 of Bombay Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose. EMPRESS *v.* VITHAL BHAICHAND

[I. L. R., 6 Bom., 19

15. ———— s. 14—*Common gaming-house—Nuisance—Penal Code, s. 268.*—A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code. REG. *v.* HAU NAGJI . . . 7 Bom., Cr., 74

16. ———— Bombay Acts IV of 1887 and I of 1890, s. 12—*Coins—Instrument of gaming—Meaning of the expression.*—A coin is not an "instrument of gaming" within the meaning of s. 12 of Bombay Act IV of 1887 as amended by Bombay Act I of 1890. The expression "instrument of gaming," as used in s. 12 of the Act of 1887, means an implement devised or intended for that purpose. *Imperatrix* v. *Vithal, I. L. R., 6 Bom., 19,* followed. QUEEN-EMPRESS *v.* GOVIND

[I. L. R., 16 Bom., 283

17. ———— Bombay Act IV of 1887, ss. 3, 4—*Common gaming-hou*[illegible] *What constitutes gaming.*—The [illegible] where large numbers of people assembled for the purpose of betting on the quantity of rain which might fall in a given time. The instruments used for measuring the quantity of rainfall were two: a rain-gauge and a gutter attached to the roof of the shed. The accused, who registered the quantity of rainfall, were entitled to a commission on each bet. They were charged, under s. 4, cls. (*b*) and (*c*), of Bombay Act IV of 1887, with keeping the shed for the purpose of a "common gaming-house." *Held* that Bombay Act IV of 1887 did not apply to betting. The shed in question was undoubtedly a common betting place, and the instruments used were instruments of betting, but there is no law in India which makes betting illegal. There is a distinction between betting and gaming. There must be a game before there is gaming; and to constitute a game, there must be a contest, and an active participation of certain persons is also necessary. In the present case there was no contest, no players, and no active part taken by the betters who merely watched the falling of rain. Rain-betting is therefore not a game, and the place where it was carried on not a "common gaming-house." QUEEN-EMPRESS *v.* NAROTTAMDAS MOTIRAM

[I. L. R., 13 Bom., 681

18. ———— Bombay Acts IV of 1837 and I of 1890, s. 3—*Betting on rainfall—"Common gaming-house"—"Instrument of gaming"—"Used"—Meaning of these words in s. 3 of the Act.*—The accused rented a place near a public road at Bombay at R250 a month. There they erected a shed containing eleven pedhis or stalls. In the centre of the shed they put up, in a prominent position, a clock for keeping accurate time. The stalls were let out to certain persons, each at the rate of R100 a month. The roofs of several adjoining houses surrounded this place. From one of these roofs rain fell into the place. Numbers of people resorted to this place for the purpose of rain-betting. The rain-betters staked certain sums of money on the chance whether the rain would fall or would not fall within a certain time. Aftre making the bets, the parties betting would go to one of the stall-keepers, and get him to register the particulars of the bet in a book kept for the purpose, and each deposited with the stall-keeper the amount staked. The bets as to rain falling were determined by persons at the place seeing the rain falling in a stream from such of the roofs of the adjoining houses as had been chosen by the betters on making the bets, and seeing also the time, by the clock, if there was any doubt as to the time. After the bet was determined, the winner received from the stall-keeper the amount of the stake. Under these circumstances, the accused were charged before the Chief Presidency Magistrate with committing the offence of keeping a "common gaming-house" under s. 4, cls. (*a*), (*b*), and (*c*), of the Bombay Gambling Act (IV of 1887), as amended by Act I of 1890. On a reference by the Magistrate under s. 432 of the Code of Criminal Procedure (Act X of 1882),—*Held* that to bring the place in question within the definition of a "common gaming-house" in s. 3 of the Bombay Gaming Act (IV of 1887) as amended by Bombay Act I of 1890, the instrument of gaming or wagering must be in the place itself, either kept there, or brought there and used there, for profit and gain. It is not sufficient that wagers are made in the place upon or by means of some article or other which is outside the place. The roofs of the houses surrounding the place in question could not therefore be regarded as "instruments of gaming, either kept or used therein," within the meaning of s. 3 of the Act. *Held* also that the word "used" in s. 3 of the Act, as amended by Act I of 1890, must be taken in its ordinary sense, as meaning actually used. Any article which is in fact used as a means of wagering comes within the definition of "an instrument of gaming," even though it may not have been specially devised or intended for that purpose. *Held per* TELANG, *J.*, that neither the stalls nor the books in which the bets were registered, nor the money staked and deposited with the stall-keeper, were instruments of gaming or wagering. QUEEN-EMPRESS *v.* KANJI BHIMJI . . . I. L. R., 17 Bom., 184

19. ———— Bombay Act IV of 1867, ss. 4, 5, and 7—*Proof of keeping or of gaming in a common gaming-house—Presumption—Evidence.*—A number of persons were found by the police in a closed room in the upper storey of a house gambling with dice and having cowries and money before them. They were convicted under Bombay Act IV of 1887. *Held,* confirming the conviction, that under s. 7 of the Act the facts found were evidence (until the contrary was shown) that

GAMBLING—*continued*

the direction of such inspector REG v NANA MOROJI IN RE MADHAV MORAR 8 Bom., Cr, 1

2 ——— Common gaming-house—

10 N W, 101

3 ——— Lottery tickets—*Act III of 1867, ss 1 and 4*—Lottery tickets by reference to which it is to be decided whether the holder or purchaser wins the whole or any part of any stakes are instruments of gaming within ss 1 and 4 of Act III of 1867, and they are instruments of gaming of a nature similar to cards ANONYMOUS [12 W R., Cr, 34

-house —Com is ion

gaming house or in a public street or place QUEEN v SHEOSUNKUR SINGH 3 N W, 1

QUEEN v SUJJAD ALI 3 N W, 134

5 ——— *Act III of 1867 ss 4 and 13—Gambling in private house* —The gist of the offence under s 4 of Act III of 1867 consists in the fact that the house in which the gambling takes place is 'a common gaming house The gist of the offence under s 13 is the gambling in a public street or place' Gambling in a private house is not an offence under the Act QUEEN v KHYROO 2 N W, 289

6 ——— Right to enter or search house—*Act III of 1867, s 5* —To authorize an entry or search of a house under s 5 of Act III of 1867, there must be credible information before ... officer who may take action ... is a common ... red or searched under the provisions of s ... ding of cards, dice, etc, therein will not be *primâ facie* evidence for the purposes mentioned in Act III of 1867 QUEEN v SUBSOOKH 2 N W., 476

7 ——— Act III of 1867, s 6—*Instrument of gaming—Cowries —Held* that cowries are not 'instruments of gaming" within the meaning of s 6 of Act III of 1867 QUEEN EMPRESS v BHAWANI I. L. R., 18 All., 23

8 ——— *Evidence of house being a common gaming house—Instruments of gaming—Cowries —Held* that the mere finding of cowries in a house searched in pursuance of a warrant issued under Act III of 1867 would not raise the presumption that the house was used as a common gaming house, but evidence that cowries were used in that house as instruments whereby to carry on gaming would bring the house within s 6 of the Act *Queen Empress v Bhawani, I L R 18 All, 23,* referred to. QUEEN EMPRESS v BALA MISRA I. L. R., 19 All., 311

9 ——— Beng Act II of 1867—*Publication as to notification of* —The notification which the Government is empowered to issue under s 2 of the Gaming Act Bengal Act II of 1867 should

published three t ... without specifying the limits to which the Act was to apply it was held that the subsequent notifications were not sufficient but that did not prevent the

10 ——— s 5—*Unauthorized entry and arrest in gaming house—Evidence—Presumption* —Where a police officer unauthorized

resorting to the presumption created by Bengal Act II of 1867, s 6 that the house is a gaming house NAZIR KHAN v PROLADH DUTTA [I L R., 4 Calc, 659

11 ——— ss 5 and 6—*Right to enter and search gaming house* —A deputy inspector of police is not authorized to enter and search an alleged gaming house unless he receives authority so to do from a Magistrate or a District Superintendent of Police Where such an unauthorized entry and subsequent arrest of persons in a gaming house takes place, there being no other evidence of an offence under *s 5 of Act II of 1867*, a Magistrate has no evidence before him on which he can convict The evidence required cannot be presumed under s 6 of the Act, because that presumption only arises when the proceedings are authorized by s. 5 SREERAM CHANDRA LEEKAN v BIPINDASS [I. L R., 4 Calc, 710

12 ——— s 6—*Common gaming house—Cowries—Instruments of gaming* Cowries may be treated as instruments of gaming where they are used as counters or as a means to carry on gaming The finding of cowries in a house upon search made under a warrant will under s 6 of the Gambling Act (Bengal Act II of 1867) raise a rebuttable presumption that the house is used as a common gaming house QUEEN EMPRESS v MAKUND LAM I L R, 25 Calc., 432

13 ——— Bombay Act III of 1866—

instruments of gaming found in such a house ... had been entered in pursuance of a search warrant illegally issued there being sufficient *aliunde* to justify the conviction REG v NARAYAN SUNDUR [5 Bom., Cr., 1

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*continued.*

See Certificate of Administration—Right to sue or execute Decree without Certificate.
[I. L. R., 16 All., 259

See Company—Formation and Registration . . I. L. R., 11 All., 349

See Costs—Special Cases—Small Cause Court Suits.
[I. L. R., 24 Calc., 399
I. L. R., 21 Bom., 779

See Execution of Decree—Effect of Change of Law pending Execution.
[I. L. R., 2 Bom., 148
I. L. R., 3 Bom., 214, 217
I. L. R., 4 Bom., 163
I. L. R., 3 Mad., 98
I. L. R., 16 Calc., 323
I. L. R., 21 Calc., 940
I. L. R., 22 Calc., 767

See Landlord and Tenant—Buildings on Land, Right to remove, and Compensation for Improvements on Land . I. L. R., 13 Mad., 502

See Limitation Act, 1877, art. 179 (1871, art. 167)—Law applicable to Application for Execution.
[11 Bom., 111, 116 note
I. L. R., 9 Calc., 446, 644
I. L. R., 7 Bom., 459
I. L. R., 11 Calc., 55

See Mortgage—Foreclosure—Demand and Notice of Foreclosure.
[I. L. R., 15 Calc., 357

See Offence committed before Penal Code came into operation.
[I. L. R., 2 Calc., 225
I. L. R., 1 All., 599

See Special or Second Appeal—Orders subject or not to Appeal.
[I. L. R., 15 Calc., 107

See Transfer of Property Act, s. 2.
[I. L. R., 6 All., 262
I. L. R., 11 Calc., 582
I. L. R., 12 Calc., 436, 505
I. L. R., 15 Calc., 357

1. ———— *"Proceedings," Meaning of—Service of notice of foreclosure.*—The proceedings referred to in s. 6 of the General Clauses Consolidation Act (I of 1868) are not necessarily judicial proceedings, but ministerial proceedings, as, *e.g.*, the service of notice of foreclosure. Umesh Chunder Das *v.* Chunchun Ojha . I. L. R., 15 Calc., 357

2. ———— *Proceedings—Procedure—Civil Procedure Code, 1877-82, s. 3—Proceedings in execution of decree commenced before Act X of 1877.*—S. 6 of Act I of 1868 covers proceedings taken in execution of decree which have been commenced before Act X of 1877 came into force. *Per* Garth, *C.J.*—A suit is a "judicial proceeding," and the words "any proceeding" in s. 6 of Act I of 1868 include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word "procedure" in s. 3, Act X of 1877, has not the same meaning as the word "proceedings" in the above-mentioned section. Runjit Singh *v.* Meherbans Koer
[I. L. R., 3 Calc., 662: 2 C. L. R., 391

Burkut Hossein *v.* Majidoonissa
[3 C. L. R., 208

Nadir Hossein *v.* Bissen Chand Bessarat
[3 C. L. R., 437

3. ———— *Pending proceedings—Effect of repeal.*—An appeal having been filed on the 10th April 1879, a memorandum of objections under s. 561 of the Civil Procedure Code was filed by the respondent on the 18th September 1879 before the actual hearing which took place in July 1880. *Held* that the memorandum under s. 561 of the Code as amended by s. 86 of Act XII of 1879 ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review,—*Held per* Maclean, *J.*, distinguishing the case of *Ratansi Kullianji, I. L. R., 2 Bom., 148,* that nothing having been done and no proceeding having been commenced by the respondent up to 31st May 1879, under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and it was therefore admissible. *Held per* Mitter, *J.*, that the appeal, having been filed before Act XII of 1879 was passed, was a proceeding within the meaning of s. 6 of the General Clauses Act, I of 1868, and that the new Act therefore did not affect the appeal. Ram Gobind Jugodeb *v.* Deno Bundhu Sri Chundun Mohapatter
[9 C. L. R., 281

4. ———— *Criminal Procedure Code, 1882, s. 558—Change of procedure—Effect on pending trial.*—*S* was tried by a Sessions Court in December 1882 on charges some of which were triable by assessors, others by jury. Before the trial was concluded, the Code of Criminal Procedure, 1882, came into force. By s. 269 of that Act, all such charges are to be tried by jury. By s. 558 of the same Act, the provisions of that Act are to be applied, as far as may be, to all cases pending in any Criminal Court on 1st January 1883. *Held* that, by virtue of s. 6 of the General Clauses Act, 1868, the trial must be conducted under the rules of procedure in force at the commencement of the trial. Srinivasachari *v.* Queen . . I. L. R., 6 Mad., 336

5. ———— *Deccan Agriculturists' Relief Act Amending Act, XXII of 1882—Decree, Execution of—Attachment—Sale—Proceeding—Deccan Agriculturists' Relief Act, 1879—Effect of repeal.*—On the 7th of September 1870, the applicant obtained a money decree against agriculturist defendants, and, having made five applications for execution up to 1879, realized a part of the judgment-debt. On the 2nd of September 1882—that is, after the coming into force of Act XVII of 1879—the

GAMBLING—*concluded*

the room was used as a common gaming-house and that the persons found therein were there present for the purpose of gaming QUEEN EMPRESS v BAI VAJU I L R. 22 Bom, 745

GAMBLING ACT (XXI OF 1848)

See CASES UNDER CONTRACT—WAGERING CONTRACTS

See TAZI MANDI CHITTIES [8 B L R, 412, 415 note

GAMING HOUSE

See MADRAS POLICE ACT 1888 s 42 [I. L R, 19 Mad., 209

See MADRAS TOWNS NUISANCES ACT s 73 I L R, 18 Mad., 46

GANJAM AND VIZAGAPATAM AGENCY COURTS' ACT (XXIV OF 1839)

See HIGH COURT JURISDICTION OF—MADRAS—CRIMINAL [I. L R, 14 Mad, 121

See LIMITATION ACT 1877 s 12 [I. L. R, 14 Mad., 365

See REVISION—CIVIL CASES [I L R., 16 Mad., 229

See TRANSFER OF CIVIL CASE—GENERAL CASES I. L R., 13 Mad, 329

See VALUATION OF SUIT—APPEALS [I. L. R, 22 Mad., 162

GAZETTE, GOVERNMENT

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—GOVERNMENT GAZETTE W R., 1864, 50

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE 7 B L. R., 63

GENERAL AVERAGE

See SHIPPING LAW [I L R., 17 Calc, 362 L R, 16 I. A, 240

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS [I. L R., 14 All., 30

———— s 1— *Include* —The word "include in cl (13) and other clauses of s 1 of Act I of 1868 is intended to be enumerative not exhaustive EMPRESS v RAMANJIYYA I. L R., 2 Mad, 5

———— s 2

See STAMP ACT 1879 SCH I ART 5 [I. L R., 13 Bom, 87

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*continued*

———— cl (5)

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS [I. L R, 9 Calc, 535

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES [I L. R, 22 Calc, 33

See TRANSFER OF PROPERTY ACT s 107 [I. L R., 22 Calc, 752

———— cls (5), (6)

See TRANSFER OF PROPERTY ACT [I. L. R., 13 All., 432

———— cl (18)

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I L R, 9 All, 240

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [18 W R, Cr, 3 I L R., 9 All., 240

———— s 3

See FISHERY, RIGHT OF [I. L R., 20 Calc, 446

See LIMITATION ACT 1877 ART 132 [I L. R., 9 Bom, 233

———— cl. (1)

See LIMITATION ACT 1877 ART 177 [I L. R., 15 All, 14

———— *Stamp Acts 1862 and 1869, s 2 and sch 3—Repeal by Act XIV of 1870 Effect of*—By force of s 3 cl (*1*) of Act I of 1868 the mere repealing of s 2 and sch 3 of Act XVIII of 1869 by Act XIV of 1870 did not *per se* revive the repealed portions of Act X of 1862 ANONYMOUS 7 Mad., Ap 9

———— cl. (2)

See LIMITATION ACT 1877 s 7 [I. L R, 13 Mad., 135

———— s 5

See CANTONMENT MAGISTRATE [I. L. R., 8 Mad., 350

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [7 Bom, Cr, 76

———— s 6

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON I. L R., 1 All., 668 [I. L. R, 3 Calc., 662 727 4 C L. R., 18 I. L. R., 5 Calc, 259 4 C L R., 23 I. L. R., 2 All., 785

See BENGAL TENANCY ACT ss. 20 21 [I. L. R., 14 Calc, 563 I. L. R., 15 Calc, 376

GHATWALI TENURE—*continued.*

express words to the contrary, ghatwali lands held under a lease which neither confirms nor recognizes the pre-existing status of the ghatwals, nor confers on them any right other than that of holding the lands at a fixed rate as long as ghatwal service is required from them, are resumable by the zamindar when that service is no longer required. LEELANUND SINGH *v.* SARWAN SINGH . . 5 W. R., 292

5. ——— *Right to hold tenure on cessation of service.*—When ghatwals hold land, not under a sanad conveying an hereditary indefeasible right, but on payment of a quit-rent, with enjoyment of the profits of the land in lieu of wages, such possession, however long, would not entitle them to hold the land at a fixed jumma, or to retain a portion of the land after they have ceased to perform the duties for which the land was assigned to them. LEELANUND SINGH *v.* NUSSEEB SINGH [6 W. R., 80

6. ——— **Succession to ghatwali tenure**—*Female holder.*—Succession to ghatwalis is regulated solely by the nature of the ghatwali tenure which descends undivided to the party who succeeds to and holds the tenure as ghatwal. A woman is not incapable of holding a ghatwali tenure. KUSTOORA KOOMAREE *v.* MONOHUR DEO. GOVERNMENT *v.* MONOHUR DEO . . W. R., 1864, 39

7. ——— *Descent of ghatwali estates—Females.*—A ghatwali estate is not necessarily held by males to the exclusion of females. DOORGA PERSHAD SINGH *v.* DOORGA KOOEREE [20 W. R., 154

8. ——— *Services dispensed with.*—Although in custom the ghatwali tenure descended from father to son, no succession was legal or valid till confirmed by the zamindar and reported by him to the Government authorities. Where Government has dispensed with the services of the ghatwals, the zamindar is under no obligation to continue to appoint, and may, on a vacancy occurring, settle the tenure as he pleases. MAHBUB HOSSEIN *v.* PATASU KUMARI [1 B. L. R., A. C., 120 : 10 W. R., 179

9. ——— *Power of Commissioner of Revenue—Disqualification.*—A Commissioner of Revenue is not warranted by law, on the demise of a ghatwal, in considering the eligibility of rival claimants to the tenure (a perpetual and descendible one), and in rejecting the claims of the natural heir on considerations purely moral,—*e.g.*, his having evinced a want of filial respect and dutiful feeling to his father. LALL DHAREE ROY *v.* BROJO LALL SINGH . . . . . 10 W. R., 401

10. ——— *Right of succession to ghatwali tenure in Beerbhoom—Beng. Reg. XXIX of 1814, s. 2—"Descendants," Meaning of—Impartible property—Separate property—Hindu law, Mitakshara.*—Ghatwali tenures in Beerbhoom are tenures to be held in perpetuity, and are descendible from generation to generation subject to certain conditions and obligations, and it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only, and not on heirs generally according to the law which may govern such succession. The word "descendants" therefore in s. 2 of Bengal Regulation XXIX of 1814 is not to be construed in its restricted meaning, but includes the widow of a deceased ghatwal, who may therefore be one of his heirs. *Lall Dharee Roy* v. *Brojo Lall Singh, 10 W. R., 401,* and *Kustoree Koomaree* v. *Monohur Deo, W. R., Gap Number (1864), 39,* referred to. Where a ghatwali tenure was admittedly impartible and governed by Mitakshara law, and the only heirs were the widow and the brother of the late ghatwal,—*Held* (it being found on the evidence that the brothers had separated, and that the ghatwali tenure was the exclusive property of the late ghatwal) that his widow was his heiress according to Mitakshara law. Although, according to the decision of the Privy Council in *Chintamun Singh* v. *Nowlukho Koonwari, I. L. R., 1 Calc., 153 : 13 W. R., P. C., 21,* impartible property is not necessarily separate property, yet *semble* that with reference to the peculiar character of ghatwali tenures as described in Regulation XXIX of 1814 they were intended to be the exclusive property of the ghatwal for the time being and not joint family property in the proper sense of the term. CHHATRADHARI SINGH *v.* SARASWATI KUMARI . . I. L. R., 22 Calc., 156

11. ——— **Suit for khas possession of ghatwali lands**—*Lands in decennially-settled estate.*—A suit for khas possession by Government will not lie in respect of ghatwali lands admittedly included in a decennially-settled estate. GADHADHUR BANERJEE *v.* GOVERNMENT . 6 W. R., 326

12. ——— **Ghatwal becoming defaulter**—*Beng. Reg. XXIX of 1814—Transfer of tenure.*—When a ghatwal becomes a defaulter, it is in the power of the authorities, according to Regulation XXIX of 1814, to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person. CHITTRO NARAIN SINGH TEKAIT *v.* ASSISTANT COMMISSIONER OF SONTHAL PERGUNNAHS [14 W. R., 203

13. ——— **Resumption and assessment**—*Beng. Reg. I of 1793, s. 8, cl. 4.*—The ghatwali lands in the zamindari of Khurruckpore are not liable to resumption and re-assessment under cl. 4, s. 8, Regulation I of 1793, relating to thannah or police establishments. LEELANUND SINGH *v.* GOVERNMENT OF BENGAL [4 W. R., P. C., 77 : 6 Moore's I. A., 101

14. ——— *Resumption of service tenure.*—In 1775 a rent-free sanad was granted to *M* for having put down wild elephants, the consideration in future being to cultivate, and keep up a body of men, and take care of the raiyats. *M* died, and a fresh sanad was in 1786 granted to *K* and *R*, they being thought to be his heirs; but in 1807, *M*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K* and *R*, reciting the circumstances; both these sanads were to cultivate, keep up a body of men, keep off elephants, and attend to the safety of the

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*continued*

creditor made his last application for recovering the balance by attachment and sale of the lands of the debtors. On the 1st of February 1883—while the above application was pending—Act XVII of 1879 was amended by Act XXII of 1882 so as to prohibit the sale of the immoveable property of agriculturists in execution of a decree, even though such decree was passed before the date of the Act *Held,* notwithstanding the provision of s 6 of the General Clauses Act, I of 1868, and the attachment of the

6. ——— *Limitation Act, 1871.*

Act, 1868, s 6 GOBIND LAKSHMAN *v* NARAYAN MAHESHVAR . 11 Bom, 111

BALKRISHNA *v* GANESH 11 Bom, 116 note

7. ——— *Limitation Acts, 1871 and 1877—Effect of repeal* —Under s 6 of Act I of 1868, the repeal of Act IX of 1871 by Act XV of 1877 did not affect any proceedings commenced before the repealing Act came into force *In re Ratansi Kalianji, I. L R, 2 Bom, 148,* followed BEHARY LALL *v* GOBERDHAN LALL

[I. L. R., 9 Calc., 446: 12 C. L. R., 431

8 ——— *Registration Acts—Effect of repeal of Act* —By s 6 of the General Clauses Act, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing OOHRA SINGH *v* ABLAKHI KOOER

[I L. R, 4 Calc, 536. 3 C. L. R., 434

9. ——— *Repeal of Registration Act*

18

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were instituted MAHOMED HOSSEIN *v* HADZI ABDULLAH . I. L. R, 3 Calc, 727

10. ——— *Stamp Act, X of 1862, s 3 —Offence under Stamp Act, 1862* —By s 6 of Act

11. ——— *Effect of repeal—Proceedings—Bengal Rent Act (VIII of 1885), s 5.—* The words "any proceedings commenced before the repealing Act shall have come into operation" in s 6 of the General Clauses Act (I of 1868) include an appeal against a decree made before the passing of

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*concluded*

Bengal Act VIII of 1869, s 102, a second appeal to the High Court was prohibited That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question A second appeal to the High Court in that suit was filed on the 18th of November 1885. *Held* that no appeal lay HURROSUNDARI DABI *v* BROJOHARI DAS MANJI I. L R., 13 Calc, 86

12 ——— *Bengal Tenancy Act (VIII of 1885), s 170—Decree for rent under Bengal Act VIII of 1869—Attachment under decree*

law, the tenancy in respect of which the rent had

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1887)

——— s. 3, cl. (13)

See VALUATION OF SUIT—APPEALS

[I. L. R., 13 All., 320

I. L. R., 15 All., 363

——— s. 7.

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION

[I. L. R., 22 Calc, 178

GHATWALI TENURE.

1. ——— Nature of tenure—*Perpetual tenure* —Ghatwali tenures are perpetual holdings subject to condition of service LEELANUND SINGH *v* MONORUNJAN SINGH . . 5 W. R., 101

2. ——— *Chakeran tenure —Grant of ghatwali tenure* —In the absence of long usage, a ghatwali grant confers a mere chakeran holding or interest IN RE SARWAN SINGH

[2 Ind Jur., N. S., 149

3. ——— *Ghatwals of Khurruckpore—Perpetual hereditary tenure* —The ghatwals of Khurruckpore hold a perpetual hereditary tenure at a fixed jumma payable in money and service, and cannot be evicted by the zamindar except for misconduct. MUNRUNJUN SINGH *v* LEELANUND SINGH . . . 3 W.R., 84

4 ——— *Right of resumption when service not required* —In the absence of

GHATWALI TENURE—*continued.*

which the zamindar ought to have received from them for rent during the time they had paid to Government. LEELANUND SINGH *v.* MUNORUNJUN SINGH. MUNORUNJUN SINGH *v.* LEELANUND SINGH [13 B. L. R., 124
L. R., I. A., Sup. Vol., 181

21. ———— Resumption—*Compensation.*—In the Khurruckpore ghatwali mehals the profits of the lands, minus the quit-rent paid to the zamindar, represented the remuneration given to the ghatwals for police services. Government illegally resumed those lands, dispensing with the services of the ghatwals, and settled the tenures with the ghatwals at half the rent current in that part of the country. The resumption proceedings having been set aside, it remained to determine to whom and in what proportions Government should refund the half jumma taken by it as rent from the ghatwals during the period of settlement. *Held* that, inasmuch as the ghatwals rendered no service during the period of settlement, the moiety of the jumma retained by them was ample compensation for any loss they might have sustained, and the zamindar was entitled to receive the whole of the moiety taken by Government, partly as quit-rent due to him and partly as compensation for loss of the ghatwals' services during the continuance of the settlement. LEELANUND SINGH *v.* GOVERNMENT . . 2 B. L. R., A. C., 114

22. ———— Acquisition of land—*Compensation.*—Where land forming part of a ghatwali tenure in the district of Beerbhoom was taken up for public purposes,—*Held* that neither the zamindar nor the under-tenants of the ghatwal could claim a proportionate share in the compensation-money payable for such land. The money so obtained carries with it all the incidents of the original ghatwali tenure, and the ghatwal for the time being is entitled only to the interest accruing therefrom during his lifetime. RAM CHUNDER SINGH *v.* JOHER JUMMA KHAN . 14 B. L. R., Ap., 7 : 23 W. R., 376

23. ———— Dismissal of ghatwal—*Jurisdiction of Civil Court.*—The Civil Courts cannot interfere to reinstate a ghatwal, who has been dismissed by the police authorities, in the land which he formerly held as ghatwal. The right to possess the land depends on the tenure of the office. DEBEE NARAIN SINGH *v.* SREE KISHEN SEIN
[1 W. R., 321

24. ———— *Misconduct of ghatwal—Forfeiture of tenure on dismissal.*—The dismissal of a ghatwal will carry with it the forfeiture of his tenure. SECRETARY OF STATE *v.* PORAN SINGH . . . I. L. R., 5 Calc., 740

25. ————Arrears of rent, Liability of successor for—*Service tenure.*—*A*, the holder of a service tenure, subject to a quit-rent to the zamindar, died, leaving his rent for the last three years unpaid. *B*, his son, succeeded him in the tenure. *Held* that the zamindar could not sue *B* as *A*'s successor in the tenure for *A*'s arrears of rent. NILMONEE SINGH *v.* MADHUB SINGH
[1 B. L. R., A. C., 195

GHATWALI TENURE—*continued.*

See NILMONEE SINGH *v.* BUKRONATH SINGH
[10 W. R., 255

26. ———— Debts of deceased holder, Liability for.—The rents of a ghatwali tenure are not liable for the debts of the former deceased holder of the tenure. BINODE RAM SEIN *v.* DEPUTY COMMISSIONER OF THE SONTHAL PERGUNNAHS
[6 W. R., 129 : S. C., on review, 7 W. R., 178

27. ———— Power of alienation—*Transfer of tenure.*—A ghatwal cannot give a pottah of his tenure binding a subsequent ghatwal. The rights and interests of each ghatwal in his tenure last only for his life. JOGESWUR SIRKAR *v.* NIMAI KARMAKAR . . . . 1 B. L. R., S. N., 7

28. ———— *Reg. XXIX of 1814—Alienation by ghatwal in Beerbhoom—Ejectment by Court of Wards.*—A ghatwal of Beerbhoom granted a lease to *A*. After *A* and his heirs had been in possession of the lands under the lease for sixty years, a surburakar appointed by the Court of Wards for the estate of the heir of *A*'s lessor, then a minor, entered upon the lands, and ejected the person then in possession under the lease. *Held* that, notwithstanding the ghatwals of Beerbhoom (independently of the recent Statute) had not the power of alienation, still, having an estate in perpetuity so long as the services were performed and the rent paid, the lease could not be regarded as a nullity, and the surburakar was not justified in ejecting the tenant without legal process. RUNGOLALL DEO *v.* DEPUTY COMMISSIONER OF BEERBHOOM. DEPUTY COMMISSIONER OF BEERBHOOM *v.* RUNGOLALL DEO
[Marsh., 117 : W. R., F. B., 34
1 Ind. Jur., O. S., 34 : 1 Hay, 200

29. ———— *Ghatwals of Beerbhoom, Leases granted by.*—Permanent leases granted by the ghatwals of Beerbhoom prior to the Decennial Settlement, for the due performance of the police duties for which the lands were originally granted to the ghatwals, and which have been held from generation to generation, cannot be set aside at the instance of the present sirdar ghatwals. The creation of such under-tenures is not beyond the powers of the ghatwals. MUKURBHANOO DEO *v.* KOSTOORA KOONWAREE . . 5 W. R., 315

30. ———— *Power creating incumbrances.*—A ghatwal in the district of Beerbhoom is not competent to grant a lease of the whole or a portion of his ghatwali tenure in perpetuity. Ghatwali tenures in Beerbhoom are grants of land by the Government to individuals for the performance of certain police duties. These tenures are heritable, but the incomes arising from them cannot be charged or encumbered by the ghatwal in possession so as to bind his successor. GRANT *v.* BANGSI DEO . . 6 B. L. R., 652 : 15 W. R., 38

31. ———— *Power of ghatwal to grant mokurari leases—Jungleburi leases.*—Any presumption that there may be against the right of a ghatwal to grant mokurari leases cannot hold good against such leases, when granted in good faith, for the clearance of jungle. DAVIES *v.* DEBEE MAHTOON . . . . . 18 W. R., 376

GHATWALI TENURE—*continued*

raiyats *Held* that this was not a service tenure that could be resumed and the subject of service tenures was explained FORBES v MIR MAHOMED TAKI

[5 B L R, 529
14 W R, P C, 28
13 Moore's I A, 438

15 ——————— *Terms implying of grant*—Suit *Held* that the the grantee and ndants or repre and permanent tenure at a fixed rate *Held* also that the clearest and most precise definition such as istemrari and

[illegible]

16 ——— Assessment of rent—*Evidence of grant—Former dismissal of su t for rent*—Long possession (presumably from the Decennial

assessment on the land so cultivated An adjudication

17 ——————— *Suit to assess ghatwal—Act X of 1859 ss 3 and 15*—Where it was admitted that the ghatwal defendant s tenure dated from a time anterior to the Decennial Settle ment and before the creat on of the zamindari the defendant is protected whether under s 3 or under s 15 Act X of 1859 from any fresh assessment ERSKINE v GOVERNMENT 8 W R, 232

18 ——— Enhancement of rent—*Here ditary tenure—Services Cessation of—Act XI of 1859 s 37*—The plaintiff an auction purchaser of a zam ndari at a sale for arrears of revenue sued in 1863 to eject the defendants from certain mouzahs included in the zamindari and which were held by the defendants under a ghatwali tenure on the ground that the service for which the grant was made was no longer required and that the sanad or grant contained no words of inheritance The defen dants proved that the grant was made in the year 1743 to *M* after whose death the land was in the possession of *M* s heir-at law prior to the Perma nent Settlement and that he and his ancestors had enjoyed uninterrupted possession in direct succes s on from a period prior to the Permanent Settlement at a quit rent of R61 per annum The Collector appeared on behalf of the Government and stated that the ghatwali services had not been dispensed with by the Government but might be required at any time *Held* the plaintiff was not entitled to eject the defendants *Per* PEACOCK *C J*—The case falls within, and is protected by, s 37 of Act XI of

GHATWALI TENURE—*continued*

1859 *Per* TREVOR and JACKSON, *JJ* S 37 of Act XI of 1859 does not apply to the case *Quære*—Is the zamindar entitled to enhance the rent of a ghatwal in lieu of service? KOOLDEEP NARAIN SINGH v MOHADEO SINGH

[B L R., Sup Vol, 559 6 W R., 199

Held on appeal to the Privy Council—A pur chaser at an auction sale cannot where lands are held under an hereditary ghatwali tenure originally created before the Decennial Settlement and at a fixed rent, resume those lands on the suggestion that the ghatwali services are no longer required The omission of words of inheritance does not show conclusively that a sanad is not hereditary it being shown that a ghatwali tenure had descended from father to son for several generations, it was held that it was an hereditary tenure KOOLDEEP NA RAIN SINGH v GOVERNMENT OF INDIA

[11 B L R, 71
14 Moore s I A, 247

19 ——————— *Grants prior to Permanent Settlement—Beng Reg VIII of 1793 s 51 cl 1—Enhancement of rent Su t for*—Where grants of land had been made prior to the Permanent Settlement on ghatwali tenure at a fixed rent and the Government subsequently dispensed with the services on the part of the zamindar—*Held* in a suit

VIII of 1793 and are protected from enhancement by cl 1 of s 51 of that Regulation LEELANUND SINGH v MUNRUNJUN SINGH

[I. L R, 3, Calc, 251

20 ——————— *Resumption—Purchaser at auction sale Rights of—Beng Reg XLIV of 1793—Enhancement of rent—Refund of revenue*—Where, prior to the Permanent Settlement grants of land had been made on ghatwali tenure at a fixed rent and the Government subsequently dispensed with the performance of the ghatwali services on the part of the zamindar—*Held* in a suit by the zamindar to resume the lands that as long as the ghatwals were willing and able to per form the services the zamindar had no right to put an end to the tenure on the ground that the services were no longer required. A purchaser at a sale for arrears of Government revenue is not entitled, under Regulation XLIV of 1793 to cancel a ghatwali tenure created subsequently to the Permanent Settle ment *Quære*—Whether he would be entitled to enhance the rent. Where lands granted on ghat wali tenure were in accordance with a decis on of the Special Commissioner resumed by Government, who made a settlement with the ghatwals under which the latter continued to pay to the Government half the sum assessed as revenue reserving the other half to themselves and the resumption proceedings were subsequently reversed by the Privy Council—*Held* that the ghatwals were entitled to a refund of the sum paid by them to Government less the sum

GHATWALI TENURE—*concluded.*

tenures—Mitakshara law inapplicable to ghatwali tenure—Family custom inapplicable to ghatwali tenure.—A ghatwali tenure in Khurruckpore is transferable if the zamindar assents and accepts the transfer. Such assent and acceptance may be presumed from the fact of the zamindar having made no objections to a transfer for a period of over twelve years, and when such a fact has been found, a Court ought to recognize such a transfer. In a suit brought to recover possession of a ghatwali tenure situated in Khurruckpore which had been brought to sale in execution of a decree against the previous ghatwali and purchased by the defendants, the plaintiffs sought to rely on the Mitakshara law and certain family custom for the purpose of establishing their right. The lower Court, applying such law and custom, found that the tenure was transferable, and that it was joint ancestral property, and gave the plaintiffs a decree for two-thirds of the property, and the defendants a decree for the remaining one-third, holding that to be the extent of the previous ghatwali interest which had been purchased by the defendants. *Held* on appeal that the decision of the lower Court was erroneous; that in dealing with a ghatwali tenure the Court must have regard to the nature of the tenure itself and to the rules of law laid down in regard to such tenures, and not to any particular school of law or the customs of any particular family; and that a ghatwali, being created for specific purpose, has its own particular incidents, and cannot be subject to any system of law affecting only a particular class or family. ANUNDO RAI *v.* KALI PROSAD SINGH

[I. L. R., 10 Calc., 677

39. ———————— *Ghatwali tenure in Bhagulpore—Ghatwal's right of alienation—Sale of ghatwal's estate in execution of decree against him.*—Ghatwali tenures are rendered by their origin and incidents distinct in some particulars from other inheritances, and to them the law of the Mitakshara, to its full extent, is not entirely applicable; yielding in their case to a custom, though only to the extent of the custom proved. On a question whether the sale of a ghatwali tenure in the Kharagpore zamindari, in Bhagulpore, in execution of a decree against the ghatwal, had transferred the inheritance as against the ghatwal's son,—*Held,* in regard to a proved custom, that the ghatwali was not inalienable, but might be aliened by the ghatwal or sold in execution of a decree against him, if such alienation was assented to by the zamindar, this power of alienation not being limited to the life-interest of the ghatwal for the time being, but forming part of this right and title to the ghatwali. KALI PERSHAD *v.* ANAND ROY . . I. L. R., 15 Calc., 471

[L. R., 15 I. A., 18

GIFT.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 2 All., 433
I. L. R., 6 All., 313

See CONTRACT ACT, S. 25.

[I. L. R., 2 All., 891

GIFT—*continued.*

See CASES UNDER HINDU LAW—GIFT.

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY DEED, GIFT, OR WILL . I. L. R., 1 Calc., 104
[I. L. R., 5 Calc., 684
I. L. R., 8 Calc., 357
I. L. R., 10 All., 495

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . 5 W. R., P. C., 131
[2 Moore's I. A., 331
I. L. R., 7 Bom., 491
I. L. R., 1 Mad., 307
I. L. R., 10 All., 407
I. L. R., 14 All., 377

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS.

See CASES UNDER MAHOMEDAN LAW—GIFT.

See CASES UNDER MALABAR LAW—GIFT.

See PARSIS . I. L. R., 5 Bom., 506
[I. L. R., 6 Bom., 151
I. L. R., 22 Bom., 355

See STAMP ACT, 1879, SCH. I, ART. 36.
[I. L. R., 12 Mad., 89
I. L. R., 7 Bom., 194

See CASES UNDER WILL—CONSTRUCTION.

———————— to a class.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 304, 670

———————— void for remoteness.

See CASES UNDER HINDU LAW—WILL CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

1.———————— Subsequent condition attached to gift—*Void condition.*—To a gift divesting the donor of all his interest in certain property, a condition cannot afterwards be attached. Where a gift completed by transfer rested on a valid consideration at the time when it was made,—*Held* that, even assuming that a condition could be afterwards imported into the transaction, and that condition an immoral one, this would not invalidate the gift, the general rule of law being that a gift to which such a condition is attached remains a good gift while the condition is void. A gift of villages was complete, being followed by transfer of possession. Afterwards in a petition to the Collector for "dakhil kharij" between the parties, the donor stating the gift added that it was on certain conditions,—*Held* that the petition must be treated as ineffective for the purpose of adding any condition. RAM SARUP *v.* BELA

[I. L. R., 6 All., 313
L. R., 11 I. A., 44

GHATWALI TENURE—*continued*

32 ———— *Sale or attachment in execution of decree* —Ghatwali tenures are not liable e ther to sale or attachment in execut on of decrees The s urplus proceeds of such a tenure collected during the lifetime of the judgment debtor are liable to be taken in execution as being personal property but profits accumulated after the death of the judgment debtor are not so liable KUSTOORA KOOMAREE *v* BINODERAM SEIN 4 W R, Mis, 4

33 ———— *Liability to attachment in execution of decree Execution for rents due to ghatwal during his lifetime* —After deduction of all necessary outgoings from the total rents due to a ghatwal the res due being his own

proved RAJKESHWAR DEO *v* BUNSHIDHUR MARWARI I L R, 23 Calc, 873

34 ———— *Ghatwals of*

approval of the purchaser as a substitute for the outgo ng ghatwal LEELANUND SINGH *v* DOORGA BUTTY W R, 1864, 249

35 ———— *Sale of rights*

zamindar as ghatwal Subsequently the zamindar having compounded with Government for a money payment in lieu of ghatwali services gave *G* a

the zamindar by granting a fresh ghatwali sanad appointed the grantee to the office of ghatwal and disallowed the sale made by *K* to *G* LALLA GOOMAN SINGH *v* GRANT 11 W R, 292

36 ———— *Nature of such tenure—Sale of tenure—Misdescription in proclamation of sale—Beng Reg XXXIV of 1814* —

retained by the jaghirdar forming no part of the zamindari assets on which the jumma of the latter was fixed *Per* JACKSON *J* —Where a jaghir is held by a person subject either to the appointment or approval of Government and with an additional

GHATWALI TENURE—*continued*

burden of public duty to the Government such a

the holding or make such lands when included in the Permanent Settlement police lands resumable by Government under cl 4 s 8 of Regulation I of 1793 *Per* WHITE *J* —Where a tenure is held under services which are not private or personal to the zamindar but are of a public nature, a proclamation issued for the sale of the tenure describing it as an ordinary rent paying one and ignoring the important fact that the tenure is a service one

revenue which was previously due to the Government and in respect of which he was assessed and did not become entitled to the services in respect whereof the one third of the rent or revenue was allowed as compensation to the jaghirdar That the jaghir, though hered tary, was not subject to the

against the father and predecessor in estate of a jaghirdar so approved as assets by descent in the possession of the latter *Leelanund Singh* v *Government of Bengal* 6 *Moore's I A* 101 followed NILMONI SINGH DEO *v* BUKRONATH SINGH I L R, 9 Calc, 187 [L R, 9 I A, 104

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debt due from its holder BALLY DOBEY *v* GANEI DEO I L R, 9 Calc, 388

38 ———— *Ghatwali tenures in Khurruckpore—Transferability of ghatwali*

GIFT—*continued.*

not fulfil it for him. Without endorsement, or something equivalent, a gift of Government stock cannot be completed. Where a particular form of transfer is prescribed by law, a transfer in another form is as inefficacious *inter vivos* as in a will. *Held* further that, having regard to the general practice among Parsis, the conduct of *B* in relation to the notes showed that it was his intention that the property should be enjoyed in sole and separate use by *M* and her children. Among Parsis a gift may be made to the separate use of a married woman or of a woman about to be married. MERBAI *v.* PEROZBAI [I. L. R., 5 Bom., 268

5. ———— **Transfer by gift**—*Failure to prove alleged inequitable advantage taken by donee over donor—Contract Act (IX of 1872), ss. 16 and 17.*—The heir to a share in an ancestral estate, out of possession and at a time when he expected that his right would be contested by another claimant, made a gift of his title to his brother's son, providing that he, the donor, should have nothing to do with the cost of getting possession. After the donee had obtained possession, the donor sued to have the gift set aside. The gift, having been maintained in the first Court, was set aside by the Appellate Court on the ground that, it having been made without consideration and imprudently as regarded the donor's interests, he had had no opportunity to obtain any advice from an independent person, but had only had that advice which came from, or was given on behalf of, the donee. Thus the gift was not an equitable transaction which the Court should enforce. The Appellate Court had, however, affirmed the finding of the first Court, that the donor, with full knowledge of the contents of the deed, had voluntarily executed it, and that he had been apprehensive of incurring costs in litigation in getting possession of his inherited share. *Held* that the Appellate Court was in error in taking it that the question was whether the transaction was an equitable one which that Court should enforce. The defendant was not asking the Court to enforce the deed; and the reason why the gift was without consideration was explained by the circumstances. The reasons given by the Appellate Court for reversing the decision of the first Court were insufficient. It did not appear that unsound advice was given to the donor by, or on behalf of, the donee, or that confidence was reposed by the donor so as to bring the case within s. 16 of the Indian Contract Act, 1872. There was only the donor's statement that he had confidence, which was not sufficient proof of it. Whether a gift made as this had been should be set aside, as being inequitable between the parties, would depend on the circumstances existing at the time of the gift, and not on subsequent events. GANGA BAKSH *v.* JAGAT BAHADUR SINGH

[I. L. R., 23 Calc., 15
L. R., 22 I. A., 153

6. ———— **Gift of land**—*Transfer of Property Act (IV of 1882), s. 123—Retractation by donor prior to registration—Effect of registration contrary to wishes of donor.*—Where a donor made a gift of land to the plaintiff, but prior to registration retracted his consent, upon which the District

GIFT—*concluded.*

Registrar ordered compulsory registration,—*Held* that the donor could not be compelled to register contrary to his wishes, and that the registration was void and the gift of no effect. RAMAMIRTHA AYYAN *v.* GOPALA AYYAN . I. L. R., 19 Mad., 433

7. ———— **Onerous gift to an infant**—*Transfer of Property Act (IV of 1882), s. 127—Acceptance.*—Land was given by the defendant to the wife of the plaintiff burdened with an obligation. She accepted the gift, and died in infancy leaving the plaintiff her heir. The plaintiff now sued to make good his title to the land against the donor. *Held* that the gift was complete as against the donor, and that the plaintiff was entitled to a decree. SUBRAMANIA AYYAR *v.* SITHA LAKSHMI

[I. L. R., 20 Mad., 147

8. ———— **Registration of gift of immoveable property after the death of the donor**—*Transfer of Property Act (IV of 1882), ss. 122, 123—Validity of gift.*—A gift of immoveable property duly made by means of a registered deed is not invalid, merely because registration of the deed of gift may have taken place after the death of the donor. *Hardei* v. *Ram Lal, I. L. R., 11 All., 319,* referred to. NAND KISHORE LAL *v.* SURAJ PRASAD . . I. L. R., 20 All., 392

GOMASTAH.

See BENGAL RENT ACT, 1869, s. 30.
[10 W. R., 51
16 W. R., 149
20 W. R., 386

See CIVIL PROCEDURE CODE, 1882, ss. 37, 38, 417, 432 (1859, s. 17).
[5 B. L. R., Ap., 11

See HEREDITARY OFFICE.
[I. L. R., 16 Bom., 374
L. R., 19 I. A., 39

See INSOLVENT ACT, s. 9.
[I. L. R., 5 Calc., 605
I. L. R., 20 Calc., 771
I. L. R., 23 Calc., 26
L. R., 22 I. A., 162

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . Bourke, A. O. C., 43
[Marsh., 282, 384
2 Agra, 275

GOOD FAITH.

See UNDER BONA FIDES.

GOODS AND CHATTELS.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY . I. L. R., 4 Calc., 946
[10 B. L. R., 448

GOODS SOLD.

See LIMITATION ACT, 1877, ART. 52.

See LIMITATION ACT, 1877, s. 62.
[I. L. R., 14 Calc., 457

GIFT—*continued*

Affirming the decision of the High Court in LACHMI NARAIN *v* WILAYATI BEGAM
[I. L R., 2 All., 433

2 ———— **Construction of gift as to quantity of estate given**—*Gift when operative without delivery of possession—Hindu law* —The rule as to the construction of the language in which a gift is made, independently of the "Transfer of Property Act," Act IV of 1882 (which may or may not have been expressed so as to lay down in favour

to my interest in those talukhs and withdraw my enjoyment thereof, and I make them over to you,' —*Held* that this must be read with what preceded it, *viz*, "in order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support, by having the property under your authority and control " and that the words of gift must be taken to be limited by the purpose of the gift, the whole taken together showing that the donor's intention was that the donee should take the property for life only *Held* also that, consistently with the authorities in the Hindu law, a gift, where the donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid for the mere reason that the donor has not delivered possession, and that where a donee or vendee is under the terms of the gift or sale, entitled to possession there is no reason why such gift or sale, though not accompanied by possession, whether of moveable

operate to give the donee or vendee a right to obtain possession KALIDAS MULLICK *v* KANHAYA LAL PUNDIT
I. L R., 11 Calc, 121
[L. R., 11 I. A, 218

3 ———— **Gift of land in consideration of performance of services**—*Failure to perform services—Obligation to restore land—Revocable gift* —Plaintiff s father and defendant entered

the contract was not revocable *Held* in special appeal, reversing the decisions of the lower Courts, that the question was whether there was in this case the offer of one performance for the other, and

intent being to give, that this was a question of construction, and that in the present case, taking the agreement and counterpart together, there was clearly a covenant for the hereditary performance of

GIFT—*continued*

the services KACHUR SUBBAYA *v* BENGAL SANTAPPAIYA
7 Mad., 167

4 ———— **Gift of Government promissory notes**—*Necessity of endorsement—Intention* —The plaintiffs, *M* and *R*, were Parsis, and were married in the year 1851 The defendant was the widow of *B M*, who was the father of the plaintiff *R* The plaintiffs sued to recover from the defendant certain Government promissory notes which they alleged had been presented by *B*, to *M* at her marriage for her sole and separate use They alleged that the said notes then of the nominal value of R1,500, were endorsed in the name of the said *B* and had been deposited by him for safe custody with *M*'s grand father *J* that the said *B* during his life used from time to time to receive the said notes from *J*, and draw the interest thereon for *M*, that *B* died in 1864, and that after his death the defendant who was his widow and executrix, used to draw the interest for *M*, that in 1869 she obtained possession of the said notes, and

before the present suit, and, having then separated from her had called upon her to hand over the notes and the accumulated interest, which she refused to do The defendant denied that her husband *B* had presented *M* with Government notes for her separate use She alleged that the notes which had been deposited by *B* with *J* were her own separate property, and not *M*'s , that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs or either of them or for their benefit She further stated that some of the notes which had been deposited with *J* had been disposed of by *B* in his lifetime with her consent, that in 1869 she obtained the remaining notes from *J* and sold them, and applied the proceeds to her own benefit

the family of her husband The latter account contained an entry (under date August 1854) to the effect that the father in-law of *M* had bought two Government notes for R1,500 in *M*'s name, and had obtained the interest on them which was duly credited to her Other documents were produced, proved to be in the handwriting of *B* and *J*, in which the said Government notes were alluded to as the property of *M* and as having been purchased with her moneys In 1864 *B* died without having endorsed the notes over to *M* or to any one in her behalf, and they remained in his name in the hands of *J* until 1869, when the defendant got possession of

GOVERNMENT—*continued.*

——— Power of—

See Cession of British Territory in India . . I. L. R., 1 Bom., 367
[L. R., 3 I. A., 102

See Cases under Escheat.

——— to extend time for appeal.

See Madras Boundary Marks Act (XXVIII of 1860).
[I. L. R., 1 Mad., 192
I. L. R., 3 Mad., 92
I. L. R., 7 Mad., 280

——— Provision in Act for benefit of—

See Bombay Act II of 1863.
[I. L. R., 2 Bom., 529

——— Resolution of—

See Collector . I. L. R., 18 Bom., 103

——— Right of, in navigable river.

See Accretion—New Formation of Alluvial Land—Churs or Islands in Navigable River . 6 B. L. R., 255
[6 B. L. R., Ap., 93
5 C. L. R., 154
14 B. L. R., 219
7 W. R., 103
20 W. R., 276
23 W. R., 110
L. R., 7 I. A., 73

See Fishery, Right of . 15 W. R., 212
[11 C. L. R., 11
I. L. R., 4 Calc., 53
I. L. R., 11 Calc., 434
I. L. R., 8 Mad., 467
I. L. R., 2 Bom., 19
I. L. R., 22 Calc., 252

——— to Costs or Court-fees.

See Pauper Suit—Appeals.
[I. L. R., 13 All., 326
I. L. R., 18 Bom., 454, 464

See Pauper Suit—Suits 15 W. R., 205
[I. L. R., 1 Bom., 7
I. L. R., 1 All., 596
I. L. R., 2 All., 196
I. L. R., 9 All., 64
I. L. R., 18 All., 419
2 B. L. R., Ap., 22
I. L. R., 15 Bom., 77
I. L. R., 20 Calc., 111
I. L. R., 21 Mad., 113

——— to property found.

See Cases under Treasure Trove.

——— to withdraw proclamation.

See Forest Act, ss. 75 and 76.
[I. L. R., 18 Bom., 670
I. L. R., 23 Bom., 518

GOVERNMENT—*concluded.*

——— Sanction of—

See Decree—Form of Decree—Mortgage . . I. L. R., 20 Bom., 565

See Execution of Decree—Effect of Change of Law pending Execution.
[I. L. R., 17 Bom., 289
I. L. R., 19 Bom., 80
I. L. R., 20 Bom., 565

See Hindu Law—Adoption—Requisites for Adoption—Sanction.
[7 Bom., A. C., 26
I. L. R., 1 Bom., 607

See Nawab of Surat . 12 Bom., 156
[I. L. R., 12 Bom., 496

——— Suits against—

See Costs—Taxation of Costs.
[I. L. R., 15 Mad., 405
I. L. R., 17 Mad., 162

See Jurisdiction—Causes of Jurisdiction—Dwelling, Carrying on Business, or Working for Gain.
[1 Hyde, 37
1 Mad., 286
I. L. R., 14 Calc., 256

See Small Cause Court, Mofussil—Jurisdiction—Government, Suits against . . . 10 Bom., 308
[I. L. R., 17 Calc., 290
I. L. R., 18 Mad., 395

——— when necessary parties or not to suits.

See Jurisdiction of Civil Court—Customary Payments.
[I. L. R., 16 Bom., 649

See Cases under Parties—Parties to Suits—Government.

——— **Wrongful dismissal of public servant, Suit against Government for**—*Contract of service—Public servant—Payment of monthly wages.*—A suit for wrongful dismissal by one of its servants will lie against the Government. In a suit by a subordinate officer in the Public Works Department for wrongful dismissal against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government,—*Held* that the hiring was indefinite; and that, although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant. An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring. Hughes *v.* Secretary of State for India in Council . 7 B. L. R., 688

GOODS SOLD AND DELIVERED

1 ———— Action for—*Principal and agent—Delivery by and payment to unauthorized agent*—The defendant through a broker purchased from the plaintiffs certain goods to be paid for by cash on delivery and before removal Both the defendant and his broker knew that the plaintiffs had a separate cash office where payments for goods of the description purchased were usually made and the broker knew that the delivery clerk whose duty

delivery from him of the goods without any order for delivery having been given by the plaintiffs The plaintiffs a year subsequently discovered that the delivery clerk had embezzled the money so paid

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between an ordinary contract for sale of goods and a contract to pay an existing debt in specific articles pointed out DADABHAI NARSI *v* SALEMAN DASSI
[5 Bom, A C, 127

GOONDAISH LANDS

———— Meaning of goondaish.—Goonda

[21 W R, 135

GORABANDI TENURE

———— Nature of tenure, Transferability of—*Onus probandi*—The onus lies upon a plaintiff claiming in virtue of a purchase of the tenure from the former holder to be entitled to possession of gorabandi lands to prove that such lands are transferable *Per Curiam*—There are no decided cases nor is there any evidence to show either that gorabandi rights are more extensive than rights of occupancy or if more extensive extensive in this particular direction—that is to say that they are transferable CHUTTERBHUJ BHARTI *v* JANKI PROSAD SINGH 4 C L R, 298

GORDON SETTLEMENT

See HEREDITARY OFFICES ACT
[4 C W N, 517

GORDON SETTLEMENT—*concluded*

See HEREDITARY OFFICES ACT s 10
[I L R, 20 Bom, 423

See SERVICE TENURE
I L R, 15 Bom, 13
[I L R, 18 Bom, 22

GOVERNMENT

See CASES UNDER ACT OF STATE

See CASES UNDER PARTIES—PARTIES TO SUITS—GOVERNMENT

———— Appeal by—

See CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS APPEALS FROM

———— Application by, when not a party to suit.

See DECREE—ALTERATION OR AMENDMENT OF DECREE 2 C L R, 461
[13 W R, 155

See PAUPER SUIT—APPEALS
[I L R 13 All, 326
I L R, 15 Bom, 454

See PAUPER SUIT—SUITS
[I L R, 15 Bom, 77

———— Debt due to—

See CROWN DEBTS
[I L R, 12 Calc, 445
5 Bom, O C, 23

———— Disaffection towards, or Disapprobation of acts of—

See PENAL CODE s 124A
[I L R, 19 Calc., 35
I L R 22 Bom, 112, 152
I L R., 20 All, 55

———— Liability of—

See CASES UNDER GOVERNMENT OFFICERS, ACTS OF

See UNDER JUDICIAL OFFICERS LIABILITY OF

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS
[I L R, 1 Calc. 11
I L R., 4 Mad., 344
I L R, 5 Mad, 273
I L R., 3 All., 820

See SECRETARY OF STATE
[Bourke, A O C, 106 5 Bom, Ap, 1
1 N W, 118

See SPECIFIC PERFORMANCE—SPECIAL CASES I L R., 3 Calc, 464

———— Order of—

See JURY—JURY IN SESSIONS CASES
[I L R, 23 Mad., 632

GOVERNMENT OFFICERS, ACTS OF —*concluded.*

the acceptance by the Government of rent at the old rate from the talukhdar for a long time after expiration of thirty years did not amount to an acquiescence in the terms of the kabuliat. Unsettled and unoccupied waste land, not being the property of any private owner, must belong to the State. PROSUNO COOMAR ROY *v.* SECRETARY OF STATE
[I. L. R., 26 Calc., 792
3 C. W. N., 695

GOVERNMENT PLEADER.

———— Officer prosecuting case, Duty of —*Discrepancies of witnesses for prosecution.*—It is the duty of the Government pleader or other officer who conducts the prosecution before the Court of Session to point out to the Court any glaring discrepancy between the evidence being given by a witness before the Court of Session and that previously recorded by the committing officer. QUEEN *v.* GONESHA MOONDA . . 20 W. R., Cr., 38

GOVERNMENT PROMISSORY NOTE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[1 C. W. N., 170

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 17 Mad., 480, 496
I. L. R., 18 Mad., 306

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.
[I. L. R., 2 All., 756

See GIFT. . I. L. R., 5 Bom., 268

See LACHES . . . 18 W. R., 58

1. ———— Renewal of note—*Loss of negotiability by note becoming covered with endorsements—"Allonge."*—In a suit by a Hindu widow as the holder and last endorsee of a Government promissory note of the 5½ per cent. loan, 1859-60, to enforce renewal of the note, it appeared that in the advertisement of the loan in the *Gazette,* it was stated that "the practice and rules heretofore in use in regard to the renewal, etc., of promissory notes will be adhered to in respect of the promissory notes of this loan;" that it was the practice of the Government to insist on the production of the promissory note when the interest due on it was applied for, and to endorse the payment of such interest on the back of the note; that the note of which renewal was sought had in consequence become so covered with endorsements that a slip of paper had been attached to it by the Government for the purpose of allowing further endorsements on payment of interest to be made; and that in consequence of having this paper attached, and being covered with endorsements, the note was practically unnegotiable. The defence was that the Government had a discretion as to granting or refusing renewal, and had, on objection made by the reversioners, exercised that discretion in refusing to renew the note. The lower Court dismissed the

GOVERNMENT PROMISSORY NOTE —*continued.*

suit on the ground that the plaintiff had failed to show any legal right to renewal against the Government. *Held* on appeal that the practice of insisting on endorsement of payments of interest on the note as a preliminary to receipt of interest thereon having rendered it practically unnegotiable, the Government were bound to renew the note. MONMOHINEE DEBI *v.* SECRETARY OF STATE
[13 B. L. R., 359: 22 W. R., 106

2. ———— Theft of note—*Purchaser, Rights of—Title.*—In the month of October 1878, a Government promissory note for R10,000 was sent from the A treasury to the Public Debt Office for enfacement. The note was duly received at the office, and its receipt was entered in the proper book. The business of the Public Debt Office is carried on by certain officers of the B Bank. The note was stolen from the office, and endorsed over by the thief to a person who sold it to *C* for full value. The note bore two blank endorsements prior to that of the thief. In the same month *C* applied to the B Bank for a loan, which the Bank agreed to make upon the security of *C*'s promissory note, and the deposit of Government notes. The form of application for the loan specified by their numbers the notes which were to be deposited. One of these was the stolen note. Before finally agreeing to the advance, the officers of the Bank in charge of the Loan Department sent the application, showing the numbers of the notes to the Public Debt Office, and received it back with a memorandum upon it to the effect that the notes were not stopped. On the 23rd October the loan was made, and the securities were given. Shortly afterwards the theft was discovered and the note was stopped. In November the Bank, at the request of *C*, sent the note to the Public Debt Office for payment of interest, and the note was detained by the Superintendent. The Bank then required *C* to repay the amount of his loan. This he refused to do unless all his securities were handed over to him. In a suit by the Bank against *C* upon his promissory note,—*Held* that he was not entitled to refuse payment until the stolen note was given up to him. *Per* GARTH, *C.J.*—The Public Debt Branch of the B Bank is as much a Government office as if it were carried on separately under the management of Government officers. The note was therefore stolen whilst virtually in the hands of the Government, and was, when detained by the Superintendent of the Public Debt Office, held by him as the agent of the Government on behalf of the true owner at the time when it was stolen, and the Bank had no right or power to take it in their private capacity out of the hands of the Public Debt Office. When an instrument, such as the note in question, has been stolen, the person from whom it was stolen has a good title to it, not only as against the thief, but as against any person who subsequently becomes the holder, unless such person can prove that the instrument had become negotiable at the time it was stolen, and that he had obtained it *boná fide* for value without notice of the theft. In this case the note was stolen whilst in the custody of the Public Debt Office before *C* had any title to it. The Bank, therefore, as agents for the

GOVERNMENT CURRENCY NOTE.

See ATTEMPT TO COMMIT OFFENCE
[I. L. R., 16 Calc., 310

——— Theft of—

See CONTRACT ACT, s 76
[I. L. R., 3 Calc, 379
1 C. L. R., 339

See CRIMINAL PROCEDURE CODES, s 520 (1872, s 419)
[I. L. R, 3 Calc, 379
1 C L. R., 339

——— Forgery of currency note—*Notice—Delay*—A person who receives a forged currency note in payment is not (in order to entitle himself to be paid a second time), upon discovering the forgery, bound to give immediate notice of it to the person from whom he receives the forged note,

were so great as to ... the payer ...

GOVERNMENT OFFICERS, ACTS OF—

1. ——— Protection of officers acting bonâ fide—*Illegal collection of revenue—Action of trespass*—If a party *bonâ fide*, and not absurdly,

illegal act SPOONER *v* JUDDOW
[4 Moore's I. A., 353

2. ——— Binding effect of—*Construction of sanad—Beng Reg VII of 1822, s 6, cl. 3*—Where, by a sanad, a grant was made of certain

ment, and not to be an error within the meaning of Regulation VII of 1822, s 6, cl 3 ZAHURRUDDIN *v* COLLECTOR OF GORUCKPORE
[4 B. L. R, P. C, 36: 13 W. R., P. C, 31

3. ——— Special Commissioner—*Decree under Act IX of 1859 directing officer to put*

KHANZADI . . . 5 B. L. R., P. C., 312

GOVERNMENT OFFICERS, ACTS OF —*continued*

4. ——— Ratification by Government—*Excess of authority*—The acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess COLLECTOR OF MASULIPATAM *v* CAVALY VENCATA NARAINAPAH
[2 W R., P. C, 61: 8 Moore's I. A., 529

5. ——— *Settlement of noabad lands in Chittagong—Evidence of settlement by Government—Acceptance of kabuliat by Government—Ratification—Acts of Government officers as binding the Government—Reg III of 1822, s 5, cl 1—Reg. VII of 1822, s 7, cl 1—Acquiescence—Acceptance of rent after term of settlement—Presumption of due performance of official acts*—The plaintiff sued the Secretary of State for India in Council for the declaration that a certain noabad mehal of his in the district of Chittagong was a permanent talukh, not resumable by the Government He based his claim on two grounds—(1) that the mehal existed from before the time of the Decennial Settlement, and the settlement of 1800 confirmed the permanent right of the talukhdar in the same, and (2) that, at any rate, a kabuliat executed in 1836 by his predecessors in title with the approval of the Collector had the same effect In defence, it was alleged (1) that the mehal was not in existence at the time of the Decennial Settlement, and the settlement of 1800 was a temporary one, and (2) that the kabuliat was never accepted by the Government, but that, on the contrary, the Government passed distinct orders that the settlements of 1836 were for thirty years only, which order was duly published by an istahar to that effect It was found on the evidence that the talukh was not shown to have been in existence before 1800, and the settlement proceedings of that year and the variation of rent from time to time did not support the plaintiff's contention *Held* that the kabuliat of 1836 was merely an offer on the part of the talukhdar for the time being and was not binding on the Government, its terms not having been accepted either by the Government or by any duly authorized officer thereof, that both by law and by the special instructions issued for the guidance of settlement officers, no settlement could be binding on the Government unless confirmed by the Governor-General in Council. There being no proof given by either party as to whether the istahar abovementioned was or was not duly published,—*Held* that the publication of the istahar must be presumed, having regard to the presumption in favour of the due performance of official acts *Held* also that, even

conduct of the officers was in violation of their duty as such officers and in direct contravention of the express orders of the Government. *Held* also that

GRANT.

See Cases under Pensions Acts, 1849 and 1871.

See Cases under Prescription.

———— by Crown.

See Ferry . I. L. R., 18 Calc., 652

———— by Government.

See Cases under Hindu Law—Inheritance—Impartible Property.

See Registration Act, s. 90.
[I. L. R., 19 Calc., 742

See Sanad . I. L. R., 1 Bom., 523
[I. L. R., 4 Bom., 643
6 Bom., A. C., 191

———— Construction of—

See Hindu Law—Endowment—Alienation of Endowed Property.
[I. L. R., 18 Mad., 266
I. L. R., 19 Bom., 271

See Ownership, Presumption of.
[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

See Cases under Sanad.

See Service Tenure.
[I. L. R., 14 Bom., 82
I. L. R., 22 Calc., 938

———— Endorsement on—

See Evidence—Parol Evidence—Varying or Contradicting Written Instruments.
[I. L. R., 14 Bom., 472

———— in lieu of maintenance.

See Resumption—Right to resume.
[22 W. R., 225
I. L. R., 3 Calc., 793
I. L. R., 5 Calc., 113

———— of land for building.

See Cantonment . I. L. R., 3 All., 669
[I. L. R., 6 All., 148

———— prior to Permanent Settlement.

See Ghatwali Tenure.
[I. L. R., 3 Calc., 251
B. L. R., Sup. Vol., 359
11 B. L. R., 71
14 Moore's I. A., 247
13 B. L. R., 124
L. R., I. A., Sup. Vol., 181

GRANT—*continued.*

See Onus of Proof—Resumption and Assessment . I. L. R., 3 Calc., 501
[24 W. R., 447
I. L. R., 8 Calc., 230

1. CONSTRUCTION OF GRANTS.

1. ———— Grant of freehold—*Hindu law—Words of inheritance.*—By the Hindu law, no words of inheritance are necessary to pass the freehold interest in land to the heirs. Anundomohey Dossee *v.* Doe d. East India Company
[4 W. R., P. C., 51
8 Moore's I. A., 43

2. ———— Omission of words of inheritance—*Stipulation for retention rent-free.*—A zamindar, on giving up a four-anna share which he had theretofore held, but had mortgaged, stipulated for the retention of the holding in suit rent-free for maintenance. *Held* the retention of the holding was intended not only for the benefit of the proprietor himself, and to inure during his life only, but also for the benefit of his heirs. Words of inheritance are neither necessary nor customary in such cases, and no inference is to be drawn from their absence. Gunga Deen *v.* Luchmun Pershad
[1 N. W., 147 : Ed. 1873, 229

3. ———————— *Proof of hereditary nature of grant.*—The absence of words of inheritance in a deed of grant of land is not of itself conclusive to show that such grant was not intended to be in perpetuity; but the hereditary character of the tenure may be inferred from evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son. Gyan Singh *v.* Peetum Singh . 1 N. W., Part 6, p. 73 : Ed. 1873, 165

4. ———— Hereditary tenure—*Transfer of tenure granted—Regs. XIII of 1795 and XXXVII of 1793.*—Grants which are hereditary "nuslan bad nuslan butnun bad butnun" are declared transferable by gift, sale, or otherwise, under the terms of s. 15, Regulation XIII of 1795, and s. 15, Regulation XXXVII of 1793. *Held* that the grant in this case was not for the benefit of the family, but was confirmed to the grantee's son only. The family could have no other claim upon him than a natural obligation to help them, and their title to succeed to the grant could only accrue in regular succession. Bithul Bhat *v.* Lalla Raj Kishore
[2 Agra, 284

5. ———————— *Mafee birt tenure.*—Whatever the words "mafee birt tenure" may have imported originally, the *primâ facie* meaning of the words has come to be an hereditary tenure. Mahendra Singh *v.* Jokha Singh
[19 W. R., P. C., 211

6. ———————— *Meaning of "talukh."*—Where the word "talukh" occurs in a grant without any sort of qualification and restriction, it refers *primâ facie* to a hereditary interest. Assanoollah *v.* Kalee Mohun Mookerjee
[18 W. R., 469

Krishno Chunder Goopto *v.* Sufdur Ali
[22 W. R., 326

GOVERNMENT PROMISSORY NOTE
—concluded

Government on behalf of the true owner, from whom and on whose behalf they received it had *primâ facie* a better title than the thief or any one claiming through him and C, in order to rebut that *primâ facie* case would have to show that he was a *bona fide* holder for value In order to do so, he would have to prove that the note at the time when it was stolen was a negotiable instrument and this he had failed to do as he had not proved that the endorsements prior to that of the thief were genuine BANK OF BENGAL v MENDES
[I. L. R., 5 Calc, 654 5 C L R, 586

3 ———— Government promissory notes bearing a forged indorsement—*Title of holder—Government promissory notes surrendered for renewal—Title to renewed notes—English* [illegible] *of 1881)*— [illegible] as adminis[illegible] [illegible]ased Hindu sued to recover from the defendants (thirty one in all) certain shares debentures and Government promissory notes which he alleged belonged to the estate of the deceased but which the first four defendants had stolen and by means of forged indorsements sold them to the other defendants and received the purchase money Those of the defendants who had purchased the Government promissory notes contended that as innocent purchasers for value they were entitled to retain them *Held* that the plaintiff was entitled to recover all the shares debentures and Government promissory notes from the defendants Some of the Government promissory notes on which the forged endorsements had been made had been surrendered for renewal and fresh promissory notes issued in their place *Held* that the plaintiff was entitled to recover the renewed notes from the holders HUNSRAJ PURMANAND v RUTTONJI WALJI
[I L R, 24 Bom, 65

4 ———— Right of Hindu widow with certificate to negotiate notes—A Hindu widow holding a certificate under Act XXVII of 1860 to collect debts due to the estate of her deceased son who had been allowed to draw interest on certain Government promissory notes which though entered in the certificate stood apparently in the name of her late husband having applied for authority to negotiate those promissory notes—*Held* that she was bound to show how she got possession of those notes IN THE MATTER OF THE PETITION OF BIDYA SOONDUREE DOSSEE 15 W R 267

GOVERNMENT REVENUE

See REVENUE

GOVERNMENT SECURITIES, SALE OF—

See CONTRACT—CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES
[Cor, 1 2 Hyde, 121
I. L R, 9 Calc, 791

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R., 9 Calc, 791

GOVERNMENT SOLICITOR

See COSTS—TAXATION OF COSTS
[I L R, 15 Mad, 405

See MADRAS MUNICIPAL ACT 1884 s 103
[I L R, 23 Mad, 529

———— Person appointed by, to act as Prosecutor in Police Courts

See PUBLIC SERVANT
[I L R., 3 Calc, 497

GOVERNOR GENERAL IN COUNCIL

———— Consent of—

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS
[I. L R., 21 Bom, 351

———— Statutes affecting the Crown or Governor General as representing it—*Exemption of Governor General from General Statutes*—The rule of construction according to which the Crown is not affected by a statute unless expressly named in it applies to India and the Viceroy and Governor General as representing the Crown therefore enjoys a like exemption SECRETARY OF STATE FOR INDIA v MATHURABHAI
[I L R., 14 Bom, 213

GOVERNOR OF BOMBAY IN COUNCIL

1 ———— Powers of Legislature—*Jurisdiction of Courts in mofussil—Course of legislation*—The Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the Courts in the mofussil established by the local Legislature and such Acts are not void because their indirect effect may be to increase or [illegible]

stone Code was passed reviewed PREMSHANKAR RAGHUNATHJI v GOVERNMENT OF BOMBAY
[8 Bom, A. C, 195

2. ———— Power to make laws—*Laws affecting authority of High Court*—The Bombay [illegible]

DEV SHETH I L R., 8 Bom, 264

GOVERNOR OF MADRAS IN COUNCIL

———— Power of, to pass Act affecting Imperia[illegible] local Legi[illegible] affecting [illegible] Parliamen[illegible] SAIT & C[illegible]

GRANT—*continued.*

1. CONSTRUCTION OF GRANTS—*continued.*

to his father for his sole use, and both these allegations were found against defendant, who appealed on the ground that the village which is inam was granted to defendant for his sole use in 1857 on the death of his father. *Held* that the grant to defendant was not a new grant, and was subject to the rights of the other members of the family. NATTAN VENKATARATNUM *alias* BALAKONDA VENKATA NARAYANA ROW *v.* NATTAM RAMAIYA *alias* BALAKONDA RAMA ROW . . . 2 Mad., 470

14. ———— Limited grant—*Prescriptive right of inamdars to recover from shilatridars the revenue formerly paid by latter to Government.*—Government, by an indenture, dated 25th January 1819, conveyed to *A* and *B* and their heirs and assigns certain villages in the Island of Salsette with the exception of such spots of shilatri tenure as might be therein or on any part thereof which could only become the property of *A* and *B* on their purchasing the same from the proprietors. Since 1819 the holders of these shilatri lands had paid to the grantees and their heirs assessment (or rent) at a fixed rate which before the grant they used to pay to Government. In a suit brought by an heir of *A* and *B* in 1868 to recover an enhanced rent or assessment levied on these lands,—*Held* that, though the language of the exception was so large that it might have been construed to exclude any right on the part of the grantees to receive rent (or revenue), yet that, as the defendant or his predecessors had, ever since 1819, paid to the plaintiff and his predecessors the revenue paid before that time to Government, that revenue passed under the indenture of 1819 to the grantees in the deed. DADABBAI JAHANGIRJI *v.* RAMJI BIN BHAU . . . . . 11 Bom., 162

15. ———— Grant of mortgaged villages—*Provision for grant of others in case of redemption—Implied confirmation of father's grant by son.*—In 1846 *A* granted a pottah of a certain village, which had been mortgaged to him, to his illegitimate son *B*, promising, in the event of the mortgagor redeeming the estate, to make over to *B*, in lieu of the village granted, other villages yielding an equal revenue, and in 1847 confirmed the grant making it rent-free. On *A*'s death, the grant made by him was confirmed by his legitimate son, the appellant, in certain pottahs, in which, however, no reference was made to the provision in the earlier grant by the father for the substitution, in the event of the mortgagor redeeming, of villages yielding an equal revenue. After the passing of Act XIII of 1866, the mortgagor obtained a decree for redemption and ousted *B*. *Held* by the Privy Council that the appellant was bound by his father's agreement in the pottah of 1846 to make over to *B* villages yielding a revenue equal to that of the village which had been redeemed. BIJAI BAHADOOR SINGH *v.* BHYRON BUX SINGH . . . . . 6 C. L. R., 21

16. ————Implied grant when intention to grant is not completed—*Intention to give further deed of grant.*—Where a piece of land is held partly by a permanent lease and partly by an amulnamah, granted [illegible] and intended eventually to [illegible], and thereupon the whole piece of land is thrown into one compound and occupied, and new [illegible] thereupon with the consent of [illegible] no failure on the part of the [illegible] with the terms of the grant,—*Held* [illegible] grant was to be impliedly ex[illegible] premises in question, notwithstanding that no lease was formally granted with respect to the remaining portion as originally contemplated. PUDDOMONEE DOSSEE *v.* DWARKANATH BISWAS . 25 W. R., 335

17. ———— Grant by zamindar—*Mad. Reg. XXV, 1802, s. 3—Inam—Tenancy not determinable at will of grantor's successor.*—Regulation XXV of 1802, s. 3, imposes restrictions on alienations only to secure the interests of the public revenue, and under it the zamindar has no power to disturb grants otherwise valid made by his predecessor or titles to inams acquired by prescription. An inam, existing under a grant made in 1811, became in 1863 the subject of arrangement between the zamindar, who had succeeded the grantor in the zamindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. Subsequently the son and successor of the grantor of 1863 claimed to have determined the tenancy by a notice to quit. *Held* that it was not determinable by such notice. MAHARAJA OF VIZIANAGRAM *v.* SURYANARAYANA

[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

18. ———— Grant from Government—*Mad. Reg. IV of 1831—Ancient and permanent tenures.*—Regulation IV of 1831, Madras Code, which must be strictly construed, applies only to suits brought to try the validity of grants emanating from, or confirmed or affected by, the direct act and order of the Governor in Council. A written order under that law is not necessary in a suit brought by a person who claims to hold under an ancient and permanent tenure in existence before the Dewany. BRETT *v.* ELLAIYA

[12 W. R., 33 : 13 Moore's I. A., 104

19. ———— Grant in saranjam—*Jaghir—Grant of revenue—Grant of soil—Pensions Act, XXIII of 1871—Evidence—Burden of proof—Impartibility—Primogeniture.*—The grant in jaghir or saranjam is very rarely a grant of the soil, and the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. It is for the Government to determine how saranjams are to be held [illegible] and in cases where the Civil Courts ha[illegible] over claims relating to saranjams, in [illegible] the non-applicability of the Pensions Act, XXIII [illegible] 1871, or otherwise they would [illegible] such claims according to the r[illegible]

GRANT—*continued.*

1 CONSTRUCTION OF GRANTS—*continued.*

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that the plaintiff's grant was dated "25th Falgoon in the year 16" *Held* that the meaning of the words "in the year 16" might, for the purpose of

COAL COMPANY *v* GONESH CHUNDER BANERJEE [9 C L. R, 276

8. ———— Inaam-i-altamgha grant—*Grants for religious and charitable purposes or for rendering military services* —A grant in inaam i-

tioned KRISHNARAV GANESH *v* RANGRAV [4 Bom, A. C., 1

secure repayment of a debt, their interest in lands which had been enfranchised as a personal inam, a claim that the lands constituted the endowment of certain mosques having been rejected at the inam enquiry. In a suit against the executants of the mortgage and their heirs and representatives to recover the principal together with interest up to date, it was *held* that, under the circumstances of the case,

10 ———— Grant for service performed—*Construction of grant of villages "as jaghir"—Bengal Regulation XXXVII of 1793, s 15—*

GRANT—*continued.*

1 CONSTRUCTION OF GRANTS—*continued.*

ninety-two, one quarter, and ninety-six reas. The revenue of the said villages hereafter, whether more *or less, to be collected by the said A B* and his heirs from the 5th of June 1830, and such lawazims or haks as are at present settled on those villages are to be disbursed by the said *A B* in the same manner as heretofore" *Held,* having regard to the language of the grant and to the object with which it was

ISHVARDAS JAGJIVANDAS I. L. R, 9 Bom, 561

the law also in Bombay and other parts of India. DOSIBAI *v.* ISHVARDAS JAGJIVANDAS [I. L. R., 15 Bom, 222 L. R., 18 I. A, 22

11. ———— Grant for an indefinite period—*Interest of grantor in property—Duration of grant—Rules of construction* —The rule of construction that a grant made to a man for an indefinite

property, and which the grant purports to convey. LEKHRAJ ROY *v* KUNHYA SINGH [I. L. R., 3 Calc., 210 ; L R., 4 I. A, 223

12. ———— Grant for particular purpose—*Building—Forfeiture.*—*A* received from *B* the use of his ground rent free, which he thus acknowledged in writing "Building a house thereon, I shall enjoy so long as I and my kinsmen live therein. I shall have no right to sell the ground to another."

entitled to recover possession of the ground, as the conditions of the grant had not been observed, and that the word "sell" must be construed as prohibiting alienation of any kind BALAJI J RAHALKAR *v.* NARAYAN BHAT . . . 3 Bom., A. C, 63

13. ———— Grant to one of members of joint family—*Subjection of, to rights of other*

GRANT—*continued.*

1. CONSTRUCTION OF GRANTS—*continued.*

25. ———— Grant of zamindari land rent-free—*Beng. Reg. XIX of 1793.*—Regulation XIX of 1793 refers to grants to hold land free of revenue, not to grants made by a private individual free of rent. A party holding under a joutuck grant from a zamindar containing no reservation of rent is entitled to hold rent-free. KAMESHUREE DASSEE *v.* COURT OF WARDS . . . 12 W. R., 251

26. Unsettled palayam held on service tenure—*Commutation of service for quit-rent—Enfranchisement—Inam pottah issued to Hindu widow by Government—Effect of acknowledging her absolute title to estate.*—The palayam of *G* was granted during the Mahomedan rule to a Hindu on service tenure, the condition being that the grantee should maintain a body of police for the service of the paramount power. This palayam was not brought under Permanent Settlement under the provisions of Regulation XXV of 1802. The last male holder died in 1860 leaving him surviving a widow *K* and a daughter *C*. In 1865 the Government discontinued the service and, in lieu thereof and of the reversionary interest of the Crown, imposed a quit-rent, and an inam pottah was issued to *K* by the Inam Commissioner by which her title to the estate was acknowledged by the Government of Madras, and the estate was confirmed to her as her absolute property subject to the quit-rent. *Held* that the effect of the inam pottah was not to confer on *K* any new estate, but merely as between the Crown and the owners of the estate to release the reversionary right of the Crown. NARAYANA *v.* CHENGALAMMA

[I. L. R., 10 Mad., 1

27. ———— Grant of profits of vatan deshmukhi in perpetuity—*Hereditary gomastahs—How far such grant valid after the death of the grantor.*—By a sanad duly executed on the 20th August 1850, the plaintiff's father, *Y*, who was a vatandar deshmukh, appointed the defendants and their heirs hereditary vatani gomastahs, and granted, by way of remuneration for their services, R201 and a quantity of grain out of the annual vatan income in perpetuity. In consideration of certain sums obtained from the defendants, *Y* mortgaged the vatan property to the defendants, who subsequently sued *Y* upon the mortgage. The suit was referred to arbitration, and an award was duly made, and a decree upon the award was obtained by the defendants against *Y*. In 1859 execution of the decree was granted against *Y*. In 1864 the services connected with the vatan were discontinued by Government. In 1871 *Y* died. The defendants, having kept the decree alive, sought in 1881 to execute the decree against the plaintiff's eldest brother, who filed objections, but his objections were overruled, and execution was ordered to issue. The plaintiffs brought this suit in 1883 for a declaration that the defendants were no longer entitled to the allowance under the sanad, and for an injunction restraining the defendants from the execution of the decree against the vatan. The defendants contended (*inter aliâ*) that the sanad could not be cancelled, *Y* having granted it as full owner, and that the receipt by the defendants of the allowance had been adverse since 1864, when their services had ceased. *Held*, confirming the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for. Although the management of the vatan was vested by the sanad in the defendants and their heirs in perpetuity under the title of gomastahs, nevertheless the remuneration attached to the office by *Y* was in derogation of his successor's rights, and was therefore, at any rate in the absence of proof of custom, invalid against them. *Held* also that, having regard to the terms of the sanad, it was in the power of the original grantor or any of his successors to determine the office and the remuneration at any time after the vatan services ceased in 1864. KRISNAJI *v.* VITHALRAV . . . . I. L. R., 12 Bom., 80

28. ———— Proprietary right of khot to khoti vatani land—*Right of such khot to forest land and to timber and wood growing thereon—Government, Right of, to appropriate forest preserves, assessed or unassessed land—Construction of such khoti grants.*—The plaintiff sued the defendant, alleging that the village of mouzah Ambedu, in the Ratnagiri District, was his khoti vatani village in which his proprietary right extended to raise crops of any kind or to preserve and cut the jungle and forest trees on the lands therein. He complained that since 1855-56 the Collector of the district had prohibited him from exercising the above alleged rights, and prayed that the obstruction might be removed and R600 awarded as damages. The plaintiff based his claim mainly on the settlement of 1788, Dunlop's proclamation of 1824, and several other khoti grants in the district. The defendant denied that the plaintiff had any proprietary right in the village, and contended (*inter aliâ*) that the khot derived his rights from the yearly kabuliats passed by him, that his right to cultivate did not extend to cultivating the jungle land, and that his position was no better than that of a patel. The joint Judge who tried the suit held that under the settlement of 1788 the plaintiff as khot was entitled to the jungle produce, except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of R600 as damages. On appeal by the defendant to the High Court,—*Held* that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the khot's sanads should be taken most beneficially to the State. *Held* accordingly that, in the absence of a sanad expressly granting it, the ownership neither of the soil nor of cultivated or uncultivated lands passes by the grant of the vatandari khotship. *Held* also that the grant of the vatani khoti did not make the khot a perpetual tenant of Government in respect of all lands in the village, except dhara lands. *Held* on the authority of *Tajubai* v. *Sub-Collector of*

GRANT—*continued*

1 CONSTRUCTION OF GRANTS—*continued.*

laid down by the British Government In the ab-

surviving brother RAM CHANDRA MANTRI *v* VENKATRAO MANTRI . . I. L R., 6 Bom , 598

20. ——————— *Descent of—Impartibility of—Suit for possession of—Joint management of saranjam—Manager of saranjam—Trustee of profits—Account of management.*—A saranjam is ordinarily impartible, and descends entire to the eldest representative of the past holder. In 1885 plaintiff brought this suit to recover possession of certain saranjam villages from the defendant

that the right to such possession and management was an interest in immoveable property within the meaning of art 144 of sch II of the Limitation Act, XV of 1877, that the defendant had enjoyed

21. ——————— Sanad—*Construction of sanad—Endowment for charitable purposes.*—A sanad, after reciting that certain villages had been held by *C* as inam "on account of the worship, jubilees and feeding of Brahmins in honour of the Shri (or the Deity)," proceeded to "confirm the inam as before," directing that "it be continued to *C* and his sons and grandsons from generation to generation as it had been continued to the Shri from former times" *Held* that this was a grant to the religious foundation, and not to *C* and his descendants for their own benefit GANESH DHARNIDHAR MAHARAJDEV *v* KESHARAV GOVIND KULGAVKAR

[I. L. R., 15 Bom., 625

22. ——————— Grant of zamindari lands—*Hereditary mokurari tenure—Death of grantee without heirs—Escheat* —Lands belonging to a zamindari granted by the zamindar under an absolute hereditary mokurari tenure do not, on the death of the grantee without heirs revert to the zamindar, nor does the zamindar, under such circumstances, take by escheat a tenure subordinate to and carved out of his zamindari Where there is a failure of heirs, the Crown, by the general prerogative, will take the property by escheat, subject to any trusts or charges affecting it, and there is nothing in the nature of a mokurari tenure which should prevent the Crown from so taking it subject to the payment of the rent reserved under it SONET KOOER *v* HIMMUT BAHADOOR

[I. L R., 1 Calc , 391 : 25 W. R , 239
L R , 3 I. A , 92

23. ——————— *Grant by landlord—Omission to reserve right of re entry or reversion —Semble* —That where a landlord grants a permanent and heritable tenure in land, he has no estate left in him unless he reserves to himself a right of re-entry or reversion *Sonet Koer v Himmut Bahadur, I L R , 1 Calc , 391* NIL MADHAB SIKDAR *v* NARATTAM SIKDAR

[I. L. R., 17 Calc., 826

24 ——————— *Rent due to zamindar—Maganam in hands of separate persons—Apportionment of rent—Mad Reg XXV of 1802, s 9* —The rent due to a zamindar from the grantee of a maganam or division of the zamindari is not a charge upon the maganam. It is a debt due to the zamindar, and nothing more When the zamindar instituted the suit for rent, the maganam was in the possession of third parties, who had become owners of different portions of it by purchase. The zamindar sought to make all of them jointly

s 9 of Regulation XXV of 1802, the apportionment might not be binding upon the Government, but it did not follow that it might not be good as between the parties to the suit, and that there was no foundation for the contention that the purchasers were jointly and severally liable for the rent fixed upon the whole maganam ZAMINDARI OF RAMNAD *v* RAMAMANY AMMAL . I. L. R., 2 Mad., 234

GRANT—*continued.*

1. CONSTRUCTION OF GRANTS—*continued.*

some from the Collector and the rest from the Superintendent of Survey; that under his kabuliats he was entitled to take up the lands direct from Government, and that the plaintiff was only entitled to the assessment due on the lands which he had refused to accept. Lastly, the defendant denied that he had acted in fraud of the plaintiff's rights in acquiring the lands in dispute on his own account. *Held* on the construction of the sanad that, the plaintiff being the khot of the whole of the village exclusive of the land granted in inam, the maphi istava lands were included in the khoti grant; that the khot's interest in them, whatever might be the extent of it, was not separable from the khoti estate; and that the khot had a reversionary interest in the maphi istava lands as well as in the suti lands which had been abandoned by their former occupants. *Held* also that the defendant was not precluded by the terms of his lease from acquiring the lands in dispute on his own account. The engagement to furnish accounts of the balance of the village revenue at the end of each year was simply an engagement to furnish the plaintiff with information which would be of use to him, and which indeed it would be necessary for him to possess when he resumed the management of the village on the determination of the lease. It imported nothing more than that; and the whole transaction evidenced by the kabuliats was merely an assignment in consideration of a fixed annual payment to be made by defendant to plaintiff, of the rights and liabilities of the latter to be exercised and discharged for a certain period by the former. For that period the defendant was the maktadar or tenant of the plaintiff's khotship; and though a certain confidence was necessarily reposed in him in connection with a tenancy of this nature, and though he was bound jealously and scrupulously to protect the plaintiff's interests, so far as they were in his keeping, yet he was not bound by the strict rule which prohibits a trustee from acquiring for himself an estate of his *cestui que* trust. Under clause 7th of the kabuliat of 1858, the defendant was at liberty either to take up waste lands himself or put in tenants; if he put in tenants on leases, the special advantages of any leases were to expire with his own lease. But the actual occupation of land either by himself or by his tenants was not to be interfered with at the determination of his lease, so long as he or they continued to pay the assessment according to the practice of the village. The defendant could therefore, without the intervention of the Collector, have taken up the maphi istava lands in suit and become himself the tenant; and he could have also acquired the suti lands from former sutidars, or taken them up if waste, without the intervention of the Survey Superintendent. The circumstance that when acquiring the lands he needlessly invoked the assistance of the revenue authorities would not invalidate his title if it could not be impugned on other grounds. *Held* further that the defendant was not guilty of fraud, as there was no evidence to show that he had acted in a surreptitious or secret manner in acquiring the lands in suit. On the contrary, his action in applying to the revenue authorities was a sign of his good faith rather than of any fraudulent intent. The plaintiff was therefore not entitled to oust the defendant from the lands in suit. FAKI ISMAIL *v.* MAHOMED ISMAIL . . **I. L. R., 12 Bom., 595**

31. ———— Invalidity of grant, or covenant by grantor, in favour of person unborn upon a condition which may never arise—*Restraint upon grantor's own power of alienating —Hindu law.*—The purpose of a grant was to oblige the grantor and his successors in a raj estate to give in some way or other maintenance to all the descendants of four persons living at the date of the grant, by declaring that, on the failure of the raja of the day at any future time to maintain such descendants, the latter were to have an immediate right to four of the raj villages. This might be regarded as *imparting a present assignment to persons not yet* in existence, subject to a suspensive condition, which might prevent its ever taking effect; or it might be regarded as a covenant intended to run with the raj estate, in favour of non-existing covenantees, to give the villages to them in the event specified. *Held* that in either view it was equally ineffectual. *Held* also that the High Court had correctly construed the instrument in holding that the words "If ever in the time of my descendants you are not provided with means of maintenance" formed a condition which also was unfulfilled—the descendants being in possession of villages granted to them by the raja, other than those claimed, more than sufficient for their maintenance. CHANDI CHURN BARUA *v.* SIDHESWARI DEBI . . **I. L. R., 16 Calc., 71**
[L. R., 15 I. A., 149

32. ———— Revenue-free grant—*Settlement in favour of daughter purporting to render other lands than the lands settled liable in the hands of the settlor and his heirs for the revenue of the settled lands—Beng. Reg. XXXI of 1803, s. 6—Mahomadan law of inheritance.*—One *B* in 1843 settled certain lands on his daughter *R*, and covenanted that he and his heirs would pay the land revenue due on the estate so assigned along with the land revenue for their own estate. The deed of settlement then went on to provide that, if at any time the heirs of the settlor, or whoever might be in possession of the rest of his estate, should demand from *R*, or the person in possession of the lands assigned to her, the revenue assessed on those lands, then *R* and her heirs would be entitled to claim and take possession of the legal share in the settlor's estate to which she would be entitled under the Mahomedan law of inheritance. *Held* that, as regards a person who had acquired a portion of the settled property partly by private sale and partly by sale at auction, the settlement contravened the provisions of s. 6 of Regulation No. XXXI of 1803, and the heirs of the settlor could not be compelled to pay the land revenue due on the portion of the settled lands acquired by the said purchaser, nor had the purchaser any right under the deed of settlement to a proportionate part of the inheritance which would have come to Rahmat-un-nissa from her father. SAHIB ALI *v.* SUBHAN ALI . **I. L. R., 21 All., 12**

GRANT—*continued.*

1 CONSTRUCTION OF GRANTS—*continued.*

Kolaba, *3 Bom*, *A C*, *132*, and *Ramchandra Narsinha* v *Collector of Ratnagiri*, *7 Bom*, *A C.*, *41*, that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settlement of 1788 was in force, except with the khot's consent, and therefore that in 1855, when the pahani of 1788 was in force, the Government could not withdraw the thikan in question from the plaintiff's cultivation *Held* also that in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, the plaintiff was entitled to cut down brushwood whether as a source of revenue or for the purpose of bringing the land into cultivation. *Held* that the respondent was entitled to damages for the years during which he had been excluded, and to an injunction restraining the defendant from excluding him in the future *Held* also that as khot the respondent had no right to cut timber in forest and uncultivated land, whether by virtue of his khotship or Dunlop's proclamation COLLECTOR OF RATNAGIRI *v* ANTAJI LAKSHMAN . . I. L R., 12 Bom, 534

29. ———— Right to cut trees—*Khoti khasgi land in the Ratnagiri District—Dunlop's proclamation—Crown grant—Right to rescind*—Defendants were khots of the village of Ojharkhol in the Ratnagiri District, of which a certain plot (Survey No 52) was their khoti khasgi land In 1894 they cut down a large number of teak trees growing on this land Thereupon the Secretary of State for India in Council sued to recover their value alleging that they were the property of Government Defendants pleaded that they were the absolute owners of the trees, and relied in support of their title on a proclamation issued by Government in 1824 known as Mr Dunlop's proclamation This proclamation had been subsequently rescinded by Government in 1851. The material part of Mr Dunlop's proclamation was in the following terms —"Upon the teak and other trees that may be on any person's land, Government has no design He whose trees may now exist, or [illegible]

or gift of the teak trees to the persons on whose lands they were then actually growing, or might thereafter grow, and that the gift could not be revoked *Held* also that by reason of this proclamation Government had no right to the teak trees growing on the land in question. SECRETARY OF STATE FOR INDIA *v* SITARAM SHIVRAM

[I. L. R, 23 Bom., 518

30. ———— Managing khot's right to create tenancies—*Maphi istava lands—Suti lands—Sanad, Construction of—Fraud*—In 1832 the British Government granted to the plaintiff's father, Mahomed Ibrahim Makba, the village of Ransai on khoti tenure by a sanad which provided *inter alia*) as follows —(1) That the whole of the land waste in the year 1830-31 was granted as inam

(2) That exclusive of this inam land, all the rest [illegible]

provided that the khot should annually pay to Government [illegible] rs Clause [illegible] the lands, [illegible] a tenure to [illegible] ie sanad, to continue in their possession, that he should every [illegible]

the khoti village, and the other in 1858 to the grantee's heirs and legal representatives By clause 5th of the kabuliat of 1858 the defendant agreed to carry on the management of the village and render a detailed account of the balance of the village revenue every year Clause 7th of the same kabuliat was in the following terms —"I (the lessee) will bring under cultivation and into [illegible]

the same I will not let (the village) nor lease to any body for a longer period than for the period of the contract If I let it, I will make good the damage you may suffer" In 1859 some of the maphi istava lands were sold by the Collector for arrears [illegible]

or took them up on the tenants abandoning them In 1861, when the survey was introduced into the village, he got his title to these lands recognized by the Superintendent of Survey In 1871 the defendant's management of the village ceased. But he refused to deliver up to the plaintiff either the [illegible]

and praying that he should be declared to have acquired and held them in trust for the plaintiff The defendant contended (*inter alia*) that the lands in suit were not included in the khoti grant; that they belonged to Government, that he had acquired

GRANT—*continued.*

2. POWER TO GRANT—*continued.*

that a zamindar was competent to make such grant, and his act is binding on the auction-purchaser, whose right is only to receive the revenue-rate from the grantee. AHMUD OOLLAH *v.* MITHOO LALL [3 Agra, 186

39. ——— **Grant for public purposes** —*Liability to assessment of rent.*—A grant for a road used annually for the Rath Jattra is valid and not assessable with rent, the grant being for a public purpose. HUREENARAIN GOSSAIN *v.* SHUMBHOO NATH MUNDUL . . . . **1 W. R., 6**

40. ——— *Tank granted subsequent to 1790.*—A tank granted subsequently to 1790 is liable to resumption in the absence of proof of its having been either the condition of the grant or the intention of the grantor that the tank should be a public benefit. Such a case does not come within the ruling of the Full Bench in *Piziruddin* v. *Mudhusoodun Pal Chowdhry, B. L. R., Sup. Vol., 75.* JUDOONATH SIRCAR *v.* BONOMALEE MITTER [2 W. R., 295

CHUNDER KANT CHUCKERBUTTY *v.* BUNKOO BEHAREE CHUNDER . . . **3 W. R., 177**

41. ——— *Supply of water to villagers from wells to be dug—Building temples —Power to resume and assess grant.*—Where the manager of a coal company had allowed persons to settle on the lands of the company, on conditions about which a dispute arose, and the company sought to assess the land with rent, and the tenants claimed to hold it rent-free,—*Held* by the High Court that in the case of one plot on which the tenant had agreed to dig wells and had done so, the water which the villagers on the company's estate drew from the said wells was in the nature of a fair consideration for the land; and that, though the land was assessable with rent, the company could not assess it so long as the villagers were supplied with water. In regard to another plot, however, in which some temples had been erected,—*Held* that the temples did not in any way further the objects of the company, and could not be treated as fair consideration, and that the company could assess the plot. BENGAL COAL COMPANY *v.* HURDYAL MARWAREE . . **25 W. R., 245**

42. ——— **Grant of land rent-free**— *Beng. Reg. XIX of 1793, s. 10—Reg. XLI of 1795, s. 10—Act XVIII of 1873, ss. 30, 95—Act XIX of 1873, s. 79.*—The plaintiff in this suit claimed the possession of certain land in virtue of a grant thereof to him, not merely of the proprietary right in such land, but of the rents of [illegible] by the payment of the revenue assessed thereon, which the grantor took upon himself to pay. *Held* by STUART, *C.J.*, PEARSON, *J.*, and OLDFIELD, *J.*, that the grant was null and void and liable to resumption, with reference to s. 10 of Regulation XIX of 1793, and Regulation XLI of 1795, and s. 30 of Act XVIII of 1873, and s. 79 of Act XIX of 1873. *Per* SPANKIE, *J.*—That the question whether the grant was null and void with reference to those Regulations and Acts did not arise, as the grant, on the facts found by the Court below, was not one within the terms of those Regulations. JAGANNATH PANDAY *v.* PRAG SINGH [I. L. R., 2 All., 545

43. ——— *Beng. Reg. XIX of 1793, s. 10—Act XVIII of 1873, ss. 30, 95 (c)—Act XIX of 1873, ss. 79, 241 (h).*—The plaintiffs in this suit, zamindars of a certain village, sued for the possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchman, and the defendant had ceased to perform those duties and was holding as a trespasser. The defendants set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor. *Held* that such assignment was not a grant within the meaning of Regulation XIX of 1793. PURAN MAL *v.* PADMA [I. L. R., 2 All., 732

44. ——— **Hereditary grant, Presumption of**—*Allowance—Long enjoyment—Title—Bom. Reg. V of 1827, s. 1.*—Where the plaintiff's ancestors had enjoyed an allowance during four successive generations for a period extending over more than a century, the legal presumption, in the absence of the original grant, is that such grant was hereditary. The allowance having been continued by the British Government to the plaintiff's grandfather, for the same reason for which a village (admitted to be held on hereditary tenure) had been continued, and having been paid to the plaintiff's grandfather up to his decease, and afterwards, as a matter of course, to the plaintiff's father, it was held that the enjoyment of the plaintiff's grandfather and father was proprietary enjoyment; and as this enjoyment had continued uninterruptedly for more than thirty years, that, under Regulation V of 1827, s. 1, a statutory and indefeasible title to the allowance had been acquired. DESAI KALYANRAYA HUKAMATRAYA *v.* GOVERNMENT OF BOMBAY . . . . **5 Bom., A. C., 1**

45. ——— **Hereditary charitable grant** —*Allowance for temple—Bom. Reg. V of 1827, s. 1.* —Where a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent and those under whom he held in regular succession for more than thirty years, it was held that the grantee had acquired a right of property in it under Regulation V of 1827, s. 1. *By* WARDEN, *J.*—Independently of the origin or nature of the grant. *By* GIBBS, *J.*—In the absence of it being shown to have been a personal grant, and by the conduct of Government in paying to the several generations in succession. COLLECTOR OF KHEDA *v.* HARISHANKUR TIKAM [5 Bom., A. C., 23

46. ——— **Grant by widow for religious benefit of husband**—*Power of successors to resume grant.*—Where two widows of a zamindar granted a small portion of the zamindari to a Brahman who had been brought up by them with a view that he should perform the funeral and annual ceremonies of their deceased husband,—*Held* that the

GRANT—*continued*

1 CONSTRUCTION OF GRANTS—*continued*

33 ——— **Grant of portion of impartible zamindari**—*Absolute grant—Creation of separate estate in favour of grantee as between him and grantor—Restriction in instrument contravening Hindu law of inheritance*—In a suit for the recovery of possession of an estate it appeared that the estate in question had formerly formed a portion of an impartible zamindari, but had been granted in the year 1845 by the plaintiff s father to his younger brother, in whose name the estate was registered in the Collector's books as a separate estate The instrument of grant provided (*inter alia*) that in case of failure of self begotten male issue in the grantee's line, the immoveable property of the grantee should be put in possession of the grantor s line On the death of the first grantee, the property passed into the possession of his two sons and, on

tended that the grant made to respondent s father in law was a maintenance grant, that under its terms the estate reverted to his father (now deceased) on the death of respondent's husband when there

principle laid down in the case of *Tagore* v *Tagore, 9 B L R, 377 L R, I A, Sup Vol, 47,* and was inoperative VENKATA KUMARA MAHIPATI SURYA RAU *v* CHELLAYAMMI GARU

[I. L. R., 17 Mad., 150

34 ——— **Grant of land**—*Presumption*

ject matter of the grant or in the surrounding circumstances sufficient to rebut that presumption, and this though the measurement of the property which is granted can be satisfied without including half the road or half the bed of the river, and although the land is described as bounded by a river or a road and notwithstanding that the map which is referred to in the grant does not include the half of the river or the road And this rule of construc-

GRANT—*continued*

1 CONSTRUCTION OF GRANTS—*concluded*

D 133, Ecroyd v *Coulthard, L R (1897), 2 Ch D, 554*, and *Lord* v *Commissioner for the City of Sydney 12 Moore's P C 473* followed BALBIR SINGH *v* SECRETARY OF STATE FOR INDIA

[I. L. R., 22 All., 96

2 POWER TO GRANT

35 ——— **Grant of rent free tenure**—*Jaghirs—Power before Permanent Settlement*—A zamindar had no power before the Permanent

[6 W R., 121

S C on appeal to Privy Council 18 W R., 321

36 ——— *Reg XIX of 1793 s 10—Grant for public purposes—Rent—*

... 22 was ...ted ... r to the grantor in the zamindari sought to resume the land on the ground that the original "rent free"

within the meaning of Regulation ... of 1793 s 10 "Rent to the zamindar" and "Revenue of Government" distinguished PIZIRUDDIN *v* MADHUSUDAN PAL CHOWDHRY

[B. L. R., Sup Vol., 75 2 W. R., 15

Overruling HUREENARAIN GOSSAIN *v* SHUMBHOONATH MUNDLE 1 W. R., 6

37 ——— *Beng Reg XIX of 1793 s 10—Resumption—Rent—Revenue—Held per* PEACOCK, *C J*, and L S JACKSON and MACPHERSON, *JJ* (BAYLEY, NORMAN, and SETON KARR *JJ*, dissenting)—The words "exempt from revenue" in s 10 Regulation XIX of 1793 refer only to grants free from the payment of revenue to Government, and do not include grants or leases by a zamindar exempt from the payment of rent Therefore a rent free grant made by a zamindar and *à fortiori* one by a mourasi ijaradar, of a specific portion

section *Held per* BAYLEY, NORMAN, and SETON KARR *JJ*, *contra* MAHOMED AKIL *v* ASADUNNISSA BIBI MUTTYLALL SEN GWYAL *v* DESHKAR ROY B. L. R., Sup Vol., 774 9 W. R., 1

38 ——— *Effect of grant* ... quantity of

rent but not free from payment of revenue *Held*

GRANT—*continued.*

4. POWER OF ALIENATION BY GRANTEE —*continued.*

widow of the youngest brother, on the deaths of his son and daughter, became by survivorship sole owner of the estate so assigned for their and her benefit; so that an alienation of part, if made by her, could not be set aside at the instance of the second brother, who failed to show, on the above state of things, that the estate was heritable property of the son, as whose uncle and heir he claimed. NARPAT SINGH *v.* MAHOMED ALI HUSSAIN KHAN . . I. L. R., 11 Calc., 1

55. ——— Alienation by zamindar—*Validity of, against his successor.*—A grant of a portion of a zamindari by the zamindar in favour of his sister cannot operate independently of her claim to maintenance, so as to bind his successor, though the alienation may be binding as against the grantor during his life. MALAVARAYA NAYANAR *v.* OPPAY AMMAL . . . . . . 1 Mad., 349

56. ——— Charge in favour of stranger—*Perpetual annuity.*—A zamindar has no more power to charge a perpetual annuity in favour of a stranger on the income of the zamindari than he has to alienate the corpus. NARAYANGA DEVU *v.* HARISCHANDANA DEVU . . . 1 Mad., 455

See SUBBARAYULU NAYAK *v.* RAMA REDDI [1 Mad., 141

57. ——— Grant by holder of appanage—*Lease for mining purposes.*—Though the holder of a younger brother's appanage has no power of complete and absolute alienation of property, of which he has only a limited tenure for maintenance, still a lease granted by him is good as between him and the grantee and those claiming under the grantor, at least during the grantor's life. Mining leases, like leases for building, are among those which the regulations particularly favour as being in their nature such as to require a long time for profitable working. GORDON, STUART & CO. *v.* TIKAITNEE SCOLAS KOWAREE . . W. R., 1864, 370

58. ——— Grant by zamindar of estate for maintenance—*Pottah "dawami" made to a lessee by the grantee in excess of his estate to what extent effectual, from circumstances—Suit for possession—Limitation Act (XV of 1877), Sch. II, art. 91—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 39—Adverse possession.*—A grant of a village for maintenance was made by a zamindar to his nephew, operating only for life. The grantee survived the grantor, and by ikrarnama acknowledged the succeeding zamindar to be entitled to the village. The grantee had, however, already executed a pottah, described therein as permanent, to a lessee. The latter obtained possession, and from him after the death of the original grantee for life the zamindars who succeeded the grantor accepted rent at the rate stipulated in the pottah, and did not disturb his possession. This suit, after the death of the lessee, claimed the village as part of the inherited zamindari, the defence being that the lessee was perpetual. *Held* (1) that the original grant not having extended to more than

GRANT—*continued.*

4. POWER OF ALIENATION BY GRANTEE —*concluded.*

the life of the grantee, the pottah was void as against the successor in title of the grantor, and not merely voidable after the grantee's death. The acceptance of rent at the rate in the pottah could not have the effect of confirming it in its entirety, which, according to the construction of the High Court, would have been for a permanent estate. The duration of the pottah could not exceed that of the original grant; nor could an admission, taken by the High Court to have been that the acceptance of rent had confirmed the permanency of the lease, preclude the claim for legal rights, even supposing that admission to have been made. The matter in contest was as to the circumstances under which the lessee was allowed to remain in possession and their legal effect. And on the evidence, the lessee had been allowed to remain as a mokurari tenant for his life. (2) The suit for possession was not barred under article 91 of the Limitation Act (XV of 1877) on the ground that a decree declaratory of title to have the pottah cancelled might have been sued for in the lessee's lifetime under s. 39 of the Specific Relief Act, 1877. (3) The possession of a tenant for life is not rendered adverse within the meaning of Act XV of 1877 by a notice from the tenant that he claims to be holding on a perpetual or hereditary tenure. BENI PERSHAD KOERI *v.* DUDHNATH ROY [I. L. R., 27 Calc., 156
L. R., 26 I. A., 216
4 C. W. N., 274

59. ——— Grant from person with only temporary interest—*Failure to prove right of occupancy.*—In a suit to recover possession of debutter land where plaintiff relied upon a mourasi pottah which had been granted by, or with the permission of, a poojaree no longer in office, the principal defendant claiming under a lease from the existing poojaree,—*Held* that plaintiff could not succeed, in the absence of evidence of a right of occupancy, under s. 6, Act X of 1859, and his title was bad as based upon a grant from a person who had only a limited or temporary interest in the land. GOOROO PERSHAD ROY *v.* RAM LOCHAN PAURAY [13 W. R., 241

60. ——— Grant by military authorities of cantonment land—*Resumption by Government.*—Where Government had permitted the military authorities to use certain land for cantonment purposes, which land was subsequently resumed by the Government,—*Held* that the military authorities had no power to make a grant of the land given for military purposes for a period longer than the land would remain in their possession, and that no term of limitation had expired to bar the ordinary right of Government as a landlord to demand rent. RAMCHAND *v.* COLLECTOR OF MIRZAPORE [3 Agra, 7

5. RESUMPTION OR REVOCATION OF GRANTS.

61. ——— Mokurari grant in perpetuity—*Right of resumption in grantor.*—A

GRANT—*continued*

2 POWER TO GRANT—*concluded*

grant was not *ultra vires* and could not be resumed by the zamindar's successor LAKSHMINARAYANA v DASU I L R., 11 Mad., 288

47 ——— **Invalidity of grant, or covenant by grantor, in favour of persons unborn, upon a condition which may never arise**—*Restraint upon grantor's own power of alienating*—*Hindu law*—A Hindu owner cannot make a conditional grant of a future interest in property in favour of persons unborn who may happen at a future time to be the living descendants of the grantees named to take effect upon the occurrence of an event which may never occur That he would thereby impose a restraint contrary to the principles of Hindu law upon his own power of alienating his

dants the latter were to have an immediate right to four of the Raj villages This might be regarded as

CHURN BARUA v SIDHESWARI DEBI [I. L R, 16 Calc, 71 L R, 15 I A, 149

3 GRANTS FOR MAINTENANCE

48 ——— **Nature of tenure**—*Resumption and assessment of lands*—In a suit for assessment of rent on certain villages the defendant admitted that the villages formerly belonged to the plaintiff's predecessor but were given over to them for their maintenance *Held* that under these circum

49 ——— **Grant by Raja of Pachete**—*Duration and effect of such grants*—A grant by a former Raja of Pachete of a pergunnah, part of the zamindari or raj of Pachete to a member of his family *held* to be a grant for maintenance only and resumption was decreed to the raja in possession *Semble*—Grants made by the predecessor of the raja in possession whether in fee or for maintenance enure only during the lifetime of the grantor and are not binding on his successor *Quære*—Whether the zamindari of Pachete constitutes an indivisible estate of inheritance and as such inalienable ANUNDLAL SING DEO v DHEERAJ GURROOD NARAYAN DEO [5 Moore's I A., 82

50 ——— **Duration of maintenance grant**—*Power of zamindar to resume grant for*

GRANT—*continued*

3 GRANTS FOR MAINTENANCE—*concluded*

maintenance—*Possession of successors of grantee*—

from being completely swallowed up by continuous demands The successors of such grantee paying rent to the zamindar cannot be regarded as holding adversely to him WOODOYADITTO DEB v MAKOOND NARAIN ADITTO DEB 22 W R., 225

51. ——— *Charge on za*

52 ——— *Value of land enhanced by irrigation*—Where a zamindar granted to his mother in lieu of maintenance two villages the income of which upon the introduction of irrigation was greatly enhanced without any expenditure or labour on the part of the grantee—*Held* in a suit by the grantee for damages against parties claiming to have been put in possession of the lands of the two villages by the successor of the grantor—(1) that in the absence of express words to the contrary the grant enured for the grantee's life,

present zamindar to revise and re-adjust the terms of the grant but was no ground for dispossessing the grantee BHAVANAMMA v RAMASAMI [I L R, 4 Mad., 193

53 ——— *Presumption of nature of grant from long undisturbed possession*—Successive enjoyment for three generations without interference of land granted by a zamindar to a member of his family in lieu of maintenance justifies the presumption that the original grant was intended to be absolute SALUR ZAMINDAR v PEDDA PAKIR RAJU . I. L R., 4 Mad., 371

4 POWER OF ALIENATION BY GRANTEE.

54. ——— **Survivorship**—*Rights of widow*—*Grant by Government for maintenance of family*—The lands of three brothers having been confiscated the Government afterwards assigned revenue paying lands for the benefit in certain proportions of the minor son of the eldest brother also of the widow minor son and daughter of the youngest brother (both these brothers being then deceased) and the second brother who survived was put into possession of a proportionate part of the property *Held* by the Privy Council that the

GRANT—*concluded.*

5. RESUMPTION AND REVOCATION OF GRANTS—*concluded.*

Secondary evidence of lost grant by Government.—In a suit to declare the plaintiff's title to a shrotrium village which was included in the jaghir granted in 1763 by the Nawab of the Carnatic to the East India Company, it appeared that the village in question had been previously granted by the Nawab free of assessment to the Kazi of Madras as an endowment for his office, and afterwards to the son of the first grantee personally, without condition of service. In 1779 the British Government confirmed the village in perpetuity to the second grantee on account of the office of Kazi which he filled, and to his direct heirs who should be fit for that office. In 1862 on failure of the direct male line, the grantee's grandson by a daughter was nominated to the office of Kazi with the approval of Government, who directed he should hold the village, adding that it had been assigned as an endowment for that office. In the same years the Inam Commissioner confirmed it as a personal inam, enfranchised it and granted a title-deed to the holder. In 1866 Government ordered that the village should be registered as an endowment of the Kaziship and the title-deed cancelled, and in 1868 notified in the Gazette that the title-deed which was not produced was cancelled. Between the dates of the above order and notification the Kazi transferred the village to the plaintiff under a deed of perpetual lease and placed him in possession. But in 1873 Government resumed the village and subsequently directed that the whole of its net revenue be paid to the Kazi. The Kazi from whom the plaintiff claimed died in 1868. An inam of certain menkaval lands, which had formerly been allotted to the village watchman as inam, had been granted to the Kazi in 1802-3; they were cultivated by raiyats who paid varam to the inamdar. The order of resumption in 1873 had no reference to these lands, but in 1877 Government issued pottahs to the raiyats. *Held* (1) that the grant of 1779, the original document not having been produced by the plaintiff, was sufficiently proved by a translation produced from official custody and certified by the Collector in 1838 to be correct and attested by the Persian translator to Government; (2) that it was competent for the Government in 1779 to alter the nature of the grant of 1761 as an act of State; (3) that on the right construction of Regulation IV of 1831 and Act IV of 1862, and in view of the facts that the plaintiff must have been aware of the nature of the tenure and of the contents of the grant of 1779 and the cancellation of the inam title-deed, the Government were not acting *ultra vires* in cancelling the enfranchisement, etc.; (4) that the Kazi through whom the plaintiff claimed having died in 1868, there was no reason to question the resumption in 1873; (5) that the plaintiff was entitled to possession of the menkaval lands, the action of Government in issuing pottahs to the raiyats being *ultra vires.* Issues first framed on appeal as to the plaintiff's claim to mirasi rights and menkaval lands. Evidence of mirasi rights considered. KARUNAKARA MENON *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 14 Mad., 431

GRATIFICATION.

——— Illegal—

See ILLEGAL GRATIFICATION.

——— Offer to give—

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL I. L. R., 17 All., 498
[L. R., 22 I. A., 193

GRATUITY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
[I. L. R., 6 All., 173, 634

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . . 1 Bom., Ap., 18
6 Bom., A. C., 250
I. L. R., 2 Bom., 470

GRAVE-YARD.

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R., 21 All., 187

——— Prohibiting use of—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 381 . I. L. R., 25 Calc., 492
[2 C. W. N., 145

——— Trespass on—

See RELIGION, OFFENCES RELATING TO.
[I. L. R., 18 All., 395

GRAZING.

See UNDER PASTURAGE, RIGHT TO.

GRIEVOUS HURT.

See CASES UNDER HURT—GRIEVOUS HURT.

See REVISION—CRIMINAL CASES—COMMITMENTS . I. L. R., 16 Bom., 580

See RIOTING . . . 3 N. W., 174
[I. L. R., 24 Calc., 686
1 C. W. N., 423

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

GROUNDS OF APPEAL.

See APPEAL—GROUNDS OF APPEAL.
[1 N. W., 193
I. L. R., 15 Mad., 503
L. R., 19 I. A., 179

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL.

GUARANTEE.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 15 Bom., 585

1. ——— Contract of—*Statute of Frauds (29 Car. II), c. 3, s. 4—21 Geo. III, c. 70, s. 17.*—A contract of guarantee is a "matter of contract and

GRANT—*continued*

5. RESUMPTION OR REVOCATION OF GRANTS—*continued*

mokurari tenure granted in perpetuity cannot be resumed by the grantor, even if the grantee dies without leaving heirs HIMMUT BAHADUR *v* SOONEET KOOER . . . 15 W. R., 549

62. ——— **Grant of mokurari pottah** —*Power to resume on death of grantor*—A mokurari pottah granted by a Raja of Tipperah to a member of his family is, by recognized custom, resumable on the death of the grantor ROOP MOONJUREE KOOEREE *v* BEER CHUNDER JOOBRAJ [9 W R., 308

63 ——— **Amaram grant**—*Right to resume—Arrears of assessment, Liability for*—An amaram grant is resumable at the pleasure of the

See NARASAYYA *v* VENKATAGIRI RAJAH [I L. R , 23 Mad , 262

64. ——— **Annual allowance for palki huq**—*Allowance attached to hereditary office—Right of Government to resume*—An annual allowance for palki huq (palanquin allowance) to the holder of the hereditary office of Desai of Broach held under a jaghir grant charged by former native Governments in the land revenues of that pergunnah is incident to the tenure of Desai and is not resumable by Government GOVERNMENT OF BOMBAY *v* DESAI KALLIANRAI HAKOOMUTRAI [14 Moore's I. A , 551

65. ——— **Grant by Government by proclamation**—*Revocation of, by proclamation—Consent—Resumption, Power of*—Government cannot, by issuing a subsequent proclamation, resume

See SECRETARY OF STATE FOR INDIA *v* SITARAM SHIVRAM . I. L R., 23 Bom , 518

66. ——— **Construction of gift**—*Tribal custom—Evidence of intention*—In view of the circumstances under which an oral lease of villages at a favourable rate of rent, and of indefinite duration, was made by the proprietor, a talukhdar, in favour of her daughter, it was held not to be a lease for life, but to be resumable at the lessor's pleasure The

after and made known to the Government to show the future succession to the talukh, contained a bequest of the same villages to the lessee, with express reservation of power to alter this disposition *Held* that this was evidence bearing on the question of intention NAJBAN BIBI *v* CHAND BIBI [I L R., 10 Calc , 236 13 C. L R., 401 L R., 10 I. A , 133

67 ——— **Effect of resumption and settlement on lakhiraj tenures**—After resumption and settlement, a lakhiraj estate becomes, to all intents and purposes, a separate zamindari held from Government in perpetuity, the proprietors of which are, in accordance with the Full Bench ruling of the 14th December 1867—*Mahomed Akil v Asadunissa Bibi, B L R , Sup Vol , 774 9 W. R , 1*—capable of granting portions rent free , the grant or taking such land, with the risk of losing it again, in the event of the whole estate being sold for default on the part of the zamindar DABEE PERSHAD *v* JOY LALL CHOWDHRY 12 W R., 361

68. ——— **Grant by Hindu sovereign to Hindu temple**—*Nibandha—Antastha sadilvar—Kherij jummabundi parbhare parki—Religious penalty for resumption*—The peishwa, by a sanad dated 1790, granted to an ancestor of the plaintiffs for the support of a Hindu temple, an annual cash allowance of R350 out of the "Antastha sadilvar" and three khandis of rice out of the 'kherij jummabundi parbhare,' to be levied from certain mehals and forts mentioned in the sanad. The allowances were paid till the death of the plaintiffs' father on the 26th December 1859, when the Collector of Thana stopped them On the 23rd December 1870, the plaintiffs sued to establish their right to the grant and to recover six years' arrears of the allowances *Held* that the grant was irresum-

certain special localities in the zillah. Thus the grant was essentially localized, and whatever there might have been of contingency or variability in the levy or application of the antastha sadilvar previously to the making of the grant, such contingency or variability ceased to the extent of the grant from the moment of its being made to a Hindu temple The

the durability of the grant The Hindu law implies the religious penalty for resumption, albeit not expressed in the sanad A pension or other periodical payment or allowance granted in permanence is

—re— per- or

THANA *v* HARI SHARAM I. L. R., 6 Bom., 546

69. ——— **Madras Regulation IV of 1831**—*Madras Act IV of 1862—Resumption of inam—East India Company's jaghir—Act of State—Menkaval lands—Mirasi rights, Evidence of*—

GUARANTEE—*continued.*

vessel *Caroline* shall be ready to leave Bombay without any delay immediately upon the disbursements being satisfied; and in case she cannot leave the said port of Bombay within such time as shall be considered reasonable, or is otherwise detained either at Bombay aforesaid or at Rangoon, except for or by such causes as the act of God," etc., "then and in such case this charter party shall be considered null and void, and the said charterers shall be entitled to recover from the said *C*, his heirs and representatives, the aforesaid sum of R21,500, together with interest thereon, calculated from the date hereof, at the rate of 10 per cent. per annum. The charterers to have the option of cancelling their charter party in the event of the vessel arriving at Rangoon in a disabled state, and the time for repairs to make the ship seaworthy in every respect exceeding twenty-five days. Penalty for non-performance of this agreement, the estimated amount of freight." The plaintiffs were acting on behalf of *N B*, and the defendants on behalf of *C* during the whole of this negotiation, and *C* was at the time largely indebted to *N B*. The ship *Caroline* turned out to be unseaworthy, and the charter party was not carried out. In an action by the plaintiffs against the defendants on the guarantee,—*Held* that the covenant to transfer the mortgage of the *Moulmein* was independent, and not a condition precedent to the plaintiff's right of action. *Held* also on the facts that the representation in the charter party that the *Caroline* was, while lying at Bombay, "tight, strong, and staunch," etc., amounted to a contract that the ship should be so, and the defendants' guarantee covered it. *Held* also that the defendants, not being parties to the charter party and not having bound themselves to any assessment of damages, were not called on to pay the penalty specified in the last clause of the charter-party, but that the damages against them must be the actual damages which the plaintiffs on *N B*'s behalf suffered in consequence of *C*'s breach of contract,—that is, R21,500 paid under the contract, and the balance of freight that would have gone to reduce *N B*'s debt and interest on both sums from the date of the contract. The plaintiffs, however, claimed a less sum than these damages would amount to, and therefore the plaintiff's claim was decreed in full. PRESTOMJEE DHUNJEEBHOY *v.* GREGORY

[1 Ind. Jur., N. S., 412

5. ——— Surety—*Disclosure—Material fact—Contract Act, s. 142.*—*M* was declared the highest bidder at a sale of an abkari farm for three years, and his bid was accepted, subject to his furnishing the security required by the conditions of sale. Having failed to furnish security, the farm was re-sold at a loss of R4,875, and *M* became indebted to Government in that amount. On the re-sale, *M* was again declared purchaser, and being unable to furnish the necessary security, *N* was accepted as his surety for the due fulfilment of the conditions of the lease to be performed by *M*. *N* did not enquire and was not informed by the Collector as to the debt due by *M* when he executed the surety-bond. *Held*, in a suit to enforce this bond (which was executed before the Contract Act, 1872, came into force) against *N*, that *N* was not discharged by reason of the fact that the indebtedness of *M* was not disclosed to him by the Collector. SECRETARY OF STATE FOR INDIA *v.* NILAMEKAM PILLAI . . **I. L. R., 6 Mad., 406**

6. ——— Intention of parties—*Bonâ fide endeavour to perform engagement—Penalty.*—When a third person voluntarily consents to incur liability on account of another, and binds himself in a penalty for the due performance of his engagement, the nice technicalities of English law are not applicable, but the real intention of the parties must be looked to. In this case, there having been a *bonâ fide* endeavour on the part of the respondent fairly to perform his engagement, and there having been a disposition on the part of the appellant to throw obstacles in the way of the performance, in order to obtain payment of the penalty consequent on non-performance, the appeal was dismissed. RAM GOPAL MOOKERJEE *v.* MASSEYK

[2 W. R., P. C., 43 : 8 Moore's I. A., 239

7. ——— Unascertained amount—*Promise to pay debt of another.*—A promise to pay a debt of a third person may be binding, although the amount may not be ascertained at the time. PEAREE LALL SHAHA *v.* WOOMESH CHUNDER MOZOOMDAR . . . . **9 W. R., 140**

8. ——— Effect of guarantor signing voucher as surety.—Where a surety for the payment of the price of goods sold to another person signs as voucher for them, that fact does not alter his position as surety or make him primarily responsible for them. AGUILAR *v.* WOOMESH CHUNDER SHAW

[22 W. R., 209

9. ——— Recommendation to lend money—*Liability to repay.*—A mere recommendation by one party to another to lend money to a third party does not operate as a guarantee nor render the first party liable to repay the loan. JUGGAT INDAR NARAIN ROY CHOWDHRY *v.* NISTARINEE DASSEE . . . . . **24 W. R., 446**

10. ——— Construction of contract guaranteeing conduct of person employed as agent of the guarantor—*Liability for loss resulting from such agent's misconduct towards his employer.*—Upon the construction of an agreement guaranteeing an employer against loss by the misconduct of a person employed as agent of the guarantor,—*Held* that the loss, to be recoverable in a suit against the guarantor, must be shown to have arisen from misconduct on the part of the agent in connection with the business of the agency, and to be within the scope of the agreement. The khezanchi of a district treasury guaranteed the Government against loss arising from the misconduct of the stamp darogah, appointed as his agent. The latter became a party to frauds by putting off upon the public forged stamps, in addition to the genuine ones issued from the treasury, into which, however, all the proceeds of sales were paid. The darogah, on whose indent the stamps were issued, made the proceeds appear to correspond in his accounts with the value of the stamps issued to him; but, under cover of the above payment, he misappropriated certain genuine stamps. *Held* that,

GUARANTEE—*continued.*

dealing" within the terms of s 17 of 21 Geo III, c 70, and therefore such a contract made by a Hindu is not affected by s 4 of the Statute of Frauds JAGADAMBA DASI v GROB . 5 B. L. R., 639

2. ———— Appropriation of payments —*Guarantee on advance to limited company*—In consideration that the plaintiffs would advance a certain sum to a limited company, two of the directors agreed that the plaintiffs should repay themselves the amount "from the first moneys received by them on account of the said company," and each of them agreed to hold himself personally responsible for the payment of half the amount of any deficiency of the amount realized by the plaintiffs in the manner above described. At this time the plaintiffs were the bankers of the company, and were regularly paying and receiving money for them The plaintiffs, instead of applying the first moneys coming to their

selves and the guarantors, were bound to appropriate the first receipts to the payment of the guaranteed debt, and that, as they had not done this, the guarantee was discharged NICHOLLAS v WILSON

[I. L. R., 4 Calc, 560: 3 C. L. R, 361

3. ———— Custom—*Trade custom in Bea-*

C coming to Beawar made several purchases in accordance with the above custom, using the firm of *S & M* as his arath On leaving Beawar, he sent *S & M* a panri, in which all his purchases, except the last and largest, under which he had taken no delivery and had made no payment, were entered On application by the vendors in the last transaction to *S & M as guarantors of C* to make good the

failure to pay and take delivery. In a suit by *S & M* against *C* to recover the amount so paid,—*Held* that, if the plaintiffs were cognizant of and allowed their names to be used in the last transaction, as was shown to have been the case in previous transactions, they were, according to the custom, liable to the

GUARANTEE—*continued*

words) to ratify the use which the defendant had made of their name, and were not deprived of their right to do so by their having for a time repudiated liability SETH SAMUR MULL v CHOGA LALL

[I. L. R, 5 Calc, 421
L R, 6 I. A., 238

4 ———— Condition precedent—*Charter party—Damages, Measure of*—The defendants *M G & Co*, entered into a contract of guarantee with the plaintiffs *P and C N C & Co*, which was contained in the following letter —"In consideration of your paying us on account of *C*, the owner of the ship *Caroline*, chartered by you to load at Rangoon with timber, as per charter party executed by him and your good selves, dated this day, the sum of R21,500, to be paid in advance and in part freight of the said vessel payable as follows —*viz*, R18 000 at Calcutta, and R3,500 at Bombay for the disbursement of the vessel there,—we hereby guarantee and engage to hold you harmless against all losses, damages, and consequences arising from the non-performance of any of the acts, covenants, or agreements to be done, kept, observed, or performed by or on the part of the said *C* in terms of the said charter party, and

said charter party this day executed by *C* in your favour." To this the plaintiffs replied on the same day "In consideration of your having guaranteed to keep us harmless for the advance made by us to *C*,

and the said *C* as per your letter of guarantee dated this day, we hereby agree and engage ourselves to make you over a mortgage-bond on the British barque *Moulmein* of 305 tons, executed in Moulmein by the said *C* in favour of *N B* of Rangoon, for certain debts due to him by the said *C*, duly transferred to you free from *N B*'s claim on the said barque *Moulmein*." The charter party was of even date, and was made by *C* on the one part and the plaintiffs on the

of Rangoon in British Burma or so near thereto as she may safely get, and there load from the charterer's

GUARDIAN—*continued.*

See LUNATIC . I. L. R., 6 Mad., 380
[I. L. R., 16 Bom., 132
I. L. R., 20 All., 2
I. L. R., 19 Bom., 135
I. L. R., 23 Bom., 403

See MAJORITY ACT, s. 3.
[I. L. R., 1 Calc., 388
I. L. R., 13 Bom., 285

See CASES UNDER MINOR—REPRESENTATION OF MINOR IN SUITS.

See PARSI MARRIAGE AND DIVORCE ACT, s. 30 . . I. L. R., 18 Bom., 366

See PRACTICE—CIVIL CASES—INTERROGATORIES . . I. L. R., 10 Bom., 167

See PRACTICE — CIVIL CASES — NEXT FRIEND . I. L. R., 16 Calc., 771

——— Contract made by—

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R., 12 Calc., 152
[I. L. R., 22 Calc., 545
I. L. R., 18 Mad., 415
I. L. R., 27 Calc., 276

——— Negligence of—

See LIMITATION ACT, s. 5.
[I. L. R., 20 Bom., 104

——— Removal of—

See APPEAL—ACTS—ACT XL OF 1858.
[7 B. L. R., Ap., 9

See APPEAL — ACTS — GUARDIANS AND WARDS ACT . I. L. R., 19 Calc., 487
[I. L. R., 20 Bom., 667
I. L R., 23 Calc., 201
I. L. R., 20 All., 433
1 C. W. N., 693

See GUARDIANS AND WARDS ACT, s. 39.
[I. L. R., 18 Bom., 375

1. APPOINTMENT.

1. ——— **Application to appoint guardian**—*Minor—Act IX of 1861, ss. 1 and 5—Previous application which had been refused.*—A Court is not precluded from entertaining a fresh application for the guardianship of a minor under s. 1, Act IX of 1861, by the circumstance that a previous application of the same sort has been refused. NEHALO *v.* NAWAL . . . I. L. R., 1 All., 428

2. ——— *Infant—Power of High Court—Application by petition without suit.*—On an application made on petition without suit for the appointment of a guardian of the person and property of an infant, the Court Receiver was appointed receiver, and the property was ordered to be handed over to him with liberty to him to sell it and invest the proceeds in Government paper, and the matter was referred to the Judge in chambers for enquiry as to the proper person to be appointed guardian. IN THE MATTER OF BITTAN . I. L. R., 2 Calc., 357

GUARDIAN—*continued.*

1. APPOINTMENT—*continued.*

3. ——— *Power of Court to appoint guardian of person and estate of a minor.*—The power of the Court of Chancery to appoint guardians to infants, whether such infants have property or not, is possessed by the High Court. RE JAGANNATH RAMJI . I. L. R., 19 Bom., 96

4. ——— *Inherent power of High Court to appoint guardian—Guardians and Wards Act (VIII of 1890)—Appointment of Hindu father as guardian.*—The High Court has the power, irrespective of the provisions of the Guardians and Wards Act (VIII of 1890), of appointing a guardian for an infant or his estate. A Hindu father appointed guardian of his infant sons for the purpose of raising money by the mortgage of ancestral immoveable property, on its appearing to the Court that by so appointing him guardian better terms were likely to be procured from the mortgagee, and the infants to that extent consequently benefited. IN THE MATTER OF THE PETITION OF JAIRAM LUXMON
[I. L. R., 16 Bom., 634

5. ——— **Guardianship of female minor**—*Mahomedan Law—Beng. Reg. X of 1793, s. 21—Act XL of 1858, s. 27—Act IX of 1861.*—The effect of s. 21 of Regulation X of 1793 and of s. 27 of Act XL of 1858 is that no person other than a female shall in any case be entrusted with the guardianship of a female minor. *Held* therefore, where a Mahomedan mother had by marrying a stranger forfeited her right to the guardianship of her children, that in the case of her female children their grandmother was entitled to be appointed guardian to the exclusion of male relatives. And the fact that the proceeding in which the right is sought to be established is under Act IX of 1861 does not affect the rule. FUZEEHUN *v.* KAJO
[I. L. R., 10 Calc., 15

6. ——— *Female minor, Right to custody of—Mahomedan law, Shia sect—Act IX of 1861—Act XL of 1858, s. 27.*—A Mahomedan father of the Shia sect is entitled to the custody of a daughter above the age of seven years as against the mother. The decision in *Fuseehun* v. *Kajo, I. L. R., 10 Calc., 15,* has no application to a case where the father is seeking to get the custody of his daughter. IN THE MATTER OF THE PETITION OF MAHOMED AMIR KHAN. LARDLI BEGUM *v.* MAHOMED AMIR KHAN I. L. R., 14 Calc., 615

7. ——— **Certificate of guardianship**—*Act XL of 1858, s. 7—Minor.*—The grant of a certificate under s. 7 of the Bengal Minors Act (XL of 1858) should not be based exclusively on considerations of propinquity of relationship without regard to the other circumstances of the case affecting the interests of the minor and the fitness [illegible] pointed. SOHNA *v.* KHALAK SINGH
[I. L. R., 13 All., 78

8. ——— **Guardianship of estate of minor paying revenue to Government**—*Mad. Reg. V of 1804, s. 20—Mad. Reg. X of 1831,*

GUARANTEE—*continued*

although the guarantor might not be responsible in respect of the forgery of the stamps, yet he was responsible on his agreement by reason of the misappropriation of the genuine stamps and the false accounts rendered, and that losses, which in the first instance were caused by the forgery, were brought

11. ——— Guarantee on condition of

debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence, and he threatens to prosecute for that offence, provided he does not, in consideration of such securities, agree not to prosecute He must not, however, by stifling a prosecution obtain a guarantee from third parties KESSOWJI TULSIDAS *v.* HURJIVAN MULJI . I. L R, 11 Bom, 566

12 ——— Guarantee for rent—*Lease—Indemnity—Liability—Continuing guarantee—Death of surety—Contract Act (IX of 1872), ss 124, 125, cl (2), 126, 129, 131*—One *B* proposed

by one *S*, the father of the plaintiff ... of his part required a guarantee or indemnity against any rent which might not be paid by *B*, and which he might

harvest, and if you have to pay the same on account of the suretyship, I am responsible to you to pay that amount to you Rest assured." *S* then gave his guar... *G* died due f ative him then

GUARANTEE—*concluded.*

that the case was that of a continuing guarantee

should be guaranteed for any of that rent which by reason of his contract of guarantee he should be made to pay, and consequently, even if it were a continuing guarantee, the liability of *G* was not determined on his death *Held* further that neither *G* if he were alive nor on his death the defendant as his

GUARDIAN.

See CASES UNDER ACT XL OF 1858

See CASES UNDER *CUSTODY OF CHILDREN*

See CASES UNDER HINDU LAW—GUARDIAN

See LETTERS OF ADMINISTRATION
[I. L R., 4 Calc., 87

See CASES UNDER LIMITATION ACT, 1877, s 7 (1871, s 7)

See CASES UNDER LUNATIC

See CASES UNDER MAHOMEDAN LAW—GUARDIAN.

See CASES UNDER MAJORITY ACT

See CASES UNDER MINOR.

——— ad litem—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
[18 W. R, P. C, 22
I. L. R., 3 Mad., 103
I. L R., 9 Calc, 810
I. L. R, 13 Bom, 137
I. L R, 15 Bom, 594
I. L R., 12 Mad., 483
I. L R., 17 All., 531
I L R., 21 Mad., 91
I. L R, 22 Mad., 378, 538
I. L R., 23 Bom., 620

GUARDIAN—*continued.*

1. APPOINTMENT—*continued.*

under Guardians and Wards Act, 1890, for the appointment of a guardian for the son of a Hindu widow who had purported to make such an appointment, to inquire, under s. 7, as to the necessity for an appointment being made and itself to appoint a fit and proper person. VENKAYYA GARU *v.* VENKATA NARASIMHULU **I. L. R., 21 Mad., 401**

18. ——— **Testamentary guardians**—*Minor residing out of the jurisdiction of the Court—Letters Patent, High Court, cl. 17—Guardians and Wards Act (VIII of 1890), ss. 4, 7, 9.*—Case in which the Court refused, on a summary proceeding under cl. 17 of the Charter, to appoint a guardian of the person and property of an infant who was not a European British subject, and who was living outside the limits of the ordinary original civil jurisdiction of the Court, there being testamentary guardians in existence, and no application or suit filed to remove them. On these two last grounds the Court also refused to appoint a guardian of the infant's property under Act VIII of 1890. IN THE MATTER OF SRISH CHUNDER SINGH

[I. L. R., 21 Calc., 206

19. ——— **Minor residing in England**—*Jurisdiction of High Court.*—Where a mother residing at Poona, the widow of a deceased European inhabitant of Poona, applied to be appointed guardian of her three minor children, two of whom were residing with her, and the third, a girl of the age of 16 years, was residing in England, and to have certain payments made to her out of the estate of their deceased father on their account, and to have certain powers over their persons given to her, and to have the costs of the application paid out of the shares of the said three minor children in the hands of the Administrator General of Bombay, the Court made the order applied for. IN RE MEAKIN

[I. L. R., 21 Bom., 137

20. ——— **Proceedings for appointment of a guardian in more Courts than one**—*Guardians and Wards Act (VIII of 1890), s. 14—Report by District Court to High Court—Direction by Chief Justice—Powers of High Court—Letters Patent, High Court, 1865, cl. 17—Costs.*—S. 14 of the Guardians and Wards Act (VIII of 1890) does not apply to the High Court in the exercise of its original civil jurisdiction; and the term "report" in cl. (2) of that section refers, not to a judicial reference, but to a ministerial act. Proceedings had been taken for the appointment of a guardian of a minor under that section in the High Court and afterwards in a Mofussil Court. The latter reported the case to the High Court, and the Chief Justice thereupon directed that the proceedings in the Mofussil Court should be stayed, and that a Judge of the Original Side of the High Court should hear and determine the matter. *Held* that such direction was in order, and that the Judge who determined the matter had jurisdiction to do so. *Held* also that, although a petitioner had failed in his application on all points except the removal of the guardian, he was entitled to his costs up to and including the order removing the guardian, as he must be taken to have acted so far for the benefit of the minor. IN THE MATTER OF FAKARUDDIN MAHOMED CHOWDHRY HAFIZ AMINUDDIN AHMED *v.* GARTH . . . . **I. L. R., 26 Calc., 133**

[3 C. W. N., 91

21. ——— **Guardian ad litem**—*Court in which suit is proceeding.*—Guardians *ad litem* should always be appointed by the Court in which the litigation is pending. ANONYMOUS

[5 Mad., Ap., 8

22. ——— *Appointment of mother where there is not male relative suitable.*—In the absence of a competent and unobjectionable male relative, ready and willing to act as guardian *ad litem* of an infant, the mother of the infant may be appointed such guardian, if there be no objection to her on any ground but that of her sex. IN THE MATTER OF DANAPPA BIN SUBRAV . **1 Bom., 134**

23. ——— *Appointment by Judge in default of relative—Act XL of 1858—Civil Procedure Code, 1882, s. 443.*—If no friend or relative of a minor defendant is willing to take out a certificate under Act XL of 1858, and appear as guardian for the infant, the Judge should appoint an officer of Court, or some respectable nominee or nominees of the minor, guardian to defend the suit. *Babaji bin Kusoji* v. *Maruti, 11 Bom., 182,* and *Dhoniba Lakshman* v. *Kusa, 6 Bom., 219,* cited and followed. ISSUR CHUNDER GUPTO *v.* NOBO KRISTO GUPTO . . . . **7 C. L. R., 407**

24. ——— *Next friend—Uncle—Nephew—Mahomedan law.*—The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor does not prevent an uncle from representing his infant nephew under the Code of Civil Procedure as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . **6 C. L. R., 413**

25. ——— *Suit against person not appointed guardian by Court.*—Neither the Code of Civil Procedure nor the proviso of s. 3 of Act XL of 1858 gives a plaintiff any power to institute a suit against a person named by himself as guardian *ad litem* on behalf of a minor, nor when he has done so do they give to the Court the power of transferring, by a mere order made *ex-parte,* such an irregular proceeding into a suit against the minor. GURU CHURN CHUCKERBUTTY *v.* KALI KISSEN TAGORE . . **I. L. R., 11 Calc., 402**

26. ——— *Minors' Act, XX of 1864—Act XV of 1880, s. 3—Appointment of guardian ad litem—Civil Procedure Code, 1877, ss. 456, 458 Costs.*—Where no administrator of the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit against the minor. Act XX of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate

GUARDIAN—*continued*

1. APPOINTMENT—*continued.*

s 3—Minor—Estate paying revenue to Government—Jurisdiction of District Court—A District Court has no jurisdiction under s 20 of Regulation V of 1804 and s 3 of Regulation X of 1831 to appoint a guardian of the estate of a minor when the estate pays revenue to Government EX-PARTE SUBRAMANYAN . I. L. R , 6 Mad , 187

9. ——— Guardianship of children of deceased husband—*Act XV of 1856, s 3—Re marriage of Hindu widow*—On the re marriage of a ... person has ... r the test ... isband the ...

sense of s 3 of Act XV ... proper male relative of the deceased husband should ordinarily be appointed guardian of such child in preference to his re married mother KHUSHALI v RANI . I. L R , 4 All., 195

10. —— ... sharers— —*Relation* *under age*—A ... cc sharer in ancestral family ... under the Mitakshara law, the co-proprietors being minors, though he may have power to manage the estate, is not in consequence the guardian of such minors for the purpose of binding them by the execution of a bond charging the estate nor is the eldest male member of the family, being of full age, guardian of such minors for the purpose of defending suits brought against them for money advanced in respect of the estate, unless he has obtained a certificate of administration under Act XL of 1858, s 3 That Act shows that he is not guardian of the minors, the care of whose persons and property (unless taken under the protection of the Court of Wards by s 2) is subject to the jurisdiction of the Civil Courts DURGAPERSAD v KESHOPERSAD SINGH I. L. R , 8 Calc , 656 : 11 C L R , 210 [L R , 9 I. A., 27

11. ———— *Guardians and Wards Act (VIII of 1890)—Minor, a member of* ... *and having no separate* ... Guardians ... appointed ... mber of a ... kshara law, and possessed of no separate estate Difference between the Guardians and Wards Act, 1890, and Act XL of 1858 stated *Durgapersad v. Kesho*... *I. A,* ... *Venkaji* ... *potier v. Rama Subba Aiyan,* ... , referred to. SHAM KUAR v MOHANUNDA SAHOY [I. L. R , 19 Calc., 301

12 ———— *Guardians and Wards Act (VIII of 1890)—Minor co parcener in a joint Hindu family governed by the Mitakshara law—Hindu law—Guardian of person of minor*—Under Act VIII of 1890 a guardian cannot be appointed to the property of a minor who is a member of a joint Hindu family governed by the Mitakshara law and possessed of no separate property A guardian of the person of such a minor may be appointed under the Act VIRUPAKSHAPPA v NILGANGAVA . I. L R., 19 Bom , 309

13 ———— *Appointment of guardian of property of minor—Minor who is a member of a joint Hindu family*—It is not competent to a Court under Act VIII of 1890 to appoint a guardian of the property of a minor who is a membe ... v *Nil* ... *Kuar* ... referre ...

14 ———— *Guardians and Wards Act (VIII of 1890), s 34—Guardian to the property of a minor who is a member of a joint Hindu family*—It is not competent to a Court to ... family estate ...

15 ——— Rival claimants—*Guardians and Wards Act (VIII of 1890), s 17—Relationship*—In appointing a guardian of a minor under Act VIII of 1890 the main question for the Court to determine is what is for the welfare of the minor, in determining this, the Court may take into consideration the nearness of relationship of the applicants as being a circumstance tending to show that the interest of the minor will be better looked after Before Act VIII of 1890 was passed no relation other than the father or mother had an absolute right to the custody of a Hindu minor ... *Krishto* ... , 583 ... R ... W. N , 191 ... ment of guardian ... valid will The procedure ... not intended to be summary SHAHU v HAFIJA BEGAM . . I. L. R , 17 Bom , 560

17. ——— Testamentary appointment of a guardian—*Guardians and Wards Act (VIII of 1890), ss 7, 8*—A Hindu mother has no authority to appoint a guardian for her son by will; it is accordingly the duty of the Court on an application

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS.

33. ——— **Filing accounts of estates**—*Payment of debts barred by lapse of time.*—Guardians appointed by Civil Courts ought to file the accounts of their estates annually as required by law. A guardian is not necessarily accountable for sums paid by him in discharge of debts barred by limitation. CHOWDHRY CHUTTERSAL SINGH *v.* GOVERNMENT . . . . **3 W. R., 57**

34. ——— **Accounts and inventory**—*Minors' Act (XX of 1864), ss. 6 and 16.*—The person appointed administrator to a minor's estate under s. 6 of the Bombay Minors' Act (XX of 1864) is not liable to furnish an inventory and accounts under s. 16 of the Act. VALLAKDHAS HIRACHAND *v.* GOKALDAS TEJIRAM . **3 Bom., A. C., 89**

35. ——— **Property of minor in hands of Court**—*Brother's right to receive and apply funds.*—Where the Court has taken the property of a minor into its own hands, the guardian appointed by the Court, and not the brother, is the right party to receive and apply the money granted by the Court to defray the expenses of the kurnobade and marriage of the ward. MONEMOTHONATH DEY *v.* AUSHOOTOSH DEY . . . **1 Ind. Jur., N. S., 24**

36. ——— **Testamentary guardian**—*Regulations previous to Act IX of 1861—Power of District Court over guardian deriving authority from will.*—A testamentary guardian applied to the District Court for permisson to remove his wards for the purpose of having them educated. *Held* that, as the guardian derived his authority from the will of the minor's father, and did not come within the meaning of the Regulations and Acts previous to Act IX of 1861, he could not thus apply to the District Court. SASHADRY AIYANGAR *v.* PERIA NADCHIAR *alias* PARWATHA VURTHANI NATCHIAR . . . . . **8 Mad., 94**

. ——— **Arr** ... **nts for minor's**
tion—*Collector* ... *an—Act XL of*
12.—A Collecto ... guardian under
XL of 1858, h ... make arrange-
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GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS—*continued.*

and as guardian of *C*, a minor," was defendant in a suit for debt brought by *A*. In that suit, a part payment of the debt by *B* to *A* on account of *C* was suppressed, a personal decree was given against the minor, and in execution of that decree certain property belonging to the minor was sold. *Held* in a subsequent suit by the minor that the latter was entitled to have the decree and the subsequent sale set aside, as against a purchaser with notice, on the ground of fraud. GRISH CHUNDER MOOKERJEE *v.* MILLER . . . . . **3 C. L. R., 17**

40. ——— *Decree against minor, Sale under—Suit to set sale aside on attaining majority, Ground for—Procedure.*—Where a decree has been made against an infant duly represented by his guardian, and the infant on attaining his majority seeks to set that decree aside by a separate suit, he can succeed only on proof of fraud or collusion on the part of his guardian. If the infant desire to have the decree set aside because any available good ground of defence was not put forward at the hearing by his guardian, he should apply for a review. If the decree were an *ex-parte* one, the procedure adopted should be that given in the Civil Procedure Code for setting aside *ex-parte* decrees. RAGHUBAR DYAL SAHU *v.* BHIKYA LAL MISSER . . . . **I. L. R., 12 Calc., 69**

41. ——— *Sale under decree in suit where minor is not properly represented.*—A sale under a decree in a suit in which the minor was not properly represented is not valid. JUNGEE LALL *v.* SHAM LALL MISSER

[20 W. R., 120

42. ——— *Power of lawful guardian to set aside decree obtained by unauthorized guardian.*—*Held* that a decree obtained against a minor and his property represented by an unauthorized guardian may be set aside, by a lawful guardian without imputation of fraud or collusion, and that such decree would have no effect, and will not be binding on the minor or against his property. KHOOSHALO *v.* SUBOOKH . . . **1 Agra, 175**

43. ——— **Acts of guardian how far binding on minor**—*Payment before certificate anted.*—*Held* that the act of the guardian was ding on the minor, unless it be proved that it was unreasonable one, and that the payment by the before any certificate was obtained was not an payment. MOTEE RAM SAHOO *v.* KHULEEL- . . . . . **2 Agra, 338**

Power of guardian to sell property—*Guardian not appointed ial Act.*—*Quære*—Whether a guardian y the Court (except under some special y authority to sell the property of his the express sanction of the Court is GANNATH RAMJI

[I. L. R., 19 Bom., 96

Inability of guardian to half of infant ward, so as to

GUARDIAN—*continued*

1 APPOINTMENT—*continued*

Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor S 458 of the Civil Proce-

Court appointed guardians *ad litem* under s 456 of Act X of 1877, as amended by Act XII of 1879 JADOW MULJI *v* CHHAGAN RAICHAND

[I L R., 5 Bom, 306

27. — *Change of guar-*

it has been made unless and until it is revoked by the Court, but if the person to whom such guardian is appointed prays for his removal and for the substitution of a guardian named by the applicant, the Court will appoint the guardian so named in the absence of any special and valid objection to such person JWALA DEI *v* PIRBHU I. L R, 14 All., 35

28. ——— *Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s 30—Minor—Age of majority—*

I L R, [illegible] Bom, [illegible]

29 ——— *Appeal by a person other than guardian*—Two defendants in a

DRASEKHARA RAZ *v* ALAKARAJAMBA MAHARANI

[I. L R, 22 Mad, 187

30. ——— **Nazir of Court**—*Minors' Act, XX of 1864—Bombay Civil Courts Acts, XII of 1869 and X of 1876—Officer of Government—Collector—Public Curator under Act XIX of 1841—*

GUARDIAN—*continued*

1 APPOINTMENT—*concluded.*

The nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s 32 of Act XIV of 1869, as amended by s 15 of Act X of 1876 An officer of Government, in order to come within those enactments, must be a party to a suit in his official capacity The only officers of Government whom Act XX of 1864 con-

as amended by s 73 of Act XII of 1879), appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court has no jurisdiction to hear it and

I. L. R., 4 Bom., [illegible]

31. ——— *Minor, Suit against —Nazir appointed guardian ad litem—Power of Court to direct fee to be paid by plaintiff for com-*

32. ——— **Certificate of administration of minor's estate**—*Minors' Act (XX of 1864)—Default in appearance as indicating consent—Procedure*—An order for the issue of a cer-

of the infant to appear and show cause why the certificate should not be issued to her,—*Held* that such

the suing creditor of the infant BABAJI *v* MARUTI

[I. L. R., 5 Bom, 310

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS —*continued.*

54. ———————— *Transaction by guardian without sanction of Court—Act XL of 1858, s. 18.*—A suit to recover possession of the plaintiff s share of certain ancestral property, which had been pledged by her mother as guardian and other relatives during her minority for a sum of money lent on a bond, on which the obligee afterwards obtained an *ex-parte* decree declaring the property mortgaged to be liable in satisfaction thereof, having been dismissed by the first Court, the order of dismissal was upheld by the lower Appellate Court: the plaintiff then preferred a special appeal. *Held* that, although the guardian had not obtained the sanction of the Court under Act XL of 1858, s. 18, the irregularity ought not to prevail where the mortgage transaction was a proper one, and there was subsequently a decree in a suit in which the minor was represented under which the property was sold. AHFUTOONNISSA *v.* GOLUCK CHUNDER SEN . . 22 W. R., 77

55. ———————— *Act XL of 1858, s. 18—Sale without sanction of Court—Transaction for benefit of minor's estate.*—In order to save certain property from sale in execution of a decree obtained upon a mortgage executed by the father of three brothers, of whom one was a minor, the other two brothers, one of whom had, under Act XL of 1858, obtained a certificate of guardianship to the minor brother, executed a mortgage of certain other property in order to raise money and pay off the decree-holder. Upon the latter mortgage the mortgagee obtained a decree and sold the properties covered thereby. No sanction had been obtained by the guardian to encumber the minor's estate. *Held*, on the authority of *Ahfutoonnissa* v. *Goluck Chunder Sen, 22 W. R., 77,* that the transaction having been a proper one, the minor was not entitled to have the sale set aside on the ground that sanction had not been obtained under s. 18 of Act XL of 1858 to the mortgage. TIL KOER *v.* ROY ANUND KISHORE [10 C. L. R., 547

56. ———————— *Power of guardian to mortgage minor's property—Act XL of 1858, s. 18—Guardians and Wards Act (VIII of 1890), s. 30, read with s. 2, Retrospective effect of —Mortgage without sanction of Court.*—A mortgage of a minor's property, made by his guardian, holding a certificate under Act XL of 1858, without obtaining sanction of Court as required by s. 18 of the Act, is absolutely null and void. S. 2 of the Guardians and Wards Act (VIII of 1890) does not give retrospective effect to s. 30, which therefore does not apply to a mortgage executed before the Act came into operation, so as to destroy its void character and render it merely voidable. LALA HURRO PROSAD *v.* BASARUTH ALI I. L. R., 25 Calc., 909

57. ———————— *Act XL of 1858, s. 18—Mortgage by certificated guardian without sanction of District Court—Mortgage money applied partly to benefit of minor's estate—Suit by minor to set aside the mortgage—Contract Act (IX of 1872), s. 65.*—S. 18 of the Bengal Minors' Act (XL of 1858) does not imply that a sale or mortgage or a lease for more than five years, executed by a certificated guardian without the sanction of the Civil Court, is illegal and void *ab initio;* but the proviso means that in the absence of such sanction the certificated guardian, who otherwise would have all the powers which the minor would have if he were of age, shall be relegated to the position which he would occupy if he had been granted no certificate at all. If any one chooses to take a mortgage or a lease for a term exceeding five years under these circumstances, the transaction is on the basis of no certificate having been granted. In a suit brought by the guardian of a Mahomedan minor for a declaration that a mortgage-deed executed by the minor's mother was null and void to the extent of the minor's share and for partition and possession of such share, it was found that a considerable proportion of the moneys received by the mortgagor had been applied for the benefit of the minor's estate by discharging incumbrances imposed on it by his deceased father. It appeared that at the time of the mortgage the mother held a certificate of guardianship under the Bengal Minors Act, and that she had not obtained from the Civil Court any order sanctioning the mortgage under s. 18 of that Act. *Held* that the omission to obtain such sanction did not make the mortgage illegal or void *ab initio,* but relegated the parties to the position in which they would have been if no certificate had been granted, *i.e.,* that of a transaction by a Mahomedan mother affecting to mortgage the property of her minor son, with whose estate she had no power to interfere. *Held* that this fell within the class of cases in which it has been decided that if a person sells or mortgages another's property having no legal or equitable right to do so, and that other benefits by the transaction, the latter cannot have it set aside without making restitution to the person whose money has been applied for the benefit of the estate. *Held* that, even if mortgages executed by a certificated guardian without the sanction required by s. 18 of the Bengal Minors Act were void, the section did not make them illegal; and, with reference to s. 65 of the Contract Act, the plaintiff could not obtain a decree for a declaration that the mortgage was inoperative as against his share, except on condition of his making restitution to the extent of any moneys advanced by the defendant under the mortgage-deed which had gone to the benefit of the plaintiff's estate, or had been expended on his maintenance, education, or marriage. *Mauji Ram* v. *Tara Sing, I. L. R., 3 All., 852,* distinguished. *Shurrut Chunder* v. *Rajkissen Mookerjee, 15 B. L. R., 350; Pana Ali* v. *Sadik Hossein, 7 N. W., 231; Sahee Ram* v. *Mahomed Abdul Rahman, 6 N. W., 268; Hamir Sing* v. *Zakia, I. L. R., 1 All., 57;* and *Gulshere Khan* v. *Naubey Khan, Weekly Notes, All., 1881, p. 16,* referred to. GIRRAJ BAKHSH *v.* HAMID ALI [I. L. R., 9 All., 340

58. ———————— *Validity of lease —Act XL of 1858, s. 18—Lease granted by guardian of minor's property for term exceeding five*

GUARDIAN—*continued*

2 DUTIES AND POWERS OF GUARDIANS —*continued*

bind him personally—*Effect of Act VI of 1862 (Bombay), s 12 in regard to a charge upon a talukhdari estate in the Ahmedabad District during the period of management*—A guardian cannot contract in the name of a ward, so as to impose on

upon the talukhdari estate at the end of the period of management, when the estate was to be restored to the talukhdar free of incumbrance, excepting the Government revenue. If debts amounted to more

should claim and enforce a right to revenue upon the villages which she transferred as being rent free The deed purported to make both guardian and ward personally liable in this respect, and also charged the l

dari estate.

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Act VI of 18

the Government claimed and enforced payment of

estates from liability for debts incurred not only before, but during the period of management WAGHELA RAJSANJI v. MASLUDIN

[I. L. R., 11 Bom., 551
L. R., 14 I. A., 89

46 ———— **Power of dealing with property of minor**—*Brother managing family—Power of, to act for minor*—A brother acting as manager of the family property and for the benefit of the minors, although he has not obtained a certificate of guardianship under Act XL of 1858, may make a temporary alienation of the family property for necessary purposes and for the benefit of the minors LALLA SEETUL PERSHAD v CHAND KHAN

[2 N. W., 428

47. ———— *Sale by guardian without certificate—Invalidity of sale—Re-*

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honestly and paid a fair price In such a case, where possession was ordered to be restored with mesne profits, it was made contingent on repayment to the purchaser of so much of the purchase money as had been applied to the benefit of the minor's

estate SURUT CHUNDER CHATTERJEE v ASHOOTOSH CHATTERJEE . 24 W. R., 46

48 ———— *Sale by guar-*

the benefit of the property, and the transaction was found to be a necessary one and beneficial to the

49 ———— *Alienation by de facto guardian without certificate under Act XX of 1864*—Alienations for family purposes of the ancestral estate by a Hindu widow (the mother of a minor son) though she was not appointed an administratrix under Act XX of 1864 upheld as made by a *de facto* manager BAI AMRIT v BAI MANIK 12 Bom., 79

50 ———— *Powers of de facto guardian to grant leases.*—A *de facto* guardian has not in that capacity larger powers than one appointed under Act XL of 1858 and is therefore

without

IETTUR

W. R., 49

51. ———— *Powers of de facto guardian—Minor—Act XL of 1858*—No

mined ABHASSI BEGUM v RAJROOP KOONWAR

[I. L. R., 4 Calc., 33 : 2 C. L. R., 249

52. ———— *Alienation by guardian without certificate—Return of property*

See MUTHOORA DOSS v KANOO BEHAREE SINGH

[21 W. R., 287

53. ———— *Compromise by guardian with certificate—Proof of sanction of Court*—Before accepting a compromise affecting rights in immoveable property tendered in special appeal by a guardian appearing under a certificate on

[6 N. W., 1..

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS —*continued.*

was only voidable under s. 30 of Act VIII of 1890, at the instance of any other person affected thereby. DATTARAM v. GANGARAM I. L. R., 23 Bom., 287

62. ———— *Act XL of 1858, s. 18—Power of guardian of minor to mortgage minor's property—Rate of interest.*—A guardian, to whom a certificate had been granted under Act XL of 1858, having obtained under s. 18 an order of a Court authorizing the raising of money by mortgage of the minor's immoveables, mortgaged accordingly. In the order so obtained, the rate of interest at which the money was to be raised was not specified. On a question whether, there being no proof of the necessity or expediency of agreeing to pay interest at a rate so high as eighteen per cent., the agreement to pay at this rate was rightly set aside by the High Court, which decreed interest at twelve per cent.,—*Held* that the proper construction of the order, and the one most favourable to the lender regarding the rate of interest, was that the guardian was authorized to borrow only at a reasonable rate of interest, and that consequently the decree of the High Court was right. GANGAPERSHAD SAHU v. MAHARANI BIBI [I. L. R., 11 Calc., 379 : L. R., 12 I. A., 47

63. ———— *Minor, Interest of, not represented—Partition of joint property in which minor was interested.*—In a suit between co-proprietors, plaintiffs sought to recover exclusive possession of a mouzah which they claimed to have derived in a partition made some years before, and to have enjoyed it under the terms of that partition until they were dispossessed from it by defendant No. 1, one *D N*, who, on the other hand, denied that he had more than a 4-anna share, alleging that plaintiffs were not entitled to the whole mouzah, and that the partition had been fraudulent and had been effected while he was a minor. It appeared that no formalities had been observed in coming to the partition, and no record preserved of the proceedings except a list representing the result arrived at; that the division was effected simply on reference to a thakbust map, an average rental per bigha taken as the basis thereof, and a number of bighas allotted in proportion to each individual's share. None of the ordinary precautions were taken for the protection of the interest of minors. *Held* that the partition was not made in such way, and under such circumstances as to be in itself obligatory on the minor, who had the option of repudiating it when he came of age or within a reasonable period after that date. *Held* also that the minor could only be held to have accepted the partition if he had acted in such a way to the plaintiffs as to lead them naturally to suppose that he had done so. KALEE SUNKUR SANNYAL v. DENENDRONATH SANNYAL . . . . 23 W. R., 68

64. ———— *Refusal of Court to sanction compromise on behalf of minor.*—The acts of guardians on behalf of minors must show the strictest good faith, and must be based on considerations of actual necessity and advantage, not on calculations of possible benefit. In this case the Court refused to sanction a compromise effected between the guardian and the widow by which the minor received immediate possession of half the property as consideration for the surrender of the reversion of the other moiety, no interest or advantage to him being shown in the arrangement. BODH MULL v. GOUREE SUNKUR . . . . . 6 W. R., 16

65. ———— *Power of, to alienate minor's lands in perpetuity.*—A guardian cannot grant his ward's lands in perpetuity except on clear proof of benefit to the minor. ODDOYTO CHUNDER KOONDOO v. PROSUNNO KOOMAR BHUTTACHARJEE . . . . . 2 W. R., 325

66. ———— *Power of compromise—Onus of proof.*—Where it is alleged that a deed of compromise was beneficial to a minor in a transaction involving a surrender of the minor's title in a large estate for a very inadequate maintenance and her waiver of the rights of appeal and cross-appeal, the onus of proving that such a deed was beneficial to the minor is on the party making the allegation. ROSHAN JAHAN v. ENAET HOSSEIN. ENAET HOSSEIN v. ROSHAN JAHAN . . 5 W. R., 5

67. ———— *Effect on minor's estate of bonds for money raised for minor's benefit.*—A minor's estate is not liable under bonds contracted by his guardian otherwise than for the minor's benefit and without legal necessity. DEOPUTTEE KOONWAR v. DHAMOO LALL . . 11 W. R., 240

68. ———— *Power of mother to compromise.*—A mother as guardian has no power to make a compromise on behalf of a minor daughter, unless the compromise is beneficial to the daughter's interests. ROUSHAN JAHAN v. ENAET HOSSEIN [W. R., 1864, 83

69. ———— *Test of validity of transaction.*—The test of the validity of a transaction effected by a guardian is whether it was beneficial to the minor. LALLA BOODMULL v. LALA GOUREE SUNKUR . . . . 4 W. R., 71

70. ———— *Power of binding minor's estate for debt—Sale in execution of decree.*—A sale in execution of a decree against an adoptive mother is good as against the adopted son when made, not personally, but as guardian of the adopted son, and not for a personal debt, but for payments made by co-sharers of Government revenue on account of the adopted son to preserve their joint property. The estate of the adopted son is not liable for a debt without proof that the debt is other than personal. ROOPMONJOOREE CHOWDHRANEE v. RAMLALL SIRCAR. GREESH CHUNDER LAHOREE v. RAMLALL SIRCAR . . . . . 1 W. R., 144

71. ———— *Mother—Power to bind sons.*—A mother can bind her sons acting in good faith as their guardian. MAKBUL ALI v. MASNAD BIBEE [3 B. L. R., A. C., 54 : 11 W. R., 396

GUARDIAN—*continued*

2 DUTIES AND POWERS OF GUARDIANS —*continued*

years without sanction of Court Effect of—A lease granted by a guardian of minor's property who has obtained a certificate under Act XL of 1858 for a term exceeding five years without the sanction required by s 18 of that act is invalid BHUPENDRO NARAYAN DUTT *v.* NEMYE CHAND MONDUL

[I L R, 15 Calc, 627

59 ——— *Guardians and Wards Act (VIII of 1890) ss 29 30—Mortgage by guardians on estate of minor—'Previous permission of the Court'—Contract Act (IX of 1872) s 64—Transfer of Property Act (IV of 1882) s 35*—Guardians duly appointed under the Guardians and Wards Act 1890 having mortgaged property belonging to a minor to enable them to dis

benefit received by him thereunder to the person from whom it had been received The fact that the person who had received the benefit was the defendant did not alter his position SINAYA PILLAI *v.* MUNISAMI AYYAN I. L R, 22 Mad., 289

60 ——— *Act XX of 1864 s 18—Sanction of alienation of minor's property—Civil Procedure Code (Act X of 1877) s 462—Compromise on behalf of a minor—Mortgage—Assignment of mortgage by guardian of minor—*

under a decree obtained by him and R30-7 cash

GUARDIAN—*continued*

2 DUTIES AND POWERS OF GUARDIANS —*continued*

paid. The lower Courts held that as to the R68 9, the transaction really amounted to a satisfaction or

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61. ——— *—Certificated guardian Mortgage by such guardian without Court's permission—Validity of such mortgage—Sanction under Civil Procedure Code (Act XIV of 1882),*

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perty of the minor under Act XX of 1864 In

without the previous permission of the Court which had appointed him to act as guardian and that the sanction of another Court given under s 30 of the Code of Civil Procedure was not sufficient to legalize the mortgage *Held* also that such mortgage would have been absolutely void under Act XX of 1864, but

GUARDIAN—*continued*

2. DUTIES AND POWERS OF GUARDIANS —*continued*

92 ———— Though the lender of money borrowed by the guardian of a minor for the payment of a family debt is bound to enquire into the necessity for the loan, and to satisfy himself as well as he can that the guardian is acting for the benefit of the estate, yet if he does so enquire and suffi- condi- he is not, under such circumstances, bound to see to the application of his money MAHA BEER PERSHAD SINGH v. DUMBEERAM OPADHYA [W. R., 1864, 166

RADHA KISHORE MOOKERJEE v MIRTOONJOY GOW . . 7 W. R., 23

93. ———— *Sale by guardian—Purchaser—Grounds for reversal of sale*—Although purchasers are not bound to look to the application of the purchase money or to enquire whether there were goods sufficient to redeem the mortgage and so to obviate the necessity of a sale of a minor's property, yet the purchaser not proving necessity or not satisfying himself of the existence of necessity and the unwillingness of the minor's mother to dispose of the property in his minority are sufficient legal grounds for reversal of the sale GOMAIN SIRCAR v PRANNATH GOOPTO [1 W. R., 14

94. ———— *Alienation of*

gagor had authority to give a good title as the minor's agent BUZRUNG SAHOY SINGH v MAUTORA CHOWDHRAIN . 22 W. R., 119

95. ———— *Sale of minor's property by guardian—Proof of legal necessity for sale*—The mother and guardian of two minors borrowed R1,000 ostensibly for their marriage expenses. The lender of the money obtained an *ex parte* decree against the minors, and in execution attached their estate, when the mother, in order to save it from sale, sold half the estate for R2,500, out of which she satisfied the decree. One of the

the decree against the minors was such as would bind their interests. LOOTF HOSSEIN v. DURSUN LALL SAHOO . . . 23 W. R., 424

96. ———— *Guardian and minor—Sale of minor's property—Legal necessity*—Where a guardian conveyed the property of her minor son by a deed of sale in which she did not in terms describe herself as his guardian,—*Held* that the omission was immaterial, since it clearly appeared from the deed that it was the minor's property which formed the subject of sale *Hunooman Persaud v Babooee Munraj Koonweree 6 Moore's I A, 393*, and *Jadoonath Chuckerbutty v Tweedie 11 W R, 20*, followed A widow, guardian of her minor son, being left after her husband's death in a state of extreme poverty, sold the entire property of the minor for less than one fourth of its real market value, by a sale deed reciting that the object of the sale was the minor's maintenance and marriage It was found that the sale was obtained by the vendee by taking advantage of the guardian's poverty, and that there was nothing to show that in purchasing the property he had satisfied himself of the actual existence of the necessities for which the sale purported to be made *Held* that the recital in the deed of the objects of sale was in itself no evidence of the necessity of the alienation *Rajlakhi Debia v Gakul Chandra Choudhry, 3 B L R, P C, 57*, followed. *Held* also that the needy circumstances of the minor did not by themselves constitute a sufficient legal necessity for such an alienation Under the Hindu law, the maintenance or marriage of a minor may be a legitimate cause for the alienation of his property by the guardian, but cannot justify a Court of equity in upholding a bargain obviously imprudent and reckless The best test is whether the alienation would have been reasonably

to the latter's benefit *Paran Chandra Pal v. Karunamayi Dasi, 7 B L R, 90*, *Bai Kesar v. Bai Ganga, 8 Bom, A. C, 31* *Kuvarji v Moti Haridas, I L R, 3 Bom, 234* and *Gadgeppa Desai v Apaji Jivanrao, I L R, 3 Bom, 237*, referred to. MAKUNDI v SARABSUKH [I. L R, 6 All., 417

97. ———— *Enhancement of rent, Effect of—Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her* A patnidar obtained decrees for the enhancement of the rent of holdings, in the possession of the widow, of a deceased tenant, one decree being in respect of land formerly held by the latter and the other in respect of a holding purchased by the widow on behalf of her minor son by the deceased whilst the enhancement suits were pending *The widow also signed* kabuliats relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held* that, as the patnidar was entitled to sue for

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS —*continued.*

82. ——— *Suit on bond executed by mother for debts which son, then a minor, might be liable to pay.*—A bond executed by a widow in possession of a zamindari was held binding on the adopted son of the late zamindar, the inference from the evidence being that the bond was given for debts which the defendant (the adopted son) as owner of the zamindari might be liable to pay, and that by his own acts he had admitted that he actually was liable to the payment. CHETTY COLUM COOMARA VENCATACHELLA RADDYAR *v.* RUNGASANWEY IYENGAR

[4 W. R., P. C., 71 : 8 Moore's I. A., 319

83. ——— *Necessity for borrowing—Mortgage by de facto guardian or manager without de jure title.*—Under the Hindu law, the right of a *boná fide* incumbrancer who has taken from a *de facto* guardian or manager a charge on lands created honestly for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* with the *de jure* title. Under the Hindu law, the power of a manager for an infant heir to charge an ancestral estate is a limited and qualified one, to be exercised in a case of need, or for the benefit of the estate. Where the charge is one that a prudent owner would make in order to benefit the estate, the *boná fide* lender is not affected by the precedent mismanagement of the estate. The lender is bound to enquire into the necessities for the loan, and to satisfy himself that the manager is acting for the benefit of the estate. But if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and he is not bound to see to the application of the money. The mere creation of a charge by a manager, securing a proper debt, cannot be viewed as improvident management; and a *boná fide* creditor should not suffer when he has acted honestly and with due caution, but is himself deceived. HUNOOMAN PERSHAD PANDEY *v.* MUNDRAJ KOONWAREE

[6 Moore's I. A., 393 : 18 W. R., 81 note

84. ——— *De facto manager—Sale by a de facto manager of minor's property for legal necessity and for his benefit, whether valid.*—A *de facto* manager of an infant's estate has, in case of necessity or for the benefit of the minor, power to sell his property. *Hunooman Pershad Panday* v. *Mundraj Koonwaree, 6 Moore's I. A., 393*, and *Gunga Pershad* v. *Phool Singh, 10 W. R., 106 : 10 B. L. R., 398 note*, referred to. MOHANUND MONDUL *v.* NAFUR MONDUL

[I. L. R., 26 Calc., 820
3 C. W. N., 770

85. ——— *Alienation made by guardian—Suit to set aside.*—A suit brought by a Hindu widow as guardian of her minor child, to set aside alienations made by her late husband, the minor's father, is governed by the principle laid down by the Privy Council in the case of *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R., 187 : 22 W. R., 56, viz.*, that the estate is not exempted from liability unless the alienations were illegal or made for an immoral purpose. SANJOOGEE KOOER *v.* HUR PERSHAD

[24 W. R., 274

86. ——— *Bond fide purchaser, What constitutes.*—In a sale by a guardian of a minor without necessity, the purchaser cannot be said to have acted *boná fide* unless his belief that the sale was necessary had been arrived at after due care and attention. SHEO PERSHAD RAM *v.* THAKOOR PERSHAD. GOUR PERSHAD NARAIN *v.* SHEO PERSHAD RAM . . . . 5 W. R., 103

87. ——— *Purchaser from guardian.*—Where a purchaser of immoveable property deals with a person having a qualified power of dealing with that property, it lies upon the purchaser to give some reason of the need which actually existed, or was alleged to exist, for the sale. VADALI RAMAKRISTNAMA *v.* MANDA APPAIYA

[2 Mad., 407

MOOTHOORA DOSS *v.* KANOO BEHAREE SINGH

[21 W. R., 287

88. ——— *Suit to set aside sale—Proof of necessity for sale.*—In a suit to set aside sales made by a minor's guardians, on the ground that the sales were not justified by any recognized legal necessity, the onus is on the defendant to prove the necessity. Nature of proof sufficient to discharge such onus explained. LOOLOO SINGH *v.* RAJENDUR LAHA . . 8 W. R., 364

89. ——— *Sale by guardians—Onus of proof—Purchaser.*—*Held* that the onus of proving that a sale by his guardians of a minor's property was necessary and for his benefit lies upon the purchaser, and that adequacy of price is an important point to be considered in determining this question. DAGDU BIN DAUD TELI PARDESHI *v.* SHEKH SAHEB VALAD BADRUDDIN KAMBLĒ

[2 Bom., 369 : 2nd Ed., 348

90. ——— *Onus of proof—Purchaser.*—Where the plaintiff was a minor, and his interest could not *primá facie* be alienated,—*Held* that the onus of proving that due enquiries were made as to the necessities for the loan, and that it was incurred by the manager for the benefit of the estate, lay on the alienee. It is not necessary to show that such necessities actually existed, but that reasonable enquiry was made as to the existence of such necessities and the object for which the loan was intended. POOLUNDER SINGH *v.* RAM PERSHAD

[2 Agra, 147

91. ——— *Transaction by guardian—Responsibility of lender to guardian of a minor.*—A lender to the manager of a minor's estate is bound to satisfy himself that the loan is for the benefit of the estate. LALLAH BUNSEEDHUR *v.* BINDESEREE DUTT SINGH

[1 Ind. Jur., N. S., 165

GUARDIAN—*continued*

2 DUTIES AND POWERS OF GUARDIANS —*continued*

101. ———— *Loan by guar-*

loan was extravagant for the purpose, considering the social or pecuniary circumstances of the minor, or that it was not duly applied and expended. JUGGESSUR SIRCAR *v* NILAMBUR BISWAS [3 W. R., 217

102. ———— *Sale by guardian—Onus of proof of bona fides of purchaser*—Purchasers from a guardian must show that they acted *bona fide* RUNDOO PANDEY *v* BAKSH ALI [3 N. W., 2

103. ———— *Decree—Legal necessity* —The existence of a decree, which may at any time be executed against ancestral property, is a clear necessity for contracting a loan, and ample justification to any one coming forward to lend money on the mortgage of the property PURMESUR OJHA *v*. GOOLBEE . 11 W. R., 446

104. ———— *Sale by guardian on behalf of minor—Repayment of purchase-money before minor allowed to recover estate* —The sale by *S*'s mother of his share, during his minority, in the estate of his deceased father was rightly held to be invalid, but his claim to recover possession of the share from the purchasers who had redeemed a mortgage existing on the estate created by his father, without tendering payment of his share of the mortgage debt, was properly dismissed. PANA ALI *v* SADIK HOSSEIN . 7 N. W., 201

105. ———— *Sale by guardian—Suit on majority to set aside sale—Refund of sale-proceeds* —The plaintiff on coming of age sued to set aside a sale of his ancestral property

sale PARAN CHANDRA PAL *v* KARUNAMAYI DASI [7 B. L. R., 90 15 W. R., 268

AGOOREE HURRIHUR CHURN *v* GUNGA PERSAD OPADHYA . . . W. R., 1864, 208

SIRDAR DYAL SINGH v RAM BUDDUN SINGH [17 W. R., 454

MOTHOORA DOSS *v* KANOO BEHAREE SINGH [21 W. R., 287

106. ———— *Court of Wards—Collector—Waiver—Application of the Land Acquisition Act, 1870, to the land of a minor*—

has no power to waive a right to compensation for part of the estate taken under the Land Acquisition Act, 1870, although the owner, had he been of full age, might have waived it Although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land for a public purpose under, and in conformity with, the Land Acquisition Act, 1870 if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate Where, however compensation had not been given, and a merely nominal consideration had passed, the Collector not having acted, as the representative of the Court of Wards, so as to protect the interests of the
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CHAIRMAN OF THE DARBHANGA MUNICIPALITY [I. L. R., 18 Calc., 99 L. R., 17 I. A., 90

107 ———— *Power to refer to arbitration—Natural guardian—Reference by arbitration on behalf of minor—Award, Application to file—Practice—Reference to Registrar* —Case in which it appeared on application to file an award that a natural guardian had on behalf of her minor sons submitted certain matters to arbitration, and in which the Court was of opinion that the cases showed that a natural guardian had power to submit to arbitration on behalf of a minor, and referred the case to the Registrar to enquire and report whether the submission and the award thereon were for the benefit of the minors ROMON KISSEN SETT *v* HURROLOLL SETT [I. L. R., 19 Calc., 334

108 ———— *Guardian's power to acknowledge a debt due by the minor—Limitation Act (XV of 1877), s 19* —A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment *Chinnaya v Gurunatham, I L R, 5 Mad, 169* followed *Wajilun v. Kadir Buksh, I L R, 13 Calc, 235*, disapproved SOBHANADRI APPA RAU *v* SRIRAMULU . I. L. R., 17 Mad., 221

KAILASA PADIACHI *v* PONNUKANNU ACHI [I. L. R., 18 Mad., 456

and is not such an acknowledgment under s. 19 of the Limitation Act as would give a new period of limitation against the minor CHHATO RAM *v*. BILTO ALI . . I. L. R., 26 Calc., 51

See also AZUDDIN HOSSEIN *v*. LLOYD [13 C. L. R., 112

110 ———— *Power of guardian to bind his ward by personal covenants* —

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS —*continued.*

enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be, and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the kabuliats. WATSON & Co. *v.* SHAMLALL MITTER . . . I. L. R., 15 Calc., 8 [L. R., 14 I. A., 178

98. ——— *Sale by guardian for minor—Necessity—Boná fides.*—When neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed, and the acts of the guardian considered to be the acts of the minor. *Quære*—Whether the same rule strictly applies to the relation of the head of a family and his descendants holding vested rights in his estate, in regard to alienations by the head of the family to which the descendants did not expressly consent. SEETUL PERSHAD SINGH *v.* GOUR DYAL SINGH [1 W. R., 283

99. ——— *Sale of minor's property for transactions by guardian not for benefit of minor—Want of necessity—Ground for setting aside sale.*—In 1850 the guardian of a minor (his step-mother) by an ikrarnamah among other things charged the minor's ancestral estate with the payment of R27,000 in favour of *L*, the amount of his alleged claim against the estate, respecting which an appeal was then pending, but to which estate he was himself a debtor, undertaking at the same time to prosecute certain claims against *M*, *L* agreeing to advance money for that purpose and to resist certain claims brought by *M* against the minor's estate. In February 1851, *M* having obtained judgment against the estate for R26,986, and taken out execution thereon, the estate was advertised for sale on the 20th of that month. To prevent the sale, *L* advanced the amount of the judgment-debt, and on the 19th of that month commenced a suit against the guardian, in which he claimed the R26,986, the amount advanced by him, and the R27,000 agreed to be paid him by the ikrarnama, and the further sum of R1,354 alleged to have been paid by him for the proceedings against *M*, making together R55,341. On the following day the guardian filed a confession of judgment admitting the debt, hypothecating the minor's estate, and undertaking to pay the same by instalments, with the exception of the R27,000, at 6 per cent. interest. The instalments not being paid, *L* in 1853 took out execution on the judgment, and under the execution put up the estate for sale, and became the purchaser himself. On the minor attaining his majority, he brought a suit to set aside the sale, impeaching the transaction as fraudulent and collusively obtained by *L* from his late guardian. The Courts in India set aside the sale on the ground of fraud, and decreed the restitution of the estate, with mesne profits and damages, subject to the repayment by way of reduction of the R26,986 at 5 per cent. Upon appeal such decree was affirmed by the Judicial Committee, *first* on the ground that the transaction was fraudulent and collusive and prejudicial to the estate of the minor, there being no evidence to show the necessity for the guardian obtaining the pecuniary assistance sought, or to justify her submitting to *L*'s extraordinary terms contained in the ikrarnama, by allowing, without consideration, his doubtful claim against the minor's estate, to which he really was a debtor himself; and *secondly*, that *L*, who set up the charge, had failed to relieve himself of the burden which the Hindu law cast upon him of showing that he had at least good ground for supposing that the transaction was for the benefit of the minor's estate. In setting aside the ikrarnama and sale, interest was allowed to *L* on the R26,000 advanced by him at the rate of 6 per cent. contracted for in the ikrarnama in lieu of 5 per cent. awarded by the Sudder Court. Such a modification of the decree of the Court below held not sufficient to deprive the respondent of his costs of appeal. The case of *Ali Hossein* v. *Badal Khan, S. D. A., N.-W. P., 1863, 19th May*, where it was held that there is no difference to be made between an innocent purchaser and one tainted with fraud which had brought about an execution-sale, observed upon and dissented from. LALLA BUNSEEDHUR *v.* BINDESEREE DUTT SINGH . 10 Moore's I. A., 454

100. ——— *Hindu law—Joint family—Release obtained from person just come of age.*—The plaintiff as a joint member of the defendant's family sued to set aside a release obtained from him by the defendant and for partition, etc. The plaintiff was the son of one *L*, and the defendant was the plaintiff's nephew and grandson of *L*, being the son of *T* and elder brother of the plaintiff. The plaintiff alleged that *L* and his brother *J* were joint and had carried on a family business; that *J* died childless, and that on *L*'s death in 1868 the whole family property passed into the hands of *T*, his eldest son, on whose death it came into the possession of the defendant as eldest male member of the family, although belonging to a younger generation than the plaintiff. The plaintiff alleged that in 1882, shortly after he came of age, the defendant induced him to sign a release of all his claims upon the estate in consideration of the sum of R25,000. He prayed that this release might be set aside. The defendant denied the plaintiff's allegations as to the release. *Held* that the release must be set aside. The defendant stood in the relation of a guardian to the plaintiff. Releases executed immediately after a ward comes of age are looked upon with suspicion. The circumstances must show the fullest deliberation on the part of the ward and perfect good faith on the part of the guardian. The circumstances of this release did not fulfil these requirements. There was not that absolute fairness and good faith required by the relations of the parties, and the signing of the release was an improvident act which a prudent person would not have done with full knowledge of the circumstances. TOOLSEYDAS LUDHA *v.* PREMJI TRICUMDAS I. L. R., 13 Bom., 61

GUARDIAN—*continued*

3 RATIFICATION—*concluded*

was granted by their guardians during their minority, they thereby ratify the lease and cannot afterwards repudiate it RAM CHUNDER SIRCAR v PRAN GOBIND BOISHNUB 25 W R., 71

120 ——— Apparent acquiescence—*Compromise by mother for minor sons*—The trans-

mise was alleged to have been entered into by a mother on behalf of her two minor sons on the one hand and an adult member of the family on the other, *agreeing to give the latter more than had been* awarded by a judicial decision, it was held that the compromise was not binding on the minors Apparent acquiescence in such a compromise by one of the minors after arriving at majority, though evidence against him, is not evidence of a conclusive character when not continued for any considerable time DHARMAJI VAMAN v GURRAV SHRINIVAS [10 Bom, 311

121. ——— Ratification by acquiescence—*Minor, Contract by*—A sued in 1885

the defendant's predecessor in title who died in 1883, having been in possession of the estates since 1867 The plaintiff attained his majority in 1878 *Held* that, whether the cause of action arose in 1865 or 1867, it was equally barred from 1879, that the plaintiff was bound by the deed, assuming the plaintiff was a minor of 15 *years of age at the date of the deed of relinquishment*, it is not likely he would not have understood its effect or that he failed to ascertain it when he attained his majority in 1878 His conduct of acquiescence, moreover, in the deed of relinquishment amounted to ratification of it VENKATACHALAM v. MAHALAKSHMAMMA [I. L. R., 10 Mad., 272

4 *DISQUALIFIED PROPRIETORS*

122 — —— Suits by, and against, disqualified proprietors—*Act XIX of 1873 (N W. P. Land Revenue Act), s 205—Act VIII of 1879, s 23*—Under s. 205 of Act XIX of 1873, as amended by s 23 of Act VIII of 1879, a disqualified proprietor whose property is in charge of the Court of Wards must sue and be sued in the Civil Courts by and in the name of his guardian, where a guardian *has been appointed, or by and in the name of* the Collector of the district in which the suit is brought, where a guardian has not been appointed, whether or not the suit has for its object to set aside

GUARDIAN—*continued*

4 DISQUALIFIED PROPRIETORS—*concluded*

SHEO D[illegible]

[I. L. R., 5 All, 264

123 ——— Contract entered into by disqualified proprietor whilst his property was under the charge of the Court of Wards—*N W P Land Revenue Act (XIX of 1873), s 205B—Court of Wards*—S 205 of Act No XIX of 1873 does not cease to have effect when property to which it might apply is released from the custody of the Court of Wards Such property cannot at any time be taken in execution of a decree obtained on a contract entered into by a ward of the *Court at a time when his property was under the* superintendence of the Court HIMANCHAL SINGH v JHAMAN LAL I. L. R., 22 All., 364

124 —
tracts—
of 1873 (
suit was

money due on a bond, given while her property was under the superintendence of the Court of Wards The Collector was made a defendant to this suit "because [illegible] of the defendant ol lieor had come under

defendant to enter into the bond The mere disqualification of a proprietor to manage his estate does not carry with it a general and absolute disqualification to enter into any contracts at all *Held*

tor, that the Court was competent to make a decree against such disqualified proprietor COLLECTOR OF BENARES v SHEO PRASAD I. L. R., 5 All., 487

5 LIABILITY OF GUARDIANS

v MUDDUN LALL DASS 16 W. R., 252

liable for the costs of the suit. GOOLAM HOOSEIN NOOR MAHOMED v FATMABAI [I. L. R., 8 Bom., 391

GUARDIAN—*continued.*

2. DUTIES AND POWERS OF GUARDIANS —*concluded.*

Act XX of 1864, ss. 18 and 29—Guardian's authority to contract debts for the marriage of his ward without the sanction of the Court—Debts contracted for pilgrimage expenses—Guardian's power to acknowledge debts—Limitation Act (XV of 1877), s. 19.—A minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate. Act XX of 1864 gives no power to a guardian or administrator to bind his ward by personal covenants. A guardian appointed under Act XX of 1864 can pledge the property of his ward for purposes beneficial to the minor, but not as a security for money previously borrowed which the minor was under no obligation to pay. Under s. 29 of Act XX of 1864, a guardian cannot contract a debt for the marriage of his ward without the sanction of the Court. Debts contracted by the guardian of a minor for a pilgrimage not undertaken in the discharge of an urgent spiritual duty, when it was obligatory on him to perform, are not necessaries for which the minor would be held liable. A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1877). *Sobhanadri Appa Rau* v. *Sriramulu, I. L. R., 17 Mad., 221,* dissented from. RANMALSINGJI *v.* VADILAL VAKHATCHAND

[I. L. R., 20 Bom., 61

111. ———— *Liability of minor for debt incurred by guardian on his behalf —Ancestral trade carried for benefit of minor by the minor's natural guardian.*—Under Hindu law, where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian, for the benefit of herself (she having a claim for maintenance) and the said minor, the minor will be bound by all acts of the guardian necessarily incidental to or flowing out of the carrying on of the trade. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI

[I. L. R., 20 Bom., 767

3. *RATIFICATION.*

112. ———— **Sale by guardian**—*Acquiescence after minor comes of age.*—The conveyance of property while the owner is a minor is not necessarily inoperative; if the sale is effected by the guardian and acquiesced in by the minor when he comes of age, it may be valid notwithstanding. KUMUROODIN *v.* BHADHOO . **11 W. R., 134**

113. ———— *Delay of minor on coming of age in repudiating act of guardian.*—Mere delay on the part of a ward, after attainment of majority, in repudiating an alienation made by his guardian, *cannot be treated as a ratification of the* guardian's act, but only as evidence of ratification. RAJ NARAIN DEB CHOWDHRY *v.* KASSEE CHUNDER CHOWDHRY . **10 B. L. R., 324 : 18 W. R., 404**

GUARDIAN—*continued.*

3. RATIFICATION—*continued.*

114. ———— **Contract by guardian**—*Delay of minor on coming of age in repudiating contract.*—Long delay in repudiating a contract by a minor on his attaining majority, when such delay is wholly unaccounted for, is sufficient ground for inferring a ratification of the contract. BOIDONATH DEY *v.* RAMKISHORE DEY

[10 B. L. R., 326 note : 13 W. R., 166

DOORGACHURN SHAHA *v.* RAMNARAIN DOSS

[10 B. L. R., 327 note : 13 W. R., 172

115. ———— **Act of guardian after majority of minor**—*Person remaining minor as far as public are concerned—Acquiescence—Evidence of necessity for loan.*—Where a party after attaining full age allowed his mother to give him out to the world as a minor, and as his guardian to mortgage his ancestral property, and permitted the mortgagee to retain possession for five years,—*Held* that he could not afterwards turn round and repudiate arrangements which were made for his benefit, and for which an innocent party had given valuable consideration. PURMESHUR OJHA *v.* GOOLBEE

[11 W. R., 446

116. ———— **Mode of ratification**—*Suit to set aside sale made by mother as guardian—Minor acting for mother in former suit.*—In a suit to set aside a sale effected by plaintiff's mother during his minority, it appearing that plaintiff, eleven months after attaining his majority, signed for his mother a written statement in another suit, to the effect that the property had been sold by her to the defendant, and that he in that suit conducted his mother's defence, which was that the purchaser from her was entitled to what he claimed, it was held that he must be considered to have acquiesced in and ratified the sale. KEBULKRISTO DASS *v.* RAMCOOMAR SHAH

[9 W. R., 571

117. ———— **Transaction prejudicial to estate**—*Formal ratification, Necessity of.*—The guardian of a minor as manager of the minor's estate is bound in duty to abstain from entering into any arrangement beneficial to himself and detrimental to the estate; and if any such arrangement has been entered into, it is incumbent on him immediately after the minor comes of age to obtain from him not an accidental, but a distinct formal ratification. PROSUNNO COOMAR GHUTTUCK *v.* WOOMA CHURN MOOKERJEE . . . **20 W. R., 274**

118. ———— **Duty of minor**—*Compromise, Suit to set aside—Proof of fraud.*—It is not incumbent upon a guardian to contest every claim made against the infant's estate. The judicial committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. LEKRAJ ROY *v.* MAHTABCHUND

[10 B. L. R., 35
14 Moore's I. A., 393 : 17 W. R., 117

GUARDIANS AND WARDS ACT (VIII OF 1890)—*continued.*

——— s. 30.

See REGISTRATION ACT, s. 77.
[I. L. R., 24 Calc., 668

——— and s. 2—*Retrospective effect of—Mortgage without sanction of Court.*—S. 2 of the Guardians and Wards Act (VIII of 1890) does not give retrospective effect to s. 30, which therefore

v. BASARUTH ALI . I. L. R., 25 Calc., 909

——— s. 31.

See SPECIFIC PERFORMANCE.
[I. L. R., 22 Calc., 545

——— s. 39—"*Instrument*" — *Construction*

SHANGAR . . . I. L. R., 18 Bom., 375

——— s. 41.

See DISTRICT JUDGE, JURISDICTION OF
[I. L. R., 17 Bom., 566

——— s. 46.

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R., 23 Bom., 698

——— s. 48.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 16 Mad., 380

——— s. 51.

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R., 17 Bom., 566

——— The word "guardian" in s. 51 of the *Guardians and Wards Act means a guardian* who was such at the time the Act came into force. VALLABDAS HIRACHAND *v.* KRISHNABAI
[I. L. R., 17 Bom., 566

——— s. 52.

See MAJORITY ACT, s. 3.
[I. L. R., 21 Bom., 281

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concluded.*

——— s. 53.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 24 Calc., 25

GUJARAT TALUKHDARS ACT (BOMBAY ACT VI OF 1888).

See VALUATION OF SUIT—APPEALS.
[I. L. R., 16 Bom., 408

——— s. 10—*Application to the talukhdari*

officer under s. 10 of Bombay Act (VI of 1888) for partition under the decree. *Held* that, as the execu-

SANG DEVABHAI *v.* GOYABHAI KIKABHAI
[I. L. R., 16 Bom., 408

——— s. 31.

See EXECUTION OF DECREE—EFFECT OF *CHANGE OF LAW PENDING EXECUTION.*
[I. L. R., 17 Bom., 289
I. L. R., 19 Bom., 80
I. L. R., 20 Bom., 565

See STATUTES, CONSTRUCTION OF.
[I. L. R., 17 Bom., 289

provisions of s. 31, cl. 2, of Bombay Act VI of 1888 did not apply to the case of a mortgage effected prior to the passing of the Act. On appeal to the High Court,—*Held*, reversing the order of the *District Court, that cl. 2 of s. 31 of Bombay Act* VI of 1888 applied to the case, and that a sale in execution of a decree was such an alienation as came within the terms of the section and required

duced it, the order for sale should be affirmed, otherwise the plaintiff's application for sale should be dismissed. *Naga*
Bom, 80, and
I. L. R., 20
CHUDASAMA NAUDHABHAI *v.* NARAN TRIBHOVAN
[I. L. R., 22 Bom., 884

GUARDIAN—*continued.*

5. LIABILITY OF GUARDIANS—*continued.*

127. ——— **Liability of widow as guardian**—*Personal liability and as representing heirs of husband.*—A widow defending a suit as guardian of her minor son cannot be made liable in her own person as well as representing the heirs of her husband. BROJO MOHUN MOJUMDAR *v.* ROODRO NATH SURMAH MOJUMDAR . . **15 W. R., 192**

128. ——— **Retaining attorney for minor**—*Liability of minor for costs—Privity of contract.*—If a guardian or next friend of an infant retain an attorney to act for the infant, no contract is created between the attorney and the infant upon which the attorney can sue the infant for costs. RADHA NATH BOSE *v.* SUTTOPROSONO GHOSE **[2 Ind. Jur., N. S., 269**

129. ——— **Liability of guardian for torts**—*Torts committed by minor.*—Guardians of a minor cannot be held personally liable for torts committed by such minor. LUCHMAN DASS *v.* NARAYAN . . . . . **3 N. W., 191**

130. ——— **Right to suit for torts to minor**—*Suit by father for personal injury to son.*—A father, as guardian of his minor son, can sue to recover damages for personal injuries received by the son. MODHOO SOODUN *v.* KAEMOCLLAH BISWAS **[9 W. R., 327**

131. ——— **Liability of guardian on security bond**—*Act XL of 1858—Suit on minor's behalf against guardian's sureties—Assignment of security-bond—Act IX of 1861—Succession Act (X of 1865), s. 257.*—*B* having been granted by a District Court a certificate under Act XL of 1858 in respect of the estate of a minor, the Judge of such Court called on her to furnish security, and certain persons accordingly gave security bonds to the Judge on her behalf. Subsequently *B*'s certificate was taken from her, and was granted to *A*, who brought a suit on the minor's behalf against *B*'s sureties for the value of the property intrusted to *B*. The security bonds in question were not assigned by the Judge to *A*. *Held* that, inasmuch as the plaintiff was seeking to enforce contracts which were never made with him or any other person in the character of legal representative of the minor, he had no legal status to maintain the suit. Also that no equitable rights were created in the minor by the bonds, which would render the suit maintainable. *Quære*—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security; and whether, where he has done so and security-bonds have been given to him, he can assign them in the manner provided in s. 257 of the Succession Act, 1865. AMAR NATH *v.* THAKUR DAS **[I. L. R., 5 All., 248**

132. ——— **Liability of guardian for malversation**—*Suit on behalf of son to get rid of guardian.*—A mother brought a suit on behalf of her minor son to recover from her step-son, the managing member of the family, the minor's share in the family property. *Held* that the only ground upon which such a suit could be maintained was that of malversation. The Court might relieve the minor from his brother's authority and appoint another guardian, but a case requiring relief must be made out. ALIMENAMMAL *v.* ARUNACHELLAM PILLAI **[3 Mad., 69**

GUARDIAN—*concluded.*

5. LIABILITY OF GUARDIANS—*concluded.*

GUARDIANS AND WARDS ACT (VIII OF 1890).

See CASES UNDER APPEAL—ACTS—GUARDIANS AND WARDS ACT.

See BOMBAY CIVIL COURTS ACT, s. 16. **[I. L. R., 16 Bom., 277**

See CUSTODY OF CHILDREN. **[I. L. R., 16 Bom., 307**

See CASES UNDER GUARDIAN.

See PROBATE—EFFECT OF PROBATE. **[I. L. R., 19 Bom., 832**

——— **s. 1, cl. (2)**—*Scheduled Districts Act (XIV of 1874)—Agency rules—Superintendence of High Court—Civil Procedure Code (1882), s. 622.*—A petition of appeal was presented to the Governor in Council against an *ex-parte* order made by the Agent to the Governor in the scheduled district of Vizagapatam, the ground of the petition being that the petitioner's vakil had not been heard. The appeal was referred to the High Court. *Held* (1) that the Guardians and Wards Act, 1890, is in force in the agency tracts, although no notification to that effect had been made under the Scheduled Districts Act; (2) that the High Court had jurisdiction to set aside the *ex-parte* order. CHAKRAPANI *v.* VARAHALAMMA . **I. L. R., 18 Mad., 227**

——— **s. 12.**

See HINDU LAW—MARRIAGE—GIVING IN MARRIAGE AND CONSENT. **[2 C. W. N., 521**

——— **s. 13.**

See DISTRICT JUDGE, JURISDICTION OF. **[I. L. R., 23 Bom., 698**

——— **s. 14**—*Application of section—"Report," meaning of.*—S. 14 of the Guardians and Wards Act (VIII of 1890) does not apply to the High Court in the exercise of its original civil jurisdiction; and the term "report" in cl. (2) of that section refers, not to a judicial reference, but to a ministerial act. IN THE MATTER OF FAKARUDDIN MAHOMED CHOWDHRY, HAFIZ AMMINUDDIN AHMED *v.* GARTH . **I. L. R., 26 Calc., 133** **[3 C. W. N., 91**

——— **s. 24**—*Court's power to make order as to marriage of minor.*—*Quære*—Whether the marriage of a minor eight or nine years old can be regarded as falling within the scope of s. 24 of Act VIII of 1890, especially when the marriage of a minor female terminates the power of the guardian of the person? BAI DIWALI *v.* MOTI KARSON **[I. L. R., 22 Bom., 509**

HANDWRITING

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—HANDWRITING
[8 B L R, 490

See EVIDENCE—CRIMINAL CASES—HANDWRITING 1 B L R., A Cr 13
[I. L R., 10 Calc, 1047

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[2 Bom, 253 2nd Ed, 239
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See LIMITATION ACT 1877 ART 144 (1859 s 1, CL 12)—INTEREST IN IMMOVEABLE PROPERTY 13 B L R., 254

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[I L R., 1 *Bom*, 203
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[Agra, F B, 63 Ed 1874, 48

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[I L R., 16 All., 157
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[I L R., 4 *Calc*, 885
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HATH CHITTA BOOK

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[1 Ind. Jur, N S, 358

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See DECLARATORY DECREE SUIT FOR—ORDERS OF CRIMINAL COURT
[I. L. R., 5 Calc, 7

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[L. R., 8 I. A. 77
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See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS
[I L R., 23 Calc, 851

HEARSAY EVIDENCE

See CASES UNDER EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE

See EVIDENCE—CRIMINAL CASES—HEARSAY EVIDENCE 7 W R. Cr, 2, 25
[2 C W N, 672

HEARSAY EVIDENCE—*concluded*

See EVIDENCE ACT s 32
[I. L. R., 20 Calc, 758

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[I. L R 22 Calc., 752

HEIR OF DECEASED DEBTOR.

See CASES UNDER MAHOMEDAN LAW—DEBTS

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HEREDITARY ALLOWANCE

See CASES UNDER PENSIONS ACT, s 4

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[I L R, 18 Bom, 92
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[I L R, 21 Bom., 387

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See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES RIGHT TO

See MADRAS REGULATION XXIX OF 1802 s 7 I. L. R, 18 Mad., 420

See MAHOMEDAN LAW—CUSTOM
[I. L. R., 1 Bom, 633

See MAHOMEDAN LAW—KAZI
[I. L. R, 1 Bom, 633
I. L. R. 3 Bom., 72
I. L. R, 18 Bom., 103
I L R., 19 Bom, 250

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[I L. R., 1 Mad., 343

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See CASES UNDER LIMITATION ACT, 1877, ART 124 (1871 ART 123)

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT

See CASES UNDER SERVICE TENURE

1. ——— Grant by Government in inam—*Bom. Reg V of 1827 s 4—Limitation*—The grant of a village in inam by the Government cannot deprive the meymoodars of their hereditary rights. To entitle the person in possession to the enjoyment of the office and receipt of the dues from the village it is not essential that the duties of the office should have been actually performed if the party was prepared to discharge them when required. Claims to recover arrears of such dues are limited by s 4 Regulation V of 1827 of the Bombay Code to 12 years. BEEMA SUNKUR *v* JAMASJEE SHAPOORJEE
[5 W R., P C, 121 2 Moore's I. A, 23

H

HABEAS CORPUS, WRIT OF—

[illegible]

[I. L. R., 16 Bom., 307
I. L. R., 23 Calc., 290

[illegible]

[I. L. R., 19 Bom., 030

1. ——— Power of High Court to issue writ into the mofussil [illegible] *In re* AMEER KHAN . . . 6 B. L. R., 392

[illegible] *In re* AMEER KHAN . 6 B. L. R., 459

2. ——— Accused becoming insane during criminal trial—*Detention in lunatic asylum after regaining sanity*—An accused person having become insane during his trial, was placed in a lunatic asylum and was detained there after becoming sane. *Held* that such detention was not illegal, and he was not entitled to his discharge, but should be made over to the authorities for continuation of his trial. IN THE MATTER OF ELBURD 1 Hyde, 173

3. ——— Return to writ—*Custody of prisoner in jail—Return by Sheriff.*—The Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his custody, and a prisoner who has not been transferred by the Sheriff to the custody of the jailor by a separate warrant, and is brought up on the writs by the Sheriff, is to be considered as in the custody of the Sheriff. SPEYER *v.* TANSSEN . . Bourke, O. C., 28

4. ——— *Affidavit to controvert return—Amendment of return—Custody of minor—56 Geo. III, c. 100.*—The return to the writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 Geo. III, c. 10, s. 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can, however, be amended. A girl under sixteen years of age has not

HABEAS CORPUS, WRIT OF—*contd.*

[illegible] 5 B. L. R., 41

[illegible] IN THE MATTER OF KHATIJA BIBI

[5 B. L. R., 55

[illegible] *habeas corpus* is not necessarily conclusive, and does not preclude [illegible] into the truth of the matters alleged therein, although 56 Geo. III, c. 100, does not apply to [illegible].

5. ——— *Mahomedan law*—[illegible]—*Custody of wife.*—On an application for a writ of *habeas corpus* to bring before the Court *M*, a female infant, who was alleged to be in the unlawful custody of *S*, a Mahomedan, it was stated that *M*'s father was a Jew by birth, who had embraced the Mahomedan faith many years ago but had since returned to the Jewish persuasion; that her mother was a Mahomedan woman; that she was detained by *S* on the allegation that she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father; and that she was of the age of about nine years, and had not attained puberty: and a writ was thereupon granted. The return stated that *M*, being then about ten years of age, was married with the consent of her mother to *S*; that after the marriage, *M* and her mother had lived with *S* until her mother, at the instigation of the father, had left the house of *S*, taking *M* with her; that *S* had thereupon instituted a charge against the father and mother for enticing away and detaining *M*, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of *S*. The High Court refused to consider the custody illegal, and ordered the writ to be quashed. *In re Khatija Bibi*, 5 B. L. R., 557, distinguished. IN THE MATTER OF MAHIM BIBI . . . 13 B. L. R., 160

6. ——— ——— *Constitution of Small Cause Courts—Privilege from arrest.*—The Small Cause Court in the Presidency town is not a Court of co-ordinate jurisdiction with the High Court, but a Court of inferior jurisdiction and subject to the order and control of the High Court. Therefore, where on a prisoner being brought up to the High Court on a writ of *habeas corpus ad subjiciendum*, the return of the jailor stated that the prisoner was detained under a warrant of arrest issued in execution of a decree of the Small Cause Court,—*Held* that the return was not conclusive, but the prisoner was entitled to show by affidavit that he was privileged from arrest at the time he was taken into custody. I THE MATTER OF OMRITOLALL DEY

[I. L. R., 1 Calc., 78

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) *—continued.*

perquisites from his raiyat VISHNU HARI KULKARNI *v* GANU TRIMBAK [I. L. R., 12 Bom., 278

1. ——— s. 4 — *Hereditary Offices Act Amendment Act (Bombay Act V of 1886), s. 2—"Hereditary office"—Village sutar—Bombay Government Resolution No 512 of 1882*—The duties with which s 4 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) deals are confined to duties in which Government, as being responsible for the administration of the country, is directly interested The definition of "hereditary office" does not extend to the duties of a carpenter, which, though useful to the village community, are not matters with which Government has any direct concern. *Held* therefore that the village sutar (carpenter) does not hold an "hereditary office" within the meaning of that section YESU *v.* SITARAM . . . I. L. R., 21 Bom., 733

2. ——— and s. 5 — *Vatandar—Person having an "hereditary interest"—Hereditary Offices Act Amendment Act (Bombay Act V of 1886), s 2*—*G*, by his will, devised all his [illegible] *V*, a distant [illegible] heir of *G*, [illegible] had not an "hereditary interest" in the vatan within the meaning of s 4 of the Bombay Hereditary Offices Act, that he was not a vatandar capable of taking under the will of *G* within the meaning of s 5, and that the will of *G* was therefore inoperative *Held* that *V* had not 'an hereditary interest" in the vatan, and that the devise to him was therefore inoperative The expression in s. 4, "persons having an hereditary interest in a vatan," means persons [illegible] character [illegible] ho may [illegible] 'Heredi- [illegible] inherit- [illegible] ured by [illegible] n. CHI- [illegible] m., 787

3. ——— *Daughter of a vatandar, Status of, during her father's lifetime—Bombay Act III of 1874, s 5—Hereditary Offices Act Amendment Act (Bombay Act V of 1886).*—The daughter of a Hindu vatandar is not during the lifetime of her father a vatandar of the same vatan within the meaning of s. 5 of Bombay Act III of 1874, as amended by Bombay Act V of 1886. MUKTABAI *v* ANTAJI . I. L. R., 23 Bom., 715

4. ——— *Hereditary Offices Act Amendment Act (Bombay Act V of 1886), s. 2—Widow—Rights of succession of a widow other than the widow of the last holder—Adoption by such widow—Collateral male member—Vatan.*—Under s. 2 of Bombay Act V of 1886, if there is a male member of a vatandar family, the succession goes to him in preference to a female member, and on his death the succession will go to his heirs with a similar provision. Where there is a male member [illegible] ance, and consequently she cannot create, transfer, or revive any rights by adoption A kulkarni vatan was owned by two brothers *A* and *B*. *B* died first and *A* became the last male holder. *A* died in 1881, leaving a widow who held the vatan until her death in 1892 *On her death, B's widow took a son in* adoption The adopted son filed a suit to establish his title to the vatan against the defendant, who was *a male member of the family and had been registered* by the revenue authorities as the vatandar on the death of *A*'s widow *Held* that the plaintiff could *not succeed, the defendant having a better title to* the vatan than the plaintiff or his adoptive mother under s 2 of Bombay Act V of 1886. KRISHNAJI TAMAJI *v* TARAWA . I. L. R., 24 Bom., 484

——— s. 5

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 14 Bom., 404

1. ——— *Vatandars—Alienation to person not vatandar—Validity of grant.—Quære*—Whether s 5 of the Vatandars Act, III of 1874, makes an alienation to a person outside the vatandar family void as between the grantor and grantee NARAYAN KHANDU KULKARNI *v* KALGAUNDA BIRDAR PATEL . I. L. R., 14 Bom., 404

2. ——— and ss. 7, 10, 13—*Officiator's remuneration—Civil process—Power of Collector*—The power of the Collector to procure *the removal of the process of the Civil Court, or to* get the Court to set aside a sale under s. 13 of the Bombay Hereditary Offices Act, No. III of 1874, *extends to any vatan, or any part thereof, or any* of the profits thereof, assigned or not assigned as remuneration of an officiator, but the exemption from *liability to the process of the Civil Court extends* only to such vatan property or profits thereof, as have been assigned as remuneration of an officiator. NILKANTH ANAJI KARGUPI *v.* BASLINGA [I. L. R., 9 Bom., 104

[illegible] and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of s. 7 read with s. 23 of the Hereditary Offices Act (Bombay Act III of 1874) APPA *v.* SADU . . . . I. L. R., 18 Bom., 752

——— s. 8.

See LIMITATION ACT, 1877, ART. 62.
[I. L. R., 7 Bom., 101
I. L. R., 8 Bom., 426
I. L. R., 9 Bom., 111
I. L. R., 10 Bom., 665

HEREDITARY OFFICE—*concluded.*

2. ——— **Hereditary gomastah appointed to collect desmukhi allowances**—*Derivation of his title such that the deshmukh could not dismiss him—Sanad, Construction of.*—As to whether a deshmukh could dismiss the holder of the paid office of hereditary gomastah, appointed to collect, in the vatan of the former, the deshmukhi allowances from the villages, it was shown by documentary evidence that the gomastah's ancestor had been appointed by the ruling power of the day, from which authority also the deshmukhi had been derived. It was also shown that the hereditary gomastah's title was independent of the deshmukh, and that the latter could not displace him. No change had been made under the British rule from what had prevailed as to this under the Peishwa; but such evidence as there was, accorded with the above. *Held* that the right of the gomastah to act as such and to receive the payments had either been granted or else had been so recognized and confirmed by an authority binding on the deshmukh that he could not deprive the gomastah of his office, which the Government had conferred upon him; and that the deshmukh had not the right, as against him, to collect the allowance himself directly, either from the village officers or from the treasury. RAMCHANDRA NARSINGRAV *v.* TRIMBAK NARAYAN EKBOTE

[I. L. R., 16 Bom., 374
L. R., 19 I. A., 39

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874).

See BOMBAY REVENUE JURISDICTION ACT, s. 4 . . I. L. R., 18 Bom., 319

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

See SERVICE TENURE.

[3 Bom., A. C., 128
5 Bom., A. C., 107, 202
8 Bom., A. C., 83
12 Bom., 232
I. L. R., 15 Bom., 13

1. ——— **Alienation of vatan**—*Bom. Reg. XVI of 1827, s. 20.*—A mortgage by a vatandar of vatan property, executed at a time when Regulation XVI of 1827 was still in force, was in its inception void against the heir of the said vatandar, nor did it become in any way validated against the heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874. KALU NARAYAN KULKARNI *v.* HANMAPA . . . I. L. R., 5 Bom., 435

2. ——— *Vatan—Restriction upon alienation by a vatandar—Mortgage invalid to what extent—Bom. Reg. XVI of 1827.*—An alienation by way of mortgage of vatan property, or any part of it, executed when Regulation XVI of 1827 was yet in force, had no operation beyond the life of the vatandar who mortgaged. The mortgage was in its inception void against the heir of the vatandar, and had not become validated against the heir by reason of the repeal of the sections in Regulation XVI of 1827, relating to this subject, by

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) —*continued.*

Bombay Act III of 1874. *Kalu Narayan Kulkarni v. Hanmappa bin Bhimappa; I. L. R., 5 Bom., 435*, referred to and approved. The childless widow of a vatandár, deceased in 1847, was the recognized vatandar in possession in 1865. She mortgaged two villages of the vatan to the father of the respondents. The latter two, after litigation, retained possession in 1886, by order of the Commissioner in the Revenue Department, until there should be a decree of Court to the contrary. The widow, according to the judgment below, had held the vatan adversely to her late husband's son, the plaintiff, who was born in 1848 of her co-widow, and he was the true heir, entitled from his birth. But the High Court gave effect to the adverse possession of the widow for the period of limitation supporting the mortgage. The plaintiff was the sole heir of the widow, his stepmother, who died in 1877. The appellant contended that the vatan, as inherited by him, was free from the mortgage encumbrance, and that he was entitled to possession. *Held*, reversing the decree of the High Court, that the mortgage was void against the heir, and had no force beyond the life of the vatandar who had executed it. The decree of the Subordinate Judge to that effect and for possession was maintained. PADAPA *v.* SWAMIRAO SHRINIVAS

[I. L. R., 24 Bom., 556
L. R., 27 I. A., 86
4 C. W. N., 517

3. ——— *Bom. Reg. XVI of 1827, s. 20—Adverse possession.*—A sale by a vatandar of vatan property, executed at a time when Regulation XVI of 1827 was still in force, was in its inception void against the heir of the vatandar, nor did it become in any way the more valid against such heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874. Adverse possession only begins to run against the heir from the time when he is entitled to succeed to the possession of the vatan property, *i. e.*, from the date of the death of the vatandar. RAVLOJIRAV *v.* BALVANTRAV VENKATESH . . . . I. L. R., 5 Bom., 437

4. ——— *Bom. Reg. XVI of 1827—Mortgage of vatan property—Mortgagor's life-interest.*—On 3rd December 1856, certain vatan property was mortgaged by the deceased defendant to the plaintiff, who obtained a decree on the mortgage in 1861, and attached the rents and profits of the vatan on the 6th October of the same year. On his (defendant's) death in 1869 his son succeeded to the estate and obtained a removal of the attachment before 1874. The plaintiff thereon applied for a fresh attachment of the property. *Held* that, the mortgagor having only a life-interest the vatan came into the hands of his son free of the mortgage. JAGJIVANDAS JAVERDAS *v.* IMDAD AL

[I. L. R., 6 Bom., 21

5. ——— *Jurisdiction—Vatandar kulkarni and raiyat—Perquisites, Right to.*—Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a vatandar kulkarni is entitled to receive

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) *—continued*

presented a petition of complaint to the Sub-Collector of B, who issued an order, on the 10th November 1830, to the Mamlatdar directing him to require the parties to refer their disputes to arbitration. The arbitration took place, and on the 20th August 1831 both parties executed a rajinama (exhibit No 20), which set forth the terms of settlement agreed upon Rudrapa was to hold the mortgaged lands and rusum (annual allowance) for fifty years At the end of that period the principal debt and all interest thereon was to be deemed to have been paid off, and the lands and rusum were to be surrendered to the mortgagor or his heir Under this rajinama, the mortgagee held uninterrupted possession of the mortgaged property until A D 1872. *A, one of the signatories of the rajinama, died in 1843, and was succeeded as vatandar by R,* and *R again was succeeded by the present plaintiff,* who in 1872 brought this suit against the defendant (Rudrapa's son) to recover possession of the mortgaged property The Subordinate Judge held that the mortgage of A D 1818 was not genuine, and that the rajinama of A D 1831, being an alienation of vatani property after the passing of Regulation XVI of 1827, s 20, was invalid as against vatandars subsequent to the grantor. He therefore made a decree for the plaintiff. On appeal the Assistant

way of mortgage in A D 1818 of vatan lands, and that the rajinama was therefore valid, and ought to be enforced, and was not affected by Regulation XVI of 1827, s 20. Previously to this decree of the High Court, the plaintiff had applied for execution of the

ing a restoration of the mortgaged property to his possession. The plaintiff did not oppose his application, but the Subordinate Judge refused it on the ground that he had received a certificate from the Collector, issued under s. 10 of Bombay Act III of

ficate by the Subordinate Judge compelled him to refrain from giving effect to the decree of the High Court. Thereupon the defendant filed a special appeal in the High Court *Held* that the certificate of the Collector was unlawfully issued, and that the

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) *—continued*

which the Collector is authorized to issue under s 10 of Bombay Act III of 1874 should be sent to the Court by whose decree or order the vatan is affected, in the manner mentioned in the section The Collector's certificate in this case, therefore, had not been issued to the proper Court The restitution of the mortgaged property to the defendant in whose possession it was at the commencement of this suit in 1872, and until the execution of the erroneous decree of the Court of first instance in 1873, was not such a passing into the ownership or beneficial possession of any person not a vatandar of the same vatan as is meant by s 10 of Bombay Act III of 1874 The alienation of the vatani property to Rudrapa having in 1831 received the sanction of the authorized officer of Government, s 10 of Bombay Act III of 1874 did not apply,—the intention of the Act being that, whenever the alienation of an hereditary officer's vatan has received the sanction of Government, the Collector should not issue his certificate The words "without the sanction of Government" in s. 10 of

tion of a subordinate Court's decree by the High Court or the re instatement of a person in possession of which he has been deprived by the execution of the erroneous decree of a subordinate Court RACHAPA v AMINGOVDA I. L. R., 5 Bom., 283

4 ———— *Execution of decree—Transfer of vatan property from one not vatandar—Collector's certificate prohibiting delivery of decreed property—Procedure*—The plaintiff and

was filed by them The lower Court, feeling doubt as to whether the Collector could legally issue the certificate and how far it would operate, referred the

was also not one, s 10 of Act III of 1874 had no application. The Collector, if he thought proper,

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) —*continued.*

——— s. 9.

See MAHOMEDAN LAW—KAZI.
[I. L. R., 18 Bom., 103
I. L. R., 19 Bom., 250

1. ——— and s. 10—*Effect of certificate under s. 10.*—The plaintiff sued as purchaser at a Court sale of the interest of defendant No. 1, to redeem and recover possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied the mortgage, and that he had any title to the land, which he said belonged to *R* and formed a part of *R*'s deshmukhi vatan. *R* having died, leaving a minor widow, sued as defendant No. 4 in the suit, the estate was administered by the Collector. On the application of the minor's personal guardians, the Collector was joined as a party. The Collector had also certified to the Court, under s. 10 of Act III of 1874, that the land formed part of a vatan. The District Judge rejected the plaintiff's claim and ordered the sale to be set aside. On appeal by the plaintiff to the High Court,—*Held,* following *Shankar Gopal* v. *Babaji Lakshman, I. L. R., 12 Bom., 550,* that the Judge ought not to have acted on the certificate by setting the sale aside. Ss. 9 and 10 of Act III of 1874 were not applicable to the case, as the first defendant, whose interest was purchased by the plaintiff, was not a vatandar. BHAU BALAPA *v.* NANA I. L. R., 13 Bom., 343

2. ——— and ss. 23 and 64—*Talvar—Shetsanadi—Lease—Alienation of talvar lands—Bom. Reg. XVI of 1827, ss. 19 and 20—Act XI of 1843, s. 15.*—In 1866 the defendant took a lease of lands pertaining to a talvar or shetsanadi vatan (the holders of which, under Regulation XVI of 1827, ss. 19 and 20, and Act XI of 1843, s. 15, are hereditary district or village officers) from the last owner, who, as sole occupant of the talvar office, was entitled exclusively to the emoluments attached to it. When the Vatan Act (Bombay Act III of 1874) came into operation, no order as regards remuneration was made, but the plaintiff, subject to objection, was appointed to officiate. The plaintiff thereupon sued to eject the defendant. *Held* that the lease to the defendant as a partial alienation was invalid under Regulation XVI of 1827, s. 20; that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under s. 9, cl. 1, of Bombay Act III of 1874; and that the plaintiff as life-owner was entitled to possession. PURSHOTTAM TALVAR *v.* MUDKANGAGAVDA SHIDANYAVDA . . . I. L. R., 7 Bom., 420

——— s. 10.

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE . I. L. R., 9 Bom., 328

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.
[I. L. R., 8 Bom., 264

1. ——— *Certificate of Collector—Jurisdiction of Civil Court.*—A certificate under s. 10 of Bombay Act III of 1874, stating that a vatan has been assigned to an officiator as his remuneration and granted by the Collector to save a vatan from attachment before judgment, does not exclude the jurisdiction of the Civil Court to make a decree, notwithstanding that the decree may be rendered inoperative by the Collector issuing a fresh certificate. SHIDDESHVAR *v.* RAMCHANDRA RAO
[I. L. R., 6 Bom., 463

2. ——— *Certificate of Collector—Removal of attachment made by Civil Court.*—The applicant held a decree, dated the 28th June 1861, against Ismail Ali Khan and another for R3,956-13-7, of which he had already recovered R2,742-4-5. On the 24th December 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain vatan, belonging to the judgment-debtors, in satisfaction of the balance R1,214-9-2 due to him, and under his decree, on the 7th February 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending, the Collector, on the 13th December 1878, sent a certificate to the Court, and informed it that the proceeds of the vatan were not liable to attachment under ss. 10 and 13 of Bombay Act III of 1874. The certificate referred to the profits of the vatan which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the Collector as remuneration of the officiator. The Court, on receiving it, removed the attachment and dismissed the application on the 11th January 1879. The order was affirmed in appeal. On an application to the High Court under its extraordinary jurisdiction,—*Held* that the Collector was authorized, by the first part of s. 10 of the Vatandars' Act, to inform the Court by his certificate that a portion of the profits attached had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it, to remove the pending attachment. *Held* also that the arrears due at the date of the Act, and *which had not been assigned, fell within the latter* part of the section. The High Court accordingly dismissed the application with costs. JAGJIVAN *v.* ISMAIL ALLI KHAN . I. L. R., 4 Bom., 426

3. ——— *Vatan, Alienation of—Certificate of Collector—Bom. Reg. XVI of 1827, s. 20.*—Previously to the year A.D. 1818, *R*, the great-grandfather of the plaintiff, settled accounts with Rudrapa, the father of the defendant, in respect of debts due by himself (*R*) and his ancestors. The amount found due to Rudrapa was R20,000, and, as security for this sum, *R*, by deed, dated A.D. 1818, mortgaged to Rudrapa certain vatani lands, and also an annual allowance of R200 received by him (*R*) on account of a rusum. Under this deed these properties were to be held by Rudrapa in lieu of interest until repayment of the principal of R20,000. A dispute subsequently arose as to the amount of the rusum, and *A*, the son and successor of *R*, the mortgagor, having by attachment interrupted Rudrapa's possession (as mortgagee) of the vatani lands, he (Rudrapa)

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) *—concluded*

See BABA KAKAJI SHET SHIMP *v* NASSARUDDIN [I L R, 18 Bom, 103

——— s

determi ie the a characte—Bo 1876) s 4 cl Re e ue Court—

payments referred to in s 17 of Bombay Act III of 1874 are those mentioned in s 4 namely customary fees or perquisites in money or in kind whether at ... or otherwise It is the commutation of

In 1884 defendant No ... service in person or by deputy the Collector appointed defendant No ... to act as kulkarni Defen... 1884 ... defen... rat on according to the scale fixed for Government villages known as the Wingate scale and ordered plaintiff to pay the increased remuneration so as to make up the amount due under that scale On 26th September 1890 the Collector recovered the sum of R171 from the plaintiff by attachment of his property The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied The defendant pleaded that the Col...

...by the p... fluctuating or indeterminate character the Collector had no power to increase the remuneration of the officiator under s 17 of Bombay Act III of 1874 *Held* also that the suit was not barred by s. 4 (c) of Act X of 1876 ANANTACHARYA *v* SECRETARY OF STATE FOR INDIA I L R., 19 Bom., 581

——— ss 33 35

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—SANCTION [I. L R, 1 Bom., 607

HEREDITARY OFFICES ACT AMENDMENT ACT (BOMBAY ACT V OF 1886)

See CASES UNDER HEREDITARY OFFICES ACT

HEREDITARY OFFICES ACT AMENDMENT ACT (BOMBAY ACT V OF 1886) *—concluded*

——— s 2

...sue I L R., 19 Bom, 614

See MAHOMEDAN LAW—INHERITANCE [I. L. R., 21 Bom, 118

HEREDITARY OFFICES REGULATION (MADRAS REGULATION VI OF 1831).

See JURISDICTION OF CIVIL COURT—OFFICES RIGHT TO
[I L R., 6 Mad., 334
I. L. R, 13 Mad, 41
I. L R, 17 Mad, 302
I. L R, 21 Mad, 134

See LIMITATION ACT 1877 s 28 [I. L. R., 21 Mad., 134

See RIGHT OF SUIT—OFFICE OR EMOLUMENT I. L. R., 8 Mad., 249

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DAMAGES [5 Mad., 383

——— s 3—*Suit for emoluments attached to office of karnam in unsettled districts*—A suit for the emoluments attached to the office of karnam in an unsettled district is barred by the operation of s. 3 Regulation VI of 1831 COLLECTOR OF KISTNA *v* KALAVAGUNTA CHINNAMBAGU 5 Mad., 360

HEREDITARY TENURE

See CASES UNDER GHATWALI TENURE

See CASES UNDER GRANT

See CASES UNDER LEASE—CONSTRUCTION

See CASES UNDER SERVICE TENURE

See UNSETTLED POLLIAM
[14 B L R, P C, 115
L R., 1 I. A, 268, 282

HIDDEN TREASURE

See CASES UNDER TREASURE TROVE

HIGH COURT, CONSTITUTION OF—

See JUDGE OF HIGH COURT [I. L. R., 16 All., 136

——— High Court, N.-W P—*Stat 24 & 25 Vict c 104 s 7—Letters Patent N W P, s 2—Omission to fill up vacant appointment—Court consisting of Chief Justice and four Judges only*—By s 2 of the Letters Patent for the High Court it was not intended that, if the Crown or the Government should omit to fill up a vacancy among the Judges under the powers conferred by s. 7 of the

HEREDITARY OFFICES ACT (XI OF 1843 AND BOMBAY ACT III OF 1874) —*continued.*

should take proceedings under s. 6, cl. (1), of the Act. SHANKAR GOPAL *v.* BABAJI LAKSHMAN [I. L. R., 12 Bom., 550

5. ———————— *Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation.*—In execution of a decree against *N*, his lands were sold in February 1876, and *H* purchased them and took possession on 10th August 1876. *N* died in July 1877, and in February 1888 his son and heir, alleging that the lands were vatan, applied to the Collector for a certificate under s. 10 of the Vatandars Act (Bombay Act III of 1874). The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until the 13th March 1890, that is, more than twelve years after the death of the last holder *N*. *Held* that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10 of the Vatandars Act. CHANDRA NAIK *v.* BAHINABAI . I. L. R., 17 Bom., 362

6. ———————— *Hereditary Offices Act Amendment Act (Bombay Act V of 1886), s. 1—Deshamukhi vatan—Commutation of service—Gordon Settlement.*—S. 10 of the Hereditary Offices Act (Bombay Act III of 1874) applies to deshamukhi service vatan with respect to which the liability to serve has been commuted under the Gordon Settlement. BHAU *v.* RAMCHANDRARAO [I. L. R., 20 Bom., 423

7. ———————— *Redemption, Suit for—Possession obtained by plaintiff under decree—Decree reversed in appeal—Collector's certificate under the Hereditary Offices Act (Bombay Act III of 1874).*—Where an erroneous decree of the District Court is reversed by the High Court and the decree of the original Court restored, the successful party has a right to be replaced in the same position as if the District Court had not made an erroneous decree. If in obtaining this right he is restored to possession of vatan land, such a restoration does not fall within the scope of s. 10, Bombay Act III of 1874. *Rachapa v. Amingovda, I. L. R., 5 Bom., 282,* referred to. VENKATESH NARASINHA *v.* GOVINDRAO. [I. L. R., 21 Bom., 55

8. ———————— *Share of vatan—Vatan divided into takshims or shares—Execution of decree by holder of one share against holder of other—Collector's certificate based on a misunderstanding of word "vatan."*—There cannot be two separate vatans in connection with one hereditary office; therefore, when a vatan is broken up into shares or takshims, those takshims do not constitute separate vatans. Where the Collector's certificate under s. 10 of the Vatan Act was based on a misunderstanding of the term "vatan,"—*Held* that his certificate was illegal, and could not be accepted by the Court. RAMANGAVDA *v.* SHIVAPAGAVDA [I. L. R., 22 Bom., 601

9. ———————— and ss. 25 and 56 *Representative vatandar—Attachment—Jurisdiction of Revenue and Civil Courts—Res judicata.*—A decree of the District Court at Solapur, made in 1863, declared the plaintiff to be an hereditary deputy vatandar of a certain deshpande vatan vested in the defendants as hereditary vatandars, and as such deputy entitled to receive a certain sum annually out of the income of the vatan. The plaintiff received moneys from time to time under his decree. He was not, however, subsequently to the decree, registered and treated as "a representative vatandar" under Bombay Act III of 1874, s. 56. In 1875 plaintiff made a darkhast for the attachment of a certain amount belonging to the vatan for arrears due to him under his decree. The money was accordingly attached. Subsequently the Collector issued a certificate to the Subordinate Judge, who had attached it for the removal of the attachment under Bombay Act III of 1874, s. 10. The Subordinate Judge accordingly ordered it to be removed, and his order was affirmed by the Assistant Judge on appeal. The plaintiff thereupon preferred a special appeal to the High Court. *Held* that the lower Courts had no option but to raise the attachment on receiving the Collector's certificate. *Held* also that, as the plaintiff having, according to law as it stood in 1863, succeeded in then establishing his right to be an hereditary deputy deshpande, he was entitled to the benefit of s. 56 of Bombay Act III of 1874. His status as hereditary deputy vatandar was a fact which neither a Revenue nor a Civil Court could properly ignore or re-open. It was *res judicata.* GOPAL HANMANT GUMASTE *v.* SAKHARAM GOVIND [I. L. R., 4 Bom., 254

———————— s. 13—*Hereditary service vatan—Office of kazi—Rozina allowance, its liability to attachment and sale in execution of a decree—Pensions Act (XXIII of 1871), s. 4.*—The office of kazi is not a hereditary service vatan under Bombay Act III of 1874. Plaintiff obtained a money-decree against *H*, and in execution sought to attach and sell a decree obtained by *H* against *M*, which entitled *H* to receive annually a certain portion of the rozina allowance paid by Government to *M* as kazi. *H* contended that the rozina allowance was paid to *M* and his family for service as kazi, and that therefore it was not liable to the process of a Civil Court under s. 13 of Bombay Act III of 1874. This contention was upheld by both the lower Courts. *Held* that, as the kazi's office was not a hereditary service vatan, plaintiff's rights to attach the decree obtained by *H* against *M* was not barred by s. 13 of Bombay Act III of 1874. *Held* also that, as *H* was not liable to serve as kazi, it was not open to him to urge that the allowance in question was appropriated as service remuneration, and was not therefore transferable. *Held* also that, as the decree sought to be attached was passed before the Pensions Act (XXIII of 1871) came into force, plaintiff's darkhast was not barred for want of a certificate under s. 4 of the Act. DHARAMDAS SAMBHUDAS *v.* HARASJI . . I. L. R., 19 Bom., 250

HIGH COURT, JURISDICTION OF —*continued*

1 CALCUTTA—*continued.*

High Court in its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts COLLECTOR OF THANA *v* BHASKAR MAHADEV SHETH . I. L. R., 8 Calc , 264

9. ——— **Sonthal Pergunnahs** —*Act XXXVII of 1855, s 2—Civil Procedure Code (Act XIV of 1882), ss 1 and 3*—An appeal lies to the High Court from the Sonthal Pergunnahs in all civil suits in which the matter in dispute is over R1,000 in value SORBOJIT ROY *v* GOVESH PROSAD MISSER I. L. R., 10 Calc , 761

10. ——— *Appeal in criminal cases.*—The High Court has no jurisdiction to entertain appeals in civil suits tried in the Sonthal Pergunnahs SURDHAREE LOLL *v* MANSOOR ALLY KHAN . . . . I. L. R , 3 Calc , 298

(*b*) CRIMINAL.

11. ——— **Appeal in criminal case**—*Superintendent of Cachar*—The High Court had no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity of Magistrate of the district QUEEN *v* RADHAKISHEN SEIN W. R., 1864, Cr., 18

12. ——— *Revision—Superintendent of Tributary Mehals—Offence committed out of British India.*—The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of the Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India *Empress v. Keshub Mahajun, I L R, 8 Calc, 985,* and *Hursee Mahapatro v Dinabundhu Patro, I L R, 7 Calc, 523,* referred to EMPRESS *v* HURRO KOLE [I. L. R., 9 Calc , 288

13. ——— **High Court's power of revi-**

[illegible]

under cl 28 of the Letters Patent of 1865. COLVILLE *v.* KRISTO KISHORE BOSE [I. L. R., 26 Calc., 746 3 C W. N , 598

14. ——— **Appellate and revisional jurisdiction**—*Withdrawal of the operation of the Criminal Procedure Code—Scheduled Districts Act (XIV of 1874), s 6—Assam Frontier Tracts Regulation, 1880, s. 2—Power of the Supreme Council*—The effect of the rules laid down by the Chief Commissioner of Assam under s. 6 of the Scheduled Districts Act (XIV of 1874), taken in conjunction with the notification issued by him in the exercise of the powers conferred by s. 2 of the Assam Frontier Tracts Regulation, 1880, directing that the Criminal Procedure Code should cease to operate in the North Cachar Hills from the date of the notification, is to supersede all previously existing criminal authority in that district by that of the Chief Commissioner The power of the Supreme Legislative authority of India to remove any place or territory from the jurisdiction of the High Court is, as was said in *Empress* v *Burah, I L R, 4 Calc., 172 L R, 5 I A, 178,* "expressly authorized and contemplated" by the Statutes and Letters Patent which affect the constitution and jurisdiction of the Court. *Semble*—Notwithstanding the withdrawal of the operation of the Criminal Procedure Code from a certain district, the High Court may continue to exercise appellate and revisional powers over that district SOONDERJEE NANJEE *v* MAYLON [I. L. R., 26 Calc., 874 3 C. W. N., 564

15. [illegible] offen [illegible] Trac [illegible] *appea* [illegible] *Penal* [illegible] There [illegible] appea [illegible] offences committed within the districts known as the Chittagong Hill Tracts. QUEEN EMPRESS *v* SONAI MUGH . . . I. L. R., 27 Calc., 654

2. MADRAS.

(*a*) CIVIL

16. ——— **Power to sell immoveable property out of jurisdiction**—*Law before 1865*—Prior to 1865, the High Court of Madras had power to execute a decree in a partition suit between Hindu inhabitants of Madras by selling immoveable property situated in Chingleput District. JAMUNA BHAI AMMAL *v* SADAGOPA I. L. R., 7 Mad., 56

Reversing on review SADAGOPA *v* JAMUNA BHAI AMMAL . I. L. R., 5 Mad., 54

17. ——— **Complaint against Governor and Council of Madras**—*21 Geo. III, c. 70, s. 5, 39 & 40 Geo III, c 79, s 3, 4 Geo. IV, c. 71, s 17*—S. 3 of 39 & 40 Geo. III, c. 70, which provides that the Governor and Council at Madras shall enjoy the same exemption and no other from the authority of the Supreme Court at Madras as is enjoyed by the Governor General and Council from the jurisdiction of the Supreme Court at Calcutta, did not confer on the Supreme Court at Madras a jurisdiction over the Governor and Council of Madras similar to that conferred by 21 Geo. III, c. 21, s. 5, on the Supreme Court at Calcutta over the Governor General and Council. *Held* therefore the High Court, Madras, had no jurisdiction to entertain an application based on a complaint of certain acts of the Governor and Members of the Council of Madras alleged by the complainant to be injurious and oppressive. IN RE WALLACE I. L. R., 8 Mad., 24

HIGH COURT, CONSTITUTION OF —*concluded.*

High Court's Act (24 & 25 Vict., c. 104), and the Court should then consist of a Chief Justice and four Judges only, the constitution of the Court should thereby be rendered illegal, and the existing Judges incompetent to exercise the functions assigned to the High Court. LAL SING *v.* GHANSHAM SINGH

[I. L. R., 9 All., 675

HIGH COURT, ESTABLISHMENT OF—

——— **N.-W. P. High Court.**

See REFERENCE FROM SUDDER COURT AT AGRA . . 6 B. L. R., P. C., 283
[13 Moore's I. A., 585

HIGH COURT, JURISDICTION OF—

See CONTEMPT OF COURT—CONTEMPTS GENERALLY . I. L. R., 4 Calc., 655
[I. L. R., 7 Bom., 1, 5
I. L. R., 10 Calc., 109
3 W. R., Cr., 2

See CASES UNDER JURISDICTION OF CRIMINAL COURTS.

See CASES UNDER REVISION.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

——— **Minor residing out of—**

See GUARDIAN—APPOINTMENT.
[I. L. R., 21 Calc., 206
I. L. R., 21 Bom., 137

1. CALCUTTA.

(*a*) CIVIL.

1. ——— Issue of writ of fieri facias —*Suit begun in Supreme Court—24 & 25 Vict., c. 104, s. 12.*—In an ordinary suit commenced in the High Court, a writ of *fieri facias* could not issue except within the limits of the Court's original jurisdiction; but in a suit originally commenced in the Supreme Court, the High Court had power, under 24 & 25 Vict., c. 104, s. 12, to issue a *fieri facias* beyond the limits of its original jurisdiction, and to

HIGH COURT, JURISDICTION OF —*continued.*

1. CALCUTTA—*continued.*

sell under it property situated there. MONOMOTHO NATH DAY *v.* GRINDER CHUNDER GHOSE

[24 W. R., 366

GRISH CHUNDER DOSS *v.* BROJO JIBUN BOSE

[8 C. L. R., 4

2. ——— Enforcement of public duties —*License for a provision market.*—The High Court has no power to compel municipalities beyond the local limits of its ordinary original civil jurisdiction to do their duty or to restrain them from doing that which it is not in their province to do. MORAN *v.* CHAIRMAN OF MOTIHARI MUNICIPALITY

[I. L. R., 17 Calc., 329

See STRACHEY *v.* MUNICIPAL BOARD OF CAWNPORE

[I. L. R., 21 All., 348

3. ——— Cause of action arising in district in which British subjects were subject to Supreme Court.—The High Court, previously to the issue of the Order in Council, No. 4366, dated 22nd November 1865, had jurisdiction in cases in which the cause of action arose in a district in which British subjects were formerly subject to the jurisdiction of the Supreme Court. INDIAN CARRYING CO. *v.* MCCARTHEY . . Cor., 116

4. ——— Irregularity in title of suit —*Immaterial mistake.*—Where a suit, cognizable by the High Court by reason of the testamentary and intestate jurisdiction of the Court, was wrongly entitled as being brought in the ordinary original civil jurisdiction,—*Held* that the Court had jurisdiction to entertain the suit. It was a mere blunder which the Court could correct. TOYLUCK NAUTH DASS *v.* MEGNAUTH DASS . . 2 Ind. Jur., N. S., 245

5. ——— Power of execution of decree—*Execution out of jurisdiction.*—The High Court, in the exercise of its civil jurisdiction, had not the power to execute its own decree, or serve its own process, out of the local limits of such jurisdiction. SAGORE DUTT *v.* RAM CHUNDER MITTER

[1 Hyde, 136

6. ——— *Civil Procedure Code (Act X of 1877), s. 649.*—Although the High Court in its Appellate Side does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under s. 649 of the Code of Civil Procedure. HURRO PERSHAD ROY *v.* BHUPENDRO NARAIN DUTT

[I. L. R., 6 Calc., 201: 7 C. L. R., 79

7. ——— Power to relieve judgment-debtor in Small Cause Court.—The High Court is not authorized by law to interfere for the relief of a necessitous judgment-debtor whose salary has been attached in execution of a decree of a Small Cause Court. HARRIS *v.* BRITAIN 15 W. R., 534

8. ——— Appellate jurisdiction of High Court—*Law in subordinate Courts.*—The

HIGH COURT, JURISDICTION OF —continued

3. BOMBAY—*continued.*

the jurisdiction to try it remained in the High Court, to which it had been given by s 12 of the Letters Patent PESHOTAM HORMASJI DUSTOOR *v* MEHER BAI . . I. L. R., 13 Bom , 302

25. ——— Suit by the husband for divorce—*Parsi Marriage Act (XV of 1865), ss 3, 30—British India—Valid marriage out of British India—Marriage when husband is a minor—Previous consent of guardian*—The plaintiff and defendant were Parsis The husband filed this suit in April 1891, stating that in March 1885 he and the defendant went through the ceremony of ashirvad at Akola in the Berar Assigned Districts. He alleged that he was at the time only nineteen years of age,

at Bhusaval until the 8th April 1885, but since then he had not lived with the defendant He further alleged that the defendant had been guilty of adultery, and he prayed that, if necessary, it might be declared that the ashirvad ceremony did not constitute a valid marriage, but that, if the marriage should be declared valid, it might be dissolved At the hearing it was found that the requirements of s 3 of the Parsi Marriage and Divorce Act (XV of 1865) were complied with at the marriage So that the marriage would have been valid if it had been celebrated within British India It was also found that the defendant had been guilty of adultery *Held* that the jurisdiction of the Court was not

fore had jurisdiction. The delegates having found that at the marriage the requirements of s 3 of the Parsi Marriage Act (XV of 1865) were complied with,

BAI . . . I. L. R , 16 Bom., 136

Bombay has no power of revision over civil cases tried by the Consular Court at Zanzibar, though it is authorized to hear appeals from the decisions of that Court as a District Court by the Zanzibar Order in Council of 1884. A power of revision is not an incident of appellate powers, but, on the contrary, can only be exercised where there is no appeal, and had it been intended to give such powers to the High Court at Bombay, it would necessarily have been expressly provided for *Per* JARDINE, J.—Under any circumstances, the Consular Court at Zanzibar is bound to obey a writ issued by the High Court for certifying the papers of a civil case Under ss. 9 and 10 of the Bombay Civil Courts Act (XIV of 1869) taken with art 21 of the Zanzibar Order in Council of 1884 and s. 622 of the Civil Procedure Code (Act XIV of 1882), the High Court is competent to exercise revisionary jurisdiction in civil matters tried by the Consular Court at Zanzibar KHOJA SIVJI *v* HASHAM GULAM . I. L. R., 20 Bom., 480

(*b*) CRIMINAL.

27. ——— European British subject—*Offence committed in foreign territory—Penal Code.*—A European British subject is liable to be tried in the High Court of Bombay for an offence against the Penal Code committed in the territories of a Native Prince in alliance with Government upon charges framed under the Penal Code REG *v* CHILL . . 8 Bom., Cr , 92

28. ——— Criminal cases sent from Zanzibar—*Stat 6 & 7 Vict , c 94—Stat 28 & 29 Vict , c 116—Stat. 29 & 30 Vict , c 87—Order in Council of 9th August 1866*—The High Court at Bombay has jurisdiction to try a prisoner accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar for trial to Bombay. EMPRESS *v* DOSSAJI GULAM HUSEIN [I. L. R., 3 Bom., 334

29. ——— Court of Her Majesty's Consul at Muscat—*High Court's criminal revisional jurisdiction over the Consular Court—Order in Council, dated 4th November 1867—Criminal* ... The High ... jurisdic- ... 's Consul ... scat In

[I. L. R., 24 Bom., 471

30. ——— Court of Judicial Superintendent of Railways at Secunderabad—*Sanction of proceedings—Subsequent sanction, Effect of—Irregular commitment accepted by High Court—Criminal Procedure Code (X of 1882), ss 197 and 532—Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate General—Letters Patent, 1865, cl. 24—European British subjects*—The provisions of the Code of Criminal Procedure (Act X of 1882) apply to the Court of the Judicial

of the Criminal Procedure Code (Act X of 1882)

HIGH COURT, JURISDICTION OF
—*continued.*

2. MADRAS—*concluded.*

(*b*) CRIMINAL.

18. ———— **Criminal Procedure Code, s. 2**—*Letters Patent, s. 28—Scheduled Districts Act (XIV of 1874), notifications under—Agency tracts, Jurisdiction of High Court over—Agency rules—Act XXIV of 1839, s. 3.*—The High Court set aside a conviction by the Agent to the Governor in Vizagapatam on a charge of culpable homicide not amounting to murder, and directed that the accused be tried in the Sessions Court at Vizagapatam on a charge of murder. The accused was tried accordingly, and was convicted of murder, and he appealed to the High Court. The Agency tract of Vizagapatam is a scheduled district under Act XIV of 1874, and the Governor in Council extended the operation of the Criminal Procedure Code of 1861 to it by a notification made under that Act in 1862. In 1863 the Governor in Council, by a notification under Act XXIV of 1839, constituted the Agent a Sessions Judge under the Criminal Procedure Code. *Held* that the High Court had jurisdiction to direct that the accused be tried by the Sessions Judge under the provisions both of the Letters Patent and of the Criminal Procedure Code. QUEEN-EMPRESS *v.* BUDARA JANNI . **I. L. R., 14 Mad., 121**

19. ———— **Jurisdiction under Local Act**—*Offence under Madras Act I of 1866—Act making offence triable by Magistrate—Power of local Legislature.*—The prisoner was committed to a criminal sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act No. I of 1866. *Held* that the High Court had no jurisdiction, inasmuch as the Act which creates the offence declares it to be punishable by a Magistrate. HOLLOWAY, *J.*, dissented from the judgment. *Quære*—Whether the local Legislature has power to enact that a European British subject shall be punishable by a Magistrate on summary conviction for an offence newly created by the local Legislature. REGINA *v.* DONOGHUE . . . **5 Mad., 277**

20. ———— *Extradition and Foreign Jurisdiction Act (XXI of 1879), Ch. II—European British subjects in Bangalore—Justices of the Peace of Mysore—Transfer of criminal case—Criminal Procedure Code, 1882, s. 526.*—The Civil and Military Station of Bangalore is not British territory, but a part of the Mysore State, and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879. Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore, being such Justices of the Peace, are, by virtue of s. 6 of the said Act, subordinate to the High Court at Madras. The High Court, therefore, has jurisdiction to order the transfer of a criminal case from the Court of the District Magistrate of the Civil and Military Station of Bangalore to the Court of a Presidency Magistrate at Madras. IN RE HAYES **[I. L. R., 12 Mad., 39**

HIGH COURT, JURISDICTION OF
—*continued.*

3. BOMBAY.

(*a*) CIVIL.

21. ———— *Exercise of extraordinary jurisdiction—Superintendence of High Court under s. 15, 24 & 25 Vict., c. 104—Bom. Reg. II of 1827, s. 5, cl. 2—Mamlatdars' Courts—Bombay Act V of 1864.*—Distinction between the High Court's extraordinary jurisdiction under cl. 2 of s. 5 of Regulation II of 1827, and its general power of superintendence under s. 15 of Stat. 24 & 25 Vict., c. 104, pointed out, and the occasion for the exercise of the former stated. The Mamlatdars' Courts, constituted under Bombay Act V of 1864, are subordinate Civil Courts within the meaning of cl. 2, s. 5, Reg. II of 1827. The High Court has therefore power, in the exercise of its extraordinary jurisdiction, to set side an order made by a Mamlatdar under Bombay Act V of 1864. MAHADAJI GOVIND *v.* SONU BIN DAVLATA . . **9 Bom., 249**

22. ———— **Power of High Court as Court of original jurisdiction.**—The High Courts are not Courts of ordinary original civil jurisdiction over the whole of the territories of the presidencies to which they belong, and there is no presumption in favour of jurisdiction beyond what is found expressly conferred by the Charters. SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL **[12 Bom., 113**

23. ———— **Inhabitant of Baroda carrying on business in Bombay by munim**—*Charter of Supreme Court, Bombay, s. 41—Subjection to process of High Court.*—An inhabitant of Baroda, who carries on the business of a banker at Bombay by a munim, and has a place of business there, is constructively an inhabitant of Bombay, and as such is subject to the orders and process of the High Court in the exercise of its equity jurisdiction, as provided by s. 41 of the Charter of the late Supreme Court, and continued to the High Court by the Act under which it was established. HURIVALLAB DAS KALLIAN DAS *v.* UTTAMCHAND MANIKCHAND. IN RE GOPALRAV MYRAL . **8 Bom., O. C., 236**

24. ———— **Suit to declare an infant marriage null and void**—*Parsi Matrimonial Court—Act XV of 1865, ss. 3, 30—Letters Patent, s. 12.*—In 1868 the plaintiff and defendant, then of the ages of seven and six years, respectively, went through the ceremoney of marriage in the presence of their respective parents and according to the rites of their religion. The formal consent on behalf of the plaintiff was not given by his father, but by his uncle with whom he was living and by whom he had been adopted. Nineteen years afterwards the plaintiff filed this suit praying for a declaration that the pretended marriage was null and void, and did not create the status of husband and wife between the plaintiff and defendant. The defendant resisted the suit, and claimed to be the lawful wife of the plaintiff. The plaintiff and defendant never lived together as man and wife, nor was the marriage ever consummated. *Held* that, such a suit not being in the category of suits relegated to a special Court by Act XV of 1865,

HIGH COURT, POWER OF—*concluded*

——— to interfere with verdict of jury

See CASES UNDER REVISION—CRIMINAL CASE—VERDICT OF JURY AND MISDIRECTION

See CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS

HIGH COURTS' CHARTER ACT (24 & 25 VICT, C 104), S 15

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s 15

——— Rulings of—

See PRACTICE—CIVIL CASES—RULINGS OF HIGH COURT I. L. R., 15 Bom., 418
[I. L. R., 17 Bom , 555

HIGH COURTS' PROCEDURE ACT, 1875 (CRIMINAL)

See CRIMINAL PROCEDURE CODES, ss 266 336

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See CASES UNDER TRANSFER OF CRIMINAL CASE—GENERAL CASES

HINDU LAW

See CONVERTS 1 W R., P C, 1
[9 Moore's I. A , 195
I L. R., 2 Mad 209
1 Agra, F B, 39
2 Agra, 61
3 Agra, 82
I. L. R , 10 Bom , 1
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See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS ETC , ON LAND I. L. R., 10 Mad., 112

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See OWNERSHIP, PRESUMPTION OF
[I L. R , 9 Mad., 175

See SALSETTE LAW, APPLICABLE IN
[I. L. R., 19 Bom., 680

See VENDOR AND PURCHASER—NOTICE
[I. L. R., 12 Bom., 33

See CASES UNDER VENDOR AND PURCHASER—POSSESSION

1. ——— Sources of Hindu law —The sources of Hindu law described and their comparative authority discussed. The various schools of Hindu law and their divisions and sub-divisions, enumerated and classified. GANGA SAHAI *v* LEKHRAJ SINGH . I. L. R., 9 All., 253

HINDU LAW—*concluded*

2. ——— Usage as a source of law —The judgment in *Collector of Madura* v *Moottoo Ramalinga Sathupathy, 12 Moore's I A., 397,* gives no countenance to the conclusion that in order their lives by it BHAGWAN SINGH *v* BHAGWAN SINGH I. L R., 21 All., 412
[L. R., 26 I A., 153
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HINDU LAW—ADOPTION

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[3 Agra, 103A
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See CASES UNDER ONUS OF PROOF—HINDU LAW—ADOPTION

1 AUTHORITIES ON LAW OF ADOPTION

1 ——— Authorities on Hindu law—*Dattaka Mimansa Kalika Purana* —In dealing with questions of the Hindu law of adoption, it is unsafe to resort to analogical arguments derived from the *arrogatio* or the *adoptio* of the Roman civil law, and where it is necessary to recur to first principles, they should be sought for in the approved authorities

HIGH COURT, JURISDICTION OF
—*continued.*

3. BOMBAY—*concluded.*

was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but held also that the provisions of s. 532 of the Criminal Procedure Code applied, and that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per* SARGENT, *C.J.*—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects. *Per* BAYLEY, *J.*—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the superintendence of the High Court of Bombay within the meaning of cl. 24 of the Letters Patent, 1865, and a prisoner committed by the former Court for trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause. QUEEN-EMPRESS *v.* MORTON . I. L. R., 9 Bom., 288

31. ———— European British subjects at Secunderabad—*Criminal Procedure Code, 1882, s. 526—Act III of 1884, s. 11—Transfer of criminal case.*—The High Court of Bombay having been vested by notification of the Governor-General of India in Council, No. 178 of 23rd September 1874, with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places at Secunderabad, outside the Presidency of Bombay and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad, in his character of a District Magistrate, is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal Procedure, Act X of 1882, as amended by Act III of 1884, s. 11; and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court either to itself or to any criminal Court of equal or superior jurisdiction. The High Court, by an order under s. 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad. QUEEN-EMPRESS *v.* EDWARDS . I. L. R., 9 Bom., 333

4. N.-W. P.—CIVIL.

32. ———— Legislative power of the Governor General in Council—*Stat. 24 & 25 Vict., c. 67, s. 22—Act XVII of 1886 (Jhansi and Morar Act)—"Indian territories now under the dominion of Her Majesty"—"Said territories"—*

HIGH COURT, JURISDICTION
—*concluded.*

4. N.-W. P.—CIVIL—*concluded.*

, c. 98, [I of *28 & 29 Vict., c. 17, preamble—32 & 33 Vict.* ires of *s. 1—Construction of statutes.*—Act XVI n and 1886 (Jhansi and Morar Act) is not *ultra v* of the the Governor General in Council, and the tov same fort of Jhansi are subject to the jurisdiction e Gov- High Court for the N.-W. Provinces in th aws and manner as the rest of the Jhansi District. Tl Indian ernor General in Council has power to make l sty, no regulations binding on all persons within the d. His territories under the dominion of Her Maje rritories matter when such territories were acquire Act (24 legislative powers are not limited to those te *i.e.*, the which, at the date when the Indian Councils of Her & 25 Vict., c. 67) received the royal assent (9 Vict., 1st August 1861), were under the dominion Parlia- Majesty. In the preamble to the 28 & 2 of the c. 17, and in s. 1 of the 32 & 33 Vict., c. 98 truction ment has placed this construction upon s. 2 liament Indian Councils Act. Even if that cons a mis- was erroneous, it has been so declared by Pa the law as to make its adoption obligatory. Thoug red as to taken opinion of the Legislature concerning *of the* does not make the law, yet it may be so decl *p. 86,* operate in future. *Postmaster General* laws and *United States* v. *Early, Curties Rep. U. S* ncil are referred to. It must be presumed that the *I. L. R.,* regulations of the Governor General in Co erred to. known to Parliament. *Empress* v. *Burah,* ll., 490 *3 Calc., 143: I. L. R., 4 Calc., 183,* ref ree of ABDULLA *v.* MOHAN GIR . I. L. R., 11 A

33. ———— Appeal from de *ssing suit* *Act (IV* District Judge in Oude—*Order dismi 5—Oude for dissolution of marriage—Divorce 7—Oude of 1869), ss. 3, sub-s. (3), 8, 9, 13, 17, and and Oude Civil Courts Act (XIII of 1879), s. 3, dated Courts Act (XIV of 1891), s. 8—N.-W. P. 25, s. 3. Act (XX of 1890), s. 42—Notification 12 N.-W. P. 23rd September 1874—Stat. 28 Vict., c.* from the —The High Court of Judicature for the ng a suit has no jurisdiction to entertain an appeal *Morgan,* decree of a District Judge in Oude dismiss PEROY for dissolution of marriage. *Morgan* v. All., 375 *I. L. R., 4 All., 306,* overruled. PEROY *v* [I. L. R., 18

HIGH COURT, POWER OF— , 82 note

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[10 B. L. R., 79, 80

See CASES UNDER REVISION— POWER OF CASES. S.

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See CASES UNDER TRANSFER O CASES.

HINDU LAW—ADOPTION—*continued.*

2. REQUISITES FOR ADOPTION—*continued.*

an adoption actually made by her without such express authority is illegal and void, and that the maxim, "*quod fieri non debuit, factum valet*" is inapplicable to such an adoption TULSHI RAM *v* BEHARI LAL . I. L. R., 12 All., 328

10. ——— Adoption by widow without special authority.—*Semble*—A Hindu widow can give her son in adoption without special authority from her husband. GURULINGASWAMI *v* RAMALAKSHMAMMA I. L. R., 18 Mad., 53

to adopt, but a daughter-in-law, *i.e.*, the widow of a ... by her ... a valid ... father-in-law GOPAL BALKRISHNA KENJALE *v* VISHNU RAGHUNATH KENJALE . I. L. R., 23 Bom., 250

ness in second appeal *Semble*—In the Bombay Presidency the widow's right to adopt is inherent, and not merely delegated *Semble*—In the absence of express prohibition by the husband, the widow's power to give or take in adoption is co-extensive with that of the husband LAKSHMIBAI *v* SARASVATIBAI . I. L. R., 23 Bom., 789

DEBEE . . . . Cor., 42

sent of some person competent to give away the adopted son had been obtained. ANANDRAV SIVAJI *v.* GANESH ESHVANT BOKIL . 7 Bom., Ap., 33

15. ——— *Proof of authority to adopt—Ceremonies—Presumption* —The

widow, has been really obtained RADHAMADHUB GOSSAIN *v* RADHABULLUB GOSSAIN [2 Ind. Jur., O. S., 5; 1 Hay, 311

16. ——— *Presumption of consent—Acts of adoptive mother*—When a Hindu lady adopted a son in the lifetime of her husband, the fact that she carried on a law suit during his lifetime, calling herself his wife and the mother of the adopted son, and that neither the husband nor any one else denied the adoption, would be strong corroborative *evidence that the adoption was made not only with* the husband's consent, but that the ceremonies usual on the occasion of an adoption were done in his actual presence TINCOWRIE CHATTERJI *v* DENONATH BANERJEE . . . W. R., 1864, 155

poses of Hindu law, give the adopted child, even after her death, any right to property inherited by her from her husband *Held* in the present case that the evidence did not support the contention that the adopted son of the widow had been adopted to the husband. CHOWDHRY PADAM SINGH *v* KOER UDAYA SINGH 2 B. L. R., P. C., 101 [12 W. R., P. C., 1 12 Moore's I. A., 350

18 ——— *Reference to deed*

former instrument, held sufficient to establish its identity. KISHEN SUNKUR DUTT *v.* MOHA MYA DOSSEE . . . . W. R., 1864, 210

[9 W. R., 463

20. ——— *Evidence of authority to adopt*—Whether an elder widow who had purported to adopt a son to her deceased husband under his authority had received such authority orally or by will was disputed by a junior widow, the Courts below differing as to the question of fact. Upon the evidence, the finding of the Subordinate Judge

1 AUTHORITIES ON LAW OF ADOPTION —*concluded.*

of the Hindu law itself, and not in foreign systems of law. *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah, 8 Moore's I. A., 529; Bhyah Ram Singh* v. *Bhyah Ugur Singh, 13 Moore's I. A., 373;* and *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar, 14 Moore's I. A., 570,* referred to. The dictum of the Lords of the Privy Council in *The Collector of Madura* v. *Mootoo Ramalinga Sathupathy, 12 Moore's I. A., 397,* that the duty of European Judges administering the Hindu law is not so much to inquire whether a disputed doctrine is deducible from the earlist authorities as to ascertain whether it has been received by the particular school governing the district concerned, and has there been sanctioned by usage, does not prohibit the Court from considering the question of fact whether a particular passage of the Kalika Purana upon which an argument in the Dattaka Mimansa is based is authentic by reference to other authoritative works of Hindu law. In that case no inflexible rule was laid down assigning supreme and infallible authority to the Dattaka Mimansa in questions connected with the law of adoption as followed by the Benares school of Hindu law. The authenticity of the text of the Kalika Purana, which lays down that a child must not be adopted whose age exceeds five years, is extremely doubtful. The interpretation given to that text in the Dattaka Mimansa was not necessarily intended to be universally applicable, and admits of a construction which would confine the application of the text to Brahmans intended for the priesthood; and various other equally plausible interpretations have been adopted by other authorities. This being so, it would be unsafe to act upon the text in question and upon the interpretation placed upon it in the Dattaka Mimansa so as to set aside an adoption which took place many years ago, which had ever since been recognized as valid, and under which the adoptee had ever since been in possession of his adoptive father's estate upon the single ground that at the time of the adoption the adopted son was more than five years of age. According to the Kalika Purana as interpreted by the Dattaka Mimansa of Nanda Pandita, an adoption in the Dattaka form is wholly null and void if made after the adoptee has completed the fifth year of his age. It is a mistake to hold that, according to the Dattaka Mimansa, so long as an adoption takes place while the adoptee is under six years of age, it is valid. The mistake arises from supposing that the word "panchvarshiya" used in paragraphs 48 and 53 of the Dattaka Mimansa necessarily indicates that the person referred to has passed the fifth anniversary of his birth. It indicates, on the contrary, that he is in his fifth year. *Thakoor Oomrao Singh* v. *Thakooranee Mehtab Koonwer, 1 N. W., 103a,* dissented from. GANGA SAHAI *v.* LEKHRAJ SINGH . **I. L. R., 9 All., 253**

2. REQUISITES FOR ADOPTION.

(*a*) SANCTION.

2. ——— Gift and acceptance—*Valid adoption.*—To constitute, a valid adoption, there must be a gift and an acceptance. COLLECTOR OF SURAT *v.* DHIRSHINGJI VAGHBAJI . **10 Bom., 235**

See KENCHAWA *v.* NINGAPA

[10 Bom., 265 note

3. ——— Sanction of ruling power—*Adoption otherwise valid—Consent of ruling power—Succession to service watan.*—A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service watan. RAMCHANDRA VASUDEV *v.* NANAJI TIMAJI

[7 Bom., A. C., 26

4. ——— Sanction of Government—*Adoption by kulkarni—Act XI of 1843—Bom. Act III of 1874, ss. 33, 34, and 35.*—The sanction of Government to an adoption by a kulkarni or his widow, or by a co-parcener in a kulkarniship or his widow, is not necessary to give it validity, nor has Government any right to prohibit or otherwise intervene in such an adoption. NARHAR GOVIND KULKARNI *v.* NARAYAN VITHAL

[I. L. R., 1 Bom., 607

5. ——— Registration — *Requisite for valid adoption.*—According to Hindu law, neither registration of the act of adoption nor any written evidence of that law having been completed is essential to its validity. SUTROOGUN SUTPUTTY *v.* SABITRA DYE . . . . **5 W. R., P. C., 109**

(*b*) AUTHORITY.

6. ——— Adoption made without authority—*Invalid adoption.*—There can be no gift in adoption where there is an absence of authority, the attempt to give being a mere nullity. There is nothing in such an attempted transaction to set aside; it should simply be declared null and void *ab initio.* LAKSHMAPPA *v.* RAMAVA

[12 Bom., 364

7. ——— Mode of giving authority—*Verbal authority.*—According to Hindu law, a power to adopt may be given verbally. SOONDER KOOMAREE DEBEA *v.* GUDADHUR PERSHAD TEWAREE

[4 W. R., P. C., 116 : 7 Moore's I. A., 54

8. ——— *Absence of prohibition—Presumption—Permission to adopt.*—*Held* that the doctrine of Hindu law that a "permission is to be presumed in the absence of prohibition" (Dattaka Chandrika, s. 1, verse 32) relates to a giver, and not to a receiver, in adoption. TARINI CHURN CHOWDHRY *v.* SARODA SUNDARI DASI

[3 B. L. R., A. C., 145 : 11 W. R., 468

9. ——— Necessity of express authority of deceased husband—*Maxim, "quod fieri non debuit, factum valet"—Law in Benares — Mitakshara law.*—*Held* by the Full Bench that, according to the Benares school of Hindu law, a Hindu widow cannot make a valid adoption to her deceased husband without his express authority; tha

HINDU LAW—ADOPTION—*continued.*

2. REQUISITES FOR ADOPTION—*continued*

29. ———— *Place for performance of ceremony* —Although, according to the Dattaka Mimansa, the ceremony of homa, or burnt-offering, is an essential part of adoption, it is not necessary that it should take place in the dwelling of the adopted OOMRAO SINGH v. MAHTAB KOONWAR [3 Agra, 103

30. ———— *Adoption by*

during the pollution of the adoptive parent. RANGANAYAKAMMA v. ALWAR SETTI [I. L. R., 13 Mad., 214

31. ———— A Brahman took a boy in adoption, but died before the ceremony of datta homam was performed. This ceremony was performed after the death of the adoptive father by his widow. *Held* that the adoption was valid. SUBBARAYAR v. SUBBAMMAL . I. L. R., 21 Mad., 497

32. ———— *Validity of adoption without ceremonies among Brahmans*—*Quære*—Whether an adoption is valid among Brahmans without the performance of the essential religious ceremonies RAVJI VINAYAKRAV JAGGANNATH SHANKARSETT v. LAKSHMIBAI [I. L. R., 11 Bom., 381

33. ———— *Upanayana, Ceremony of—Second birth—Age of adoptee*—As ption is itself a he fiction of law nto the adoptive being favoured mainly for the sake of the parent's beatitude in the future h certain c is wantn to cerem and taking. Having taken place, its effect is the affiliation of the adoptee as if he had been begotten by his adoptive father, thus removing him from his natural into his adoptive family In this manner, he is "born again" into the adoptive family by the rites of initiation. According to Manu, in the case of the three "twice-born" classes the turning point of the "second birth" which means purification from the sin inherent in human nature, is represented by the ceremony of upanayana or investiture of the sacred thread hallowed by the gayatri, and until the performance of this ceremony, the person concerned, though born of twice born parents, remains on the same level as a Sudra. The ceremony is, moreover, the beginning of his education in the duties of his tribe, as prescribed by Manu According to the Hindu law, as observed by the Benares school, the

HINDU LAW—ADOPTION—*continued.*

2 REQUISITES FOR ADOPTION—*continued.*

form can take place Adoption in that form implies

therein The age of the boy is material only as determining the term at which the upanayana may be performed *Kerutnarain* v. *Bhoobunesree, 1 Sel. Rep, 161,* and *Ramkishore Acharj Chowdree* v. *Bhoobunmoyee Debea Chowdrain, S D A. Beng., 1859, 229,* referred to *Dharmo Dagu* v. *Ram Krishna Chimnaji, I L R, 10 Bom, 80,* dissented from GANGA SAHAI v LEKHRAJ SINGH [I. L. R., 9 All., 253

34. ———— *Adoption among Brahmans—Datta homam, when it may be dispensed with.*—The ceremony of datta homam is not essential to a valid adoption among Brahmans in Southern India, when the adoptive father and son belong to the same gotra *Singamma* v. *Ramanuja Charlu, 4 Mad, 165,* approved and followed. *Shoshinath Ghose* v *Krishnasunderi Dasi, I. L R., 6 Calc, 381,* considered. GOVINDAYYAR v. DORASAMI . I. L. R., 11 Mad., 5

35 ———— Ceremonies is case of Sudras—*Necessity for ceremony*—*Quære*—Whether religious ceremonies are necessary to make an adoption valid among Sudras. SRINARAIN MITTER v KISHEN SOONDERY DASI 11 B. L. R., 171 [L. R., I A, Sup. Vol, 149

S C NUGGENDRO CHUNDER MITTRO v KISHEN SOONDURY DASSEE . . 19 W. R., 133

36 ———— *Necessity for ceremonies.*—A Hindu Sudra adopted the plaintiff, his brother's son, in 1247 (1840), who upon the death of his adoptive father, performed his sradh and obtained possession of all his property as such adopted

years of such dispossession, sued to recover possession stating that the decree in the former suit had been obtained by the defendant in collusion with the guardian. The defence was, that the adoption was invalid, the

mere giving and taking may be sufficient to make the adoption valid. NITTANUND GHOSE v KRISHNA DOYAL GHOSE . 7 B. L. R., 1: 15 W. R., 300

37. ———— *Necessity of ceremonies.*—Among Sudras in Bengal, no ceremonies in addition to the giving and taking of the child are necessary to constitute a valid adoption. BEHARI LAL MULLICK v INDRAMANI CHOWDHRANI [13 B. L. R., F. B., 401: 21 W. R., 285

that no such authority had been given was maintained. AMMI DEVI *v.* VIKRAMA DEVU

[I. L. R., 11 Mad., 486
L. R., 15 I. A., 176

21. ———— Power to adopt—*Validity of power to widow and executors to adopt—Exercise of such power by widow with consent of the surviving executor.*—A testator by his will authorized and empowered his wife to adopt a son in the following words: "I hereby authorize and empower my wife and executrix, and my executors and trustees, to whom I give full permission and liberty, to adopt after my decease a son, and in case of his death during his minority, or on attaining his full age, and without leaving male issue, to adopt a second son, and in case of his death during minority or on attaining such age and without leaving male issue, to adopt a third son, and no more, etc." *Held* the power of adoption was valid. The testator associated the other executors with his wife for the purpose of insuring a wise exercise of her discretion in the selection of a son for adoption, and not with the intention of making it an essential condition of adoption that they should take a part in the ceremony of adoption from which, under the Hindu law, they were precluded. *Held* also the power was given to the executors *qua* executors, and therefore survived to the holders for the time being of the office of executors; the death of one of them before the power was exercised did not therefore render the power void. The power was validly exercised by the wife adopting with the consent of the surviving executor. The mere fact of the surviving executor not having actually and physically taken in adoption was not a failure to comply with the terms of the power. AMRITO LALL DUTT *v.* SURNOMOYE DASSEE . . . . I. L. R., 24 Calc., 589

[1 C. W. N., 345

Held on appeal that such power was bad. Under Hindu law, power to adopt can be given to a widow only, and she has no capacity to adopt save under the express permission of her husband given in his lifetime. AMRITO LAL DUTT *v.* SURNOMONI DASI

[I. L. R., 25 Calc., 662
2 C. W. N., 389

Held by the Privy Council:—That no one except the widow, authorized for the purpose by her husband, can adopt a son to him after his decease is a principle in the Hindu law of adoption. The power is exerciseable by the widow alone, though restriction may be placed upon her choice of a boy by the husband's having made it a condition that persons named by him should concur in the choice. *Held* therefore that by this will no valid authority to adopt was given to the widow. The conjecture that the testator really meant to give authority to the widow to adopt, restricting her power merely to the extent that there should be others, his executors, who were to consent to the choice of a boy to be adopted by her, could not be accepted as a legitimate construction of the will. The authority was expressed in clear terms to be to the three. It would also be beyond the range of judicial interpretation to construe the will as meaning that the testator only intended to provide for the appointment of a male successor to him in the property. AMRITO LAL DUTT *v.* SURNOMOYE DASI

[I. L. R., 27 Calc., 996
L. R., 27 I. A., 128
4 C. W. N., 549

22. ———— Specifying a child for adoption who dies or is refused—*Continuation of authority to adopt another person.*—Where a husband authorizing an adoption specifies the child he wishes to be taken, but that child dies or is refused by his parents, the authority given warrants (at least in Bombay) the adoption of another child. The presumption is that the husband desired an adoption, and by specifying the object merely indicated a preference. LAKSHMIBAI *v.* RAJAJI

[I. L. R., 22 Bom., 996

23. ———— Termination of authority to adopt.—The authority of a widow to adopt is at an end when the estate, after being vested in her son, has passed to the son's widow. AMAVA *v.* MAHADGAUDA . . . . I. L. R., 22 Bom., 416

(*c*) CEREMONIES.

24. ———— Ceremony of putrestee jag—*Consent of person adopted—Superior castes.*—The performance of the putrestee jag is essential to the validity of an adoption in the Dattaka form, at least among the three superior castes. The consent of the party adopted is essential to the validity of an adoption in the kritrima form. LUCHMUN LALL *v.* MOHUN LALL BHAYA GAYAL . 16 W. R., 179

25. ———— Ceremony of datta homam—*Brahmans.*—*Semble*—The ceremony of datta homam is among Brahmans an essential element in adoption. *Singamma* v. *Vinjamuri Venkatacharlu, 4 Mad., 165,* questioned. VENKATA *v.* SUBHADRA . . . I. L. R., 7 Mad., 548

26. ———— *Brahmans—Giving and receiving child.*—In order to establish a valid adoption in a Brahman family, proof of the performance of the datta homam is not essential. The giving and receiving a boy who is capable of being adopted is sufficient to constitute a valid adoption according to Hindu law. SINGAMMA *v.* VINJAMURI VENKATACHARLU . . . 4 Mad., 165

27. ———— *Dakhani Brahmans.*—In the case of Dakhani Brahmans, the "datta homam" or any other religious ceremony is not required to give validity to the adoption of a brother's son: the giving and taking of the child is sufficient for that purpose. ATMARAM *v.* MADHO RAO

[I. L. R., 6 All., 276

28. ———— *Brahmans in Bombay—Adoption of brother's son.*—Among Brahmans in the Presidency of Bombay the performance of the datta homam ceremony is not essential to the validity of the adoption of a brother's son. VALUBAI *v.* GOVIND KASHINATH

[I. L. R., 24 Bom., 218

2. REQUISITES FOR ADOPTION—*concluded.*

46. ———— *Portion of ceremonies performed by relation, not by widow*—Where a widow performs the principal part of the adoption ceremony,—namely, the gift and acceptance,—the fact that at her request the religious part of the ceremony is completed by a relation does not vitiate the adoption LAKSHMIBAI v. RAMCHANDRA [I. L. R., 22 Bom., 590

47. ———— *Gift and acceptance—Ceremonies of adoption*—In the case of an adoption under the Hindu law, if there is evidence of gift and acceptance, and it is further shown that the adoptee has been recognized for a number of years and placed in possession of property, the Court may dispense with the formal proof of the performance of the ceremonies of adoption VYAS CHIMANLAL v. VYAS RAMCHANDRA I. L. R., 24 Bom., 473

3. WHO MAY OR MAY NOT ADOPT

4

to

is required to be done for that end is not optional with him, but an imperative obligation RAJENDRO NARAIN LAHOREE v. SARODA SOONDUREE DEBIA [15 W. R., 548

49 ———— Husband or widow after

[7 W. R., P. C., 71: 4 Moore's I. A., 414

50 ———— Widow succeeding as heir of son—*Effect of, on right to adopt*—A widow succeeding as heir to her own son does not lose the right to exercise the power of adoption. BYKANT MONEE ROY v. KRISTO SOONDEREE ROY [7 W. R., 392

[10 Bom., 235

See KENCHAWA v. NINGAPA 10 Bom., 265 note

that authority to another person ... gift by him, made after they are both deceased. Therefore, a gift in adoption by the brother of the adoptee after the decease of his father and mother, though made with the previous assent of his father,

3 WHO MAY OR MAY NOT ADOPT—*continued.*

was held to be invalid BASHOTIAPPA BIN BASLINGAPPA v. SHIVLINGAPPA BIN BALLAPPA [10 Bom., 268

53. ————

Deed of adoption

—*A B*, a meml

Marvadi origin,

Ahmadnagar in the Deccan, died without leaving natural born issue and without adopting any child. His wife, who survived him, resolved shortly before her death on adopting the son of *C D*, a brother of *A B*, but did not live to carry her intention into

to adopt a not only a his wife or widow, manifested by some overt act, being necessary to constitute an adoption by Hindu law BHAGVANDAS TEJMAL v. RAGMAL *alias* HIRALAL LACHMIANDAS . . . . 10 Bom., 241

54. ———— *Death of only son leaving widows in lifetime of father—Subsequent*

at an end when the estate, after being vested in her son, has passed to the son's widow. An adoption by a widow in a divided family cannot divest any estate other than her own and her co-widow's except, perhaps, with the consent of the heir in whom the estate has vested. AMAVA v. MAHADGAUDA [I. L. R., 22 Bom., 416

55. ———— Members of Talabda Koli caste—*Absence of spiritual motives for adoption*—It is not a necessary consequence of the circumstance that the spiritual motive for adoption, which cas'e

Affirmed on appeal in INDRAMANI CHOWDHRANI *v.* BEHARI LAL MULLICK

[I. L. R., 5 Calc., 770: 6 C. L. R., 183
[L. R., 7 I. A., 24

Overruling BHAIRUBNATH SYE *v.* MOHESH CHANDRA BHADURY

[4 B. L. R., A. C., 162: 13 W. R., 168

38. ———— *Adoption by widow under pollution.*—Among Sudras no religious ceremonies are essential to adoption, and consequently an adoption by a Sudra widow under pollution is not invalid. THANGATHANNI *v.* RAMU

[I. L. R., 5 Mad., 358

39. ———— *Ceremonies to complete adoption.*—In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement to give and receive the defendant's son in adoption,—*Held* that to complete an adoption there must be an actual giving and receiving, and that the execution of the deeds was not sufficient. SRINARAIN MITTER *v.* KISHEN SOONDERY DASI

[2 B. L. R., A. C., 279: 11 W. R., 196

In the same case on appeal to the Privy Council it was, however, held that the execution of the deeds, if they were deeds of gift and adoption, and not mere agreements to give and adopt, was sufficient, and that the fact that they were not interchanged was not necessary or important. SREENARAIN MITTER *v.* KISHEN SOONDERY DASSEE . . . 11 B. L. R., 171
[L. R., I. A., Sup. Vol., 149

SIDDESSORY DASI *v.* DOORGA CHURN SETT

[2 Ind. Jur., N. S., 22: Bourke, O. C., 360

40. ———— *Execution of mutual deeds—Actual giving and taking of child.*—Although it has been held that, in the case of Sudras, no ceremonies except the giving and taking of the child are necessary to an adoption, yet it is not to be taken for granted that such giving and taking can be completed by the execution of mutual deeds without more; but *semble* that, according to Hindu usage, which the Courts should accept as governing the law, the giving and taking in such an adoption ought to take place by the father handing over the child to the adoptive mother, the latter intimating her acceptance of the child in adoption. In this case it was found on the evidence that it was not the intention of the parties to complete the adoption by the mere execution of the deeds. SHOSHINATH GHOSE *v.* KRISHNASUNDERI DASI

[I. L. R., 6 Calc., 381: 7 C. L. R., 313
L. R., 7 I. A., 250

41. ———— Ceremonies in case of Kshatriyas—*Necessity of religious ceremonies.*—Among Kshatriyas in the Madras Presidency adoption without religious ceremonies is valid. *Singamma* v. *Vinjamuri Venkatacharlu, 4 Mad., 165,* followed. CHANDRAMALA PATTI MAHADEVI *v.* MUKTAMALA-PATTI MAHADEVI . . I. L. R., 6 Mad., 20

42. ———— Necessity for performance of ceremonies—*Construction of will—Gift.*—*G*, a childless Hindu, by his will, directed as follows:—"And as I am desirous of adopting a son, I declare that I have adopted *K*, third son of my eldest brother. My wives shall perform the ceremonies according to the Shastras and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami, left my me, also that adopted son. When he comes to maturity, the executors shall make over everything to him to his satisfaction." ..... "God forbid, but should this adopted son die, and my younger brother Nilrutton have more than one son, then my wives shall adopt a son of his. If at that time Nilrutton has not a son eligible to adoption, they shall adopt another son of Saroda, and the wives and executors shall perform all the aforementioned acts." In a suit by one of *G*'s widows as heir of her husband to set aside his will and recover half his property, it appeared that the above-mentioned ceremonies had been performed by one widow only. *Held* that according to the true construction of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person independently of the performance of the ceremonies. *Quære*—Whether the performance of the ceremonies was essential to the completeness of the adoption; and if so, whether one widow was effectually empowered to perform them. NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE

[L. R., 3 I. A., 253: 26 W. R., 91

43. ———— Proof of performance of ceremonies—*Evidence.*—In a case to set aside an adoption on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognized for a series of years, and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute,—*Held* that the Court might well dispense with formal proof of the peformance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed. SABO BEWA *v.* NAHAGUN MAITI

[2 B. L. R., Ap., 51: 11 W. R., 380

CHOWDHRY HEERASUTOOLLAH *v.* BROJO SOONDUR ROY . . . . . . 18 W. R., 77

44. ———— *Authority to adopt.*—The Court, when it is satisfied that permission to adopt existed, will exact slight proof of performance of ceremonies; but it cannot conversely, from the due observance of ritual forms, infer that the husband's authority has been really obtained. RADHAMADHUB GOSSAIN *v.* RADHABULLUB GOSSAIN

[1 Hay, 311: 2 Ind. Jur., O. S., 5

45. ———— Subsequent performance of ceremonies—*Omission to perform ceremonies at adoption.*—*Quære*—Whether, where the ceremonies of an adoption are not performed at the proper time, the omission can be subsequently supplied. INDROMANI CHOWDHRAIN *v.* BEHARILAL MULLICK

[I. L. R., 5 Calc., 770: 6 C. L. R., 183
L. R., 7 I. A., 24

also because it was made when the adopter was under

SUDASIVA PILLAI 1 W. R., P. C., 25
[9 Moore's I. A., 606

68 ———— *Widow whose husband's corpse has not been removed—Adoption during* ... *Act (IX of* ... *in-fluence* ... f the Komati or Vaisya caste (who had authorized her to adopt a son) corporeally accepted a boy as in adoption from his natural father, who (*semble*) belonged to a different gotra from her deceased husband There

obstructed the removal of the corpse until the child had been accepted as above and the widow had executed a deed of adoption *Held* that there was no valid adoption by the widow *Per Cur.*—Obstructing the removal of a corpse by the deceased's widow or her guardian unless she made an adoption and signed a document is an unlawful act, and amounts to "coercion" and "undue influence," such as are defined by s 15 or 16 of the Contract Act Dicta in *Shosinath Ghose* v. *Krishna Sunderi Dasi, I L R, 6 Calc, 381 L. R, 7 I. A, 250*, as to incidents of a formal adoption discussed. Observations on the necessity of datta homam in a ceremonial adoption among members of a twice born class, and on an adoption taking place during the pollution of the adoptive parent. RANGANAYAKAMMA v ALWAR SETTI
[I. L. R., 13 Mad., 214

69. ———— *Adoptive mother under pollution—Adoptive mother of same gotram as natural father—Subsequent datta homam—Absence of natural father at datta homam—Validity of adoption—Estoppel.*—In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman, it

by birth a member of the same gotram as his natural father *Held* on the evidence that the defendant was estopped from denying the validity of the adoption. SANTAPPAYYA v RANGAPPAYYA
[I. L. R., 18 Mad., 397

70. ———— Unchaste widow—*Incompetency to adopt*—A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption SAYAMALAL DUTT v SAUDAMINI DASI 5 B. L. R., 362

But *see* THANGATHAMIR v RAMA
[I. L. R, 5 Mad., 358

where the parties, however, were Sudras.

son *R*, who subs ... iving his widow ... afterwards I ...
afterwards *P* adopted the defendant The plaintiff sought to set aside the adoption of the defendant, alleging that it was invalid, inasmuch as it took place subsequently to his own adoption, and because of *P*

suit for re-trial From this order of remand the defendant appealed On appeal to the High Court,—*Held* that the adoption of the plaintiff was invalid. After the death of *R*, his estate vested in his widow *P*, the adoptive mother of the defendant Her exis-

[I. L. R, 9 Bom, 94

72. ———— Untonsured widow—*Vali-* ... *Shastris* ... uphold the ... defendant ... at she had performed certain ceremonies which she intended to be an adoption of the plaintiff as son of *V*; but she alleged that at the time of the said adoption she had not, nor had she since, undergone tonsure, and that, according to the custom of the Daivadnya community, to which she and the plaintiff belonged, a widow could not adopt until her head had undergone tonsure. She also stated that the majority of her caste had declared the said adoption to be invalid, and she submitted the question as to its validity to the Court. *Held* that the adoption of the plaintiff was a valid adoption. From the evidence it appeared that the requisite religious ceremonies had been performed. Before the defendant took part in them, Shastris were consulted as to whether the defendant, while untonsured, could

amongst the higher castes of Hindus, has no influence upon the Talabda Koli caste, that its members may not lawfully adopt. BHALA NAHANA *v.* PARBHU HARI . . . . . I. L. R., 2 Bom., 67

56. ——— Naikinds (dancing girls)—*Adoption, Invalidity of—Want of presupposition of husband.*—The plaintiff and the defendant were naikins. The plaintiff, as the adopted daughter of the first defendant, sued to recover a share of the property in the hands of her adoptive mother which she (plaintiff) alleged to be family property. *Held* that adoption by naikins cannot be recognized by Courts of law, and confers no right on the person adopted. An adoption by a woman presupposes a husband to whom she adopts as her representative, and a naikin, while she remains a naikin, can have no husband. MATHURA NAIKIN *v.* ESU NAIKIN

[I. L. R., 4 Bom., 545

57. ——— Adoption by minor—*Power of minor to adopt or give permission to adopt—Age of discretion.*—According to the Hindu law prevalent in Bengal, a lad of the age of fifteen is regarded as having attained the age of discretion, and as competent to adopt, or to give authority to adopt, a son. JUMOONA DASSYA *v.* BAMASUNDARI DASSYA

[I. L. R., 1 Calc., 289: 25 W. R., 235
L. R., 3 I. A., 72

58. ——— *Age of discretion.*—An adoption is not invalidated by the mere fact of the adoptive father being a minor, if he has attained the years of discretion. Such an adoption is not attended by any civil disability. RAJENDRO NARAIN LAHOREE *v.* SARODA SOONDUREE DEBIA

[15 W. R., 548

59. ——— *Minor widow.*—A widow, although a minor, is competent to adopt a son. MONDAKINI DASI *v.* ADINATH DEY

[I. L. R., 18 Calc., 69

60. ——— Adoption by widower—*Validity of adoption.*—An adoption by a widower is valid according to Hindu law. NAGAPPA UDAPA *v.* SUBBA SASTRY . . . . . 2 Mad., 367

CHANDVASEKHARUDU *v.* BRAMHANNA

[4 Mad., 270

61. ——— Adoption by an unmarried man.—Adoption by an unmarried man is not invalid. GOPAL ANANT *v.* NARAYAN GANESH

[I. L. R., 12 Bom., 329

62. ——— Adoption by man who has never married—*Validity of adoption.*—*Semble*—The Hindu law does not prohibit an adoption by a man who has not been married. CHANDVASEKHARUDU *v.* BRAMHANNA . . . . 4 Mad., 270

63. ——— Adoption by husband with knowledge of wife's pregnancy—*Validity of adoption.*—An adoption by a Hindu with knowledge of his wife's pregnancy is not invalid. *Narayana Reddi* v. *Vardachala Reddi, Mad. S. D. A., 1859, p.* 97 dissented from. NAGABHUSHANAM *v.* SESHAMMA GARU . . . . . I. L. R., 3 Mad., 180

64. ——— Adoption during wife's pregnancy—*Posthumous son, Rights of, in family property—Will limiting legal share of such son.*—The adoption of a son by a childless Hindu is valid, although at the time of adoption his wife is pregnant. The possibility that a son may afterwards be born to him does not invalidate the adoption. A posthumous son takes the family property by right of survivorship, on the principle of relation back to the time of the father's death, which applies in the analogous case of inheritance and partition, and the rights of such a son stand on the same footing as those of a son *in esse* at the time of the father's death. A father therefore can no more interfere by his will with the right of a posthumous son to his share of the family property as fixed by law than with the right of a son *in esse* at the time of his death. An adopted son stands in the position of a natural son, subject to having his share reduced to one-fourth in the event of a natural son being subsequently born. *R* died, leaving him surviving his widow, who was then pregnant, and the defendant, whom he had adopted, a few days before his death. By his will *R* directed that, in the event of a son being born to him after his death, his property should be divided equally between such son and the defendant, but otherwise all his property was to go to the defendant. Shortly after *R*'s death, a son (the plaintiff) was born. The present suit was brought by the guardian of the plaintiff to recover the family property from the defendant. It was contended that the adoption of the defendant was invalid, having taken place during the pregnancy of the plaintiff's mother, and that *R*'s will, in so far as it was in prejudice of the plaintiff's right as a son, was also invalid. *Held that the adoption of the defendant* by *R* was valid, notwithstanding that *R*'s wife was pregnant at the time of the adoption. *Held* also that *R*'s will was inoperative in so far as it reduced the plaintiff's share to a moiety of the property. On the birth of the plaintiff, the defendant, as the adopted son, became by Hindu law entitled only to one-fourth, the plaintiff, as the natural son, taking the other three-fourths. HANMANT RAMCHANDRA *v.* BHIMACHARYA

[I. L. R., 12 Bom., 105

65. ——— Vaishya who has undergone the ceremony of Vibhut Vida—*Custom as to incapability to adopt.*—There is nothing in the books of authority amongst Hindus to show that a Vaishya who has undergone the ceremony of Vibhut Vida is incapable of adopting a son. If a custom to that effect exists, it should be proved by satisfactory evidence. MHALSABAI *v.* VITHOBA KHANDAPPA GULVE . . . . . 7 Bom., Ap., 26

66. ——— Adoption by leper—*Validity of adoption.*—The Hindu law does not prevent a leper from giving his son in adoption. ANUND MOHUN MOZOOMDAR *v.* GOBIND CHUNDER MOZOOMDAR . . . . . . W. R., 1864, 173

67. ——— Person under pollution from death of relative—*Validity of adoption.*—Objection that the respondent's adoption was not valid because the adopted son was the son of a sister, and

of the brother having aurasa (self begotten) issue, and should not be alienated from the line of the latter by adoption *Held* that this contract did not bind the son not to adopt, or exclude from the inheritance a son adopted by him Such a stipulation was contrary to the law declared in the *Tagore case*, 9 *B L R*, 377, and was ineffectual to prevent the son's exercising his right of adoption SURIYA RAU *v* RAJA OF PITTAPUR . I L R., 9 Mad, 499 [L. R., 13 I A, 97

80 ——— Adoption by wife—*Sanction to wife to adopt in husband's lifetime*—According a

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wife in his lifetime Comparative weight, as legal authorities on this side of India on the question of adoption, of the Mitakshara Mayukha, Dattaka Mimansa, Dattaka Chandrika, Smriti Chandrika, Viramitrodaya, Dharmasindhu and the Nirnayasindhu pointed out Dictum in the case of *Collector of Madura* v *M Ramalinga Sathapati*, 2 *Mad*, 220, "that the opinion of Devanda Bhatta must have been

questioned NARAYAN BABAJI *v*. NANA MANOHAR [7 Bom., A. C, 153

81 ——— *Power of wife to give in adoption—Consent of Government to adop-*

implied, of her husband, the father of that son, or under circumstances from which the husband's dissent can be inferred RANGUBAI *v* BHOGIRTHIBAI [I. L. R., 2 Bom, 377

82 ——— Adoption by widow—*Authority of husband—Consent of sapindas*—A widow cannot make a valid adoption without either the authority of her husband or the consent of the sapindas ARUNDADI AMMAL *v* KUPPAMMAL [3 Mad, 283

83 ——— *Authority of husband—Ceremonies, Performance of*—In cases of adoption in the Dattaka form, it must be proved that the widow had the authority of her husband to adopt, and that she made the adoption when the boy adopted was under six years of age, and with the prescribed ceremonies. OOMRAO SINGH *v* MAHTABKOONWAR . . 3 Agra, 103

84. ——— *Authority of husband—Bareilly law*—In the district of Bareilly the authority of the husband is essential to the validity of an adoption HAIMUN CHULL SINGH *v* KOOMAR GUNSHEAM SINGH 5 W. R., P C, 69

85 ——— *Prohibition by husband—Effect of an adoption by widow—Fraud—Concealment of rights from widow*—A Hindu widow has no power to adopt a son to her deceased husband if she has been expressly prohibited from doing so by her husband in his lifetime *Quære* whether, according to the Maratha school, she can adopt without the authority of her husband given prior to his decease Where a Hindu childless husband, when at the point of death, positively refused to adopt a son, and died without retracting that refusal, it was held that a subsequent adoption by his widow was null and void, as authority from her husband to adopt could not in such a case be implied (*per* WESTROPP, *J*) Dictum of the High Court of Madras, "that the opinion of Devanda Bhatta must have been that the assent of the husband stood upon the same footing, and was of the scope, in the case of giving and receiving" (a son in adoption by the wife) questioned Where an adoption by a young Hindu widow is set up against her and to defeat her rights, the Court will expect clear evidence that at the time she adopted she was fully informed of those rights, and of the effect of the act of adoption upon them, and if it find that fraud or cajolery was practised upon the widow to induce her to adopt, or that there has been suppression or concealment of facts from her, it will refuse to uphold the adoption. BAYABAI *v* BALA VENKATESH RAMA KANT . 7 Bom., Ap, 1

86 ——— *Authority to adopt—Kinsmen, Consent of—Prohibition to adopt*—According to the Hindu law current in the Dravida country, a widow not having her husband's permission may, if duly authorized by his kindred, adopt a son to him The question,—who are the kinsmen whose assent will supply the want of positive authority of the deceased husband?—must depend upon the circumstances of the family in each case *There must be such evidence of the assent of the kinsmen as suffices to show that the act is done by the widow in the bonâ fide* performance of a religious duty, and not capriciously, or from a corrupt motive The widow cannot adopt where there is a prohibition by the husband, direct or implied COLLECTOR OF MADURA *v* MUTTU RAMALINGA SATHUPATHY 1 B L. R., P. C, 1: 12 Moore's I. A, 397 [10 W. R, P. C, 17

S. C in Court below COLLECTOR OF MADURA *v* MUTTU VIJAYA RAGUNADA MUTTU RAMALINGA SETHUPATI. ANANDAYI *alias* KUNJARA NATCHIAR *v*. PARVATAVARDANI NATCHIAR 2 Mad., 206

87. ——— *Mithila Law—Consent of husband to adoption by widow*—Under the Hindu law current in Mithila, a Hindu widow

left by the husband of his adoptive mother, but would be considered her son, and entitled to succeed to her only COLLECTOR OF TIRHOOT *v*. HURROPERSHAD MOHUNT . . . 7 W. R., 500

SHIBO KOOERE *v*. JOOGUN SING BOOLEE SINGH *v*. BUSUNT KOOEREE . . 8 W. R., 155

properly do so, and on making certain expiatory gifts she was pronounced competent. Under such circumstances, the Court could not hold her to be incompetent. Even if other Shastris were of a different opinion, a Civil Court could not decide between conflicting opinions upon such a question of ecclesiastical etiquette. If an adoption be performed with all requisite rites, with the assistance of priests and in accordance with the opinions of Shastris, the Court will uphold it, even against the opinions of other Shastris expressing or entertaining contrary views. RAVJI VINAYAKRAV JAGGANNATH SHANKARETT *v.* LAKSHIMIBAI **I. L. R., 11 Bom., 381**

73. ———— - *Delegation of authority to adopt—Ceremony of adoption.*—Under the Hindu law, the widow only can adopt a son to her husband, and she cannot delegate this authority to any other relation. Where a widow performs the principal part of the adoption ceremony—namely, the gift and acceptance,—the fact that at her request the religious part of the ceremony is completed by a relation does not vitiate the adoption. In the case of a young widow, the fact that she was untonsured at the time of the adoption is not such a disqualification as vitiates the adoption. LAKSHMIBAI *v.* RAMCHANDRA . . . **I. L. R., 22 Bom., 590**

74. ———— **Rights of adoption of elder widow**—*Adoption by younger widow without consent of elder widow invalid, although child selected by both widows—Right of selection.*—An adoption by a younger widow, without the consent of the eldest widow, of a boy who has previously been selected by all the widows for adoption cannot be supported against the wish of the eldest widow. A younger widow cannot adopt without the consent of the elder. *Held* that the right of the elder widow was not merely a right of selection. Adoption, of course, implies selection of the child, but there is not complete adoption until the mutual acts of giving and receiving the child are accomplished, and until they take place, there is necessarily a *locus penitentiæ* for the elder widow of which she may avail herself, although contrary to the wishes of the other widows, by changing her mind and selecting another child. To hold that any one of the junior widows might perform the formal act of adoption of the selected child whenever it pleased her would be tantamount to enabling her to force the hand of the elder widow and compel her to complete the adoption which, at the most, was only *in fieri*. *B* died in 1865 without a son, leaving three widows, *viz.*, *L*, *A*, and *C*, of whom *L* was the eldest and *C* the youngest. The plaintiff was unanimously selected by the three widows for adoption after the death of their husband. The unanimity continued down to May 1866; but on the 30th June 1866 *L* declared that, if the plaintiff were adopted by *C*, she would not consent to it. On the 1st July 1866, *C* adopted the plaintiff without the consent of *L*. On the 12th August 1869, *L* adopted the defendant. On the 10th August 1881, the plaintiff filed this suit against the defendant, alleging himself to be *B*'s adopted son and as such claiming possession of *B*'s property. He did not deny the factum of the defendant's alleged adoption on the 12th August 1869, which constituted (the plaintiff alleged) his cause of action. The defendant contended that he himself was the adopted son of *B*, having been adopted by *L*, the senior widow. He insisted that the plaintiff's adoption was invalid, having been carried out without the consent of *L*, the senior widow. He further contended that the plaintiff's claim to the property was barred by limitation, it having been in possession of himself (the defendant) and *L* for more than twelve years before this suit was filed. *Held* that the plaintiff was not the rightfully adopted son of *B*, and therefore was not entitled to the property in dispute. His adoption by *C*, the younger widow, without the consent of *L*, the senior widow, was invalid. PADAJIRAV *v.* RAMRAV **I. L. R., 13 Bom., 160**

75. ———— **Adoption by a mother after the death of her son who has left neither child nor widow.**—Under the Hindu law, a mother is competent to adopt when her son dies leaving no widow or other heir nearer than herself. GAVDAPPA *v.* GIRIMALLAPPA **I. L. R., 19 Bom., 331**

76. ———— **Adoption by widow, but ceremonies performed by deputy by uncle** —*Validity of adoption.*—Where a mother, in pursuance of the promise of her deceased husband, allowed her son to be adopted, but did not herself attend at the adoption ceremonies to give him in adoption, but commissioned her uncle to give the boy on her behalf, it was held that the adoption was not on that account invalid. VIJIARANGAM *v.* LAKSHUHAN **8 Bom., O. C., 244**

77. ———— **Adoption with consent of father, but ceremonies performed by deputy** —*Validity of adoption.*—Where the father of a boy gave his formal consent to the adoption of his son, but was prevented by sickness from attending the adoption ceremony, and delegated to his brother the duty of making the presentation, it was held that the adoption was nevertheless valid. JAMNABAI *v.* RAYCHAND NAHALCHAND **I. L. R., 7 Bom., 229**

78. ———— **Adoption made by brother in pursuance of father's agreement**—*Validity of adoption.*—In pursuance of a promise made by his father, *A* gave his younger brother away in adoption. *Held* that the gift was valid. VENKATA *v.* SUBHADRA . . **I. L. R., 7 Mad., 548**

79. ———— **Son, Adoption by**—*Son's power to adopt—Impartible estate—Failure to prove alleged custom in a family against adoption—Invalid agreement between father and father's brother, in a joint family, contrary to rights of son already born.*—Two brothers, undivided under the Mitakshara, the family estate being an impartible zamindari in the possession of one of them who had a son, contracted with each other that, in the event of an indefinite failure of male issue in the line of either of them, the estate should descend in the line

HINDU LAW—ADOPTION—*continued*

3. WHO MAY OR MAY NOT ADOPT—*continued*

94. ——— *Widow adopting to her deceased husband, with consent of sapindas —Effect of estate having already vested in the widow of a son*—A son's widow having obtained her widow's estate in the property inherited by her deceased husband from his father, the widow of that father cannot adopt a son to the latter, whether she acts under authority from her husband or as widow with the assent of sapindas That the power of the father's widow to adopt a son to him is brought to an end upon the vesting of the estate in the sons' widow was decided in *Bhoobun Moyee Debia* v *Ram Kishore Acharj Choudhry, 10 Moore's I A, 179,* and *Padmakumari Debi* v *Court of Wards, I. L R, 8 Calc, 302 L R, 8 I A, 229* THAYAMMAL v VENKATARAMA

[I. L. R., 10 Mad., 205

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deceased husband is in the Maratha country good without the consent of her husband's kinsmen, when the estate of her husband is vested in her or in her

brother, the consent of such third person would appear to be necessary to give validity to such an adoption. *Rakhmabai* v *Radhabai, 5 Bom, A C, 181,* and *Collector of Madura* v *Mutu Ramalinga Sathupathy, 12 Moore's I A, 397,* commented on and compared RUPCHAND HINDUMAL v RAKHMA BAI 8 Bom, A. C, 114

96. ——— *Consent of relatives*—The doctrine that the consent of all her husband's relatives is requisite to make an adoption by a Hindu widow valid is erroneous GOPAL SHRIDHAR DIKSHIT PATVARDHAN v NARO VINAYAK DIKSHIT PATVARDHAN 7 Bom., Ap., 24

97. ——— *Permission of*

within that family, and cannot be given by a single separated and remote kinsman. Speculations founded on the assumption that the law of adoption now prevalent in Madras is a substitute for the old and obsolete practice of raising up seed to a husband by actual procreation are inadmissible as a ground of judicial decision. VIRADA PRATAPA RAGHUNADA DEO v. BROZO KISHORO PATTA DEO

[I. L. R., 1 Mad., 69
25 W. R., 291: L. R., 3 I. A., 154

S C. in Court below BROZO KISHORO PATTA DEVU v. VARADHI VIRAPRATAPA SHRI RAGHUNATHA DEVU 7 Mad., 301

HINDU LAW—ADOPTION—*continued*

3 WHO MAY OR MAY NOT ADOPT—*continued*

98 ——— *Adoption in Dravida country—Widow's power to adopt with consent of sapindas—Motives for making adoption.*

that event, make a valid adoption *Bhoobun Moyee Debia* v *Ram Kishore Acharj Chowdry, 10 Moore's I A, 279,* distinguished. Under the law which prevails in the Dravida country, a widow, without any permission from her husband, may, if

adoption] is done by the widow in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive," considered and explained VELLANKI VENKATA KRISHNA RAO v VENKATA RAMA LAKSHMI

[I. L. R., 1 Mad, 174
L R, 4 I. A., 1 26 W. R., 21

99. ——— *Authority of husband, express or implied—Right of widow to adopt—Assent of nearest sapindas*—Without the express or implied authority of the husband, a widow may make a second adoption under the sanction of the nearest sapindas With such sanction a second adoption would probably not be recognized as valid in the face of an express prohibition of a second adoption on the part of the husband When the only surviving members of the family are divided from the

shown that the consent of the others is refused from interested or improper motives or without a fair exercise of discretion PARASARA BHATTAR v RANGARAJA BHATTAR I. L. R., 2 Mad., 203

100. ——— *Authority of husband—Assent of sapindas.*—The sapinda of a deceased person gave his child to the widow of the latter to be adopted in pursuance of an authority which she represented herself to have had from her husband This natural father of the child was the

Courts having found against the existence of an

assent by a sapinda to an adoption by a widow sufficient to support her adopting in the absence of an

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT ADOPT—*continued.*

88. ——— *Authority of husband—Permission of relatives or younger widow —Maratha country.*—In the Maratha country a Hindu widow may, without the permission of her husband and without the consent of his kindred, adopt a son to him if the act is done by her in the proper *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. An elder Hindu widow has the power to adopt a son to her deceased husband without the consent of a younger widow. RAKHMABAI *v.* RADHABAI

[5 Bom., A. C., 181

89. ——— *Adoption by a widow whose husband died while a minor—Implied authority from minor husband—Adoption from corrupt and improper motives—Onus of proof—Adoption in Gujarat—Kadva Kunbi caste, Adoption among—Custom as to adoption.*—In the Maratha country a Hindu widow may, without the permission of her husband and without the consent of her kindred, adopt a son to him if the act is done by her in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. But the adoption must not have been expressly forbidden by the husband and must not have the effect of divesting an estate already vested in a third person. There is no reason for drawing any distinction, as regards the general law, between Gujarat and the Maratha country properly so called. Apart from local or caste custom, the general law in Gujarat must be taken to be as stated in *Rakhmabai* v. *Radhabai, 5 Bom., A. C., 181.* A widow has implied authority from her husband to adopt, even though her husband be a minor. Where a widow adopts, there is a presumption that she has performed the duty from proper motives, and the onus lies heavily on him who seeks to set aside the adoption on the ground of corrupt motive. A Hindu widow in Gujarat having adopted a son to her husband, who died before the completion of his sixteenth year, and who was separated from his brother,—*Held* that the adoption was valid. The authority of the husband to adopt may be implied, although he was a minor at the time of his death. If adoption by a widow be a meritorious act "beneficial to her husband's soul," assent should be implied in the case of a minor husband, as well as in the case of one who had attained his majority. A Hindu widow having adopted a son about eight years after her husband's death, during her last illness when she was confined to her bed,—*Held* that that circumstance alone did not afford any sufficient reason for supposing that she was not actuated by the sense of the duty she owed to her husband. The fact that the adoption was made on an inauspicious day showed the anxiety of the widow *to adopt, but not the motive.* PATEL VANDRAVAN JEKISAN *v.* PATEL MANILAL CHUNILAL

[I. L. R., 15 Bom., 565

90. ——— *Motives of widow in adopting—Adoption from corrupt motives—Presumption.*—In Bombay, according to the authorities, if it can be predicated of an adoption by a widow (in a case where the consent of the husband's kinsmen is not required) that the ceremony has been performed, not as a religious duty, but from sinful and corrupt motives, it is on that account invalid, and the authorities appear to impose upon the Court the duty of inquiring into the motives of the adopting widow where her motives are called in question. Whether the presumption that an adopting widow has performed her duty from proper motives ought or ought not to be deemed an irrebuttable presumption, is a question which still remains to be judicially decided. The fact that the motives of the widow were of a mixed character is not sufficient to rebut the presumption—*Patel Vandravan Jekisan* v. *Patel Manilal Chunilal, I. L. R., 15 Bom., 565.* The fact that the widow has made terms for herself with the father of the boy to be adopted, or that she has solicited a boy whose father will be likely to accede to her wishes, is not sufficient to render the adoption invalid—*Bhaiya Rabidat Singh* v. *Indar Kunwar, I. L. R., 16 Calc., 556; Chitko Raghunath Rajadiksh* v. *Janaki, 11 Bom. H. C., 199.* Where a widow had adopted a son, and it was found by the Courts that, unless she had been assured by the father and *guardian of the adopted boy that she would receive* R4,000, she would not have adopted him, but it was not found that she had not the special benefit of her husband in view when she made the adoption,—*Held* that the presumption that she made the adoption from motives of duty was not rebutted, and that presumption should be allowed to prevail. MAHABLESHVAR FONDBA *v.* DURGABAI

[I. L. R., 22 Bom., 199

91. ——— *Motive in adopting—Adoption made by a widow to defeat the claim of her co-widow to a share in her husband's estate—Validity of such adoption.*—An adoption made by a Hindu widow is not invalid, merely because it is made with the object of defeating the claim of a co-widow to a share in her husband's property. BHIMAWA *v.* SANGAWA

[I. L. R., 22 Bom., 206

92. ——— *Motives in making adoption.*—*Held* by a Full Bench (HOSKING, *J.*, dissenting) that in the Bombay Presidency a widow having the power to adopt, and a religious benefit being caused to her deceased husband by the adoption, any discussion of her motives in making the adoption is irrelevant. RAMCHANDRA BHAGAVAN *v.* MULJI NANABHAI . . . I. L. R., 22 Bom., 558

93. ——— *Consent of kindred—Validity of adoption.*—*Quære*—Whether the ruling in *Collector of Madura* v. *Mootoo Ramalinga Sathupathy, 12 Moore's I. A., 397,* applies to cases governed by the Mitakshara law in Northern India, and whether an adoption made by a widow after the death of the husband without his express consent, but with the consent of his near kindred, is valid, or whether the recognition of the adopted son by the next reversioner would likewise render the adoption valid. LALA PARBHULAL *v.* MYLNE . . . I. L. R., 14 Calc., 401

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT ADOPT—*continued.*

Estoppel —*B* and *R* were brothers and vatandar kulkarnis of a village in the Kaladgi District *B* died leaving him surviving his widow, the defendant On the death of *B*, *R* endeavoured to appropriate the whole vatan estate so as altogether to exclude the defendant The defendant appealed to the revenue authorities, and *R* admitted her right to a moiety of the vatan Subsequently in 1856 the defendant passed a document to *R* to the effect that, in consideration of receiving certain property as her share, she would not trouble *R* in the enjoyment by him of the rest of the vatan, and that she was to hold and enjoy this property for her life The arrangement continued till 1881.

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against the defendant for a declaration that the adoption was invalid, as also the gift to the adoptee, and that he was entitled to the property after the death of the defendant The Court of first instance held that the husband of the defendant and the father

that, after the death of the defendant, the property in the possession of the defendant should revert to the

On appeal to the High Court,—*Held* (reversing the decrees of the lower Courts) that the document passed by the defendant to the father of the plaintiff implied

thus become distinct and having been acted on for about twenty-eight years, the plaintiff was not at liberty to impeach it *Held* also that, as the widow

in any way extinguish the right of the defendant to adopt under circumstances calling for adoption. GIRIOWA *v* BHIMAJI I. L. R., 9 Bom., 58

106. ———————— *Adoption by widow with consent of father-in-law—Adoption is*

natural guardian of the widow, whatever may be her motives or the effect of the adoption on the undivided kinsmen *B* and his two sons, *N* and *V*, were members of a joint Hindu family In 1883 *B* and *N* commenced to live separately from *V*, but the family estate was not divided In 1886 *N* died, leaving a widow without male issue In 1887 *N*'s widow adopted the plaintiff with the consent of her father-in law *B*, with whom she was living *B* died shortly after the adoption Thereupon the plaintiff as *adopted son sued V to recover a moiety of the* family estate The defence to this suit was that the plaintiff's adoption was invalid on the ground that the adoption had not been made with the assent of all the co parceners *Held* that the adoption was valid. As *B*, who was the head of the family and natural guardian of the adoptive mother, had given his assent to the adoption, the consent of the other co-parceners was not necessary VITHOBA *v* BAPU

[I. L. R., 15 Bom., 110

107 ———————— *Adoption by widow without consent of husband—Jains of Southern India—Evidence of adoption—Proof of custom —Will of a Jain widow* —In a suit to declare plaintiff's right as the adopted son of a Jain (deceased) and as a beneficiary under the will of the adoptive mother, it appeared that the plaintiff had been taken in adoption by the widow without authority from her husband or consent of his kinsmen *Held* that it lay on the plaintiff to prove by evidence that the adoption was valid, and that he was entitled to take under the will according to the custom governing the family, and *held* on the evidence that the plaintiff had failed to prove this *Per* BEST, *J* —If a Jain widow succeeds to her husband's property absolutely and has the right to dispose of it as she likes, the adoption of a son to herself who may succeed to such property would be valid Observations of HOLLOWAY, *J*, in

ancestors had been converted to Jainism PERIA AMMANI *v* KRISHNASAMI ADINADHA *v* KRISHNASAMI I. L. R., 16 Mad., 182

108. ———————— *Adoption by widow of a predeceased son of owner after the estate had vested in the daughters of the deceased owner—Assent of a minor daughter in whom the estate had vested to the adoption—Ratification by the minor on attaining years of discretion—Adoption invalid—Acquiescence not equivalent to consent.*—On the death of one *V*, his estate vested in his

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the adoption *Held* that the adoption was invalid, as the minor daughter could not give such a consent

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT ADOPT—*continued.*

authority from her husband. It was decided that under all the circumstances under which this child had been applied for by the widow and given by the father, the assent of the latter was not one which had rendered the adoption valid as against the brothers. There was no sufficient evidence to show that the widow applied to the boy's father to give his assent as sapinda to an adoption, on the ground that she could not adopt without the sapinda's assent. It was not necessary to determine whether this sapinda could alone have given a valid assent, if it had been given to the widow as one having no authority from her husband to adopt; and if it had been given without his mind having been influenced by other and undue considerations. GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR . I. L. R., 2 Mad., 270
[L. R., 7 I. A., 173

101. ———— *Authority of husband—Consent of sapinda.*—*V*, one of the nearest male sapindas of *S*, gave his son in adoption to the widow of *S* in 1878. Both the giver and receiver professed to have been carrying out the directions of *S*. In 1883 a suit was brought by *N*, another sapinda, to set aside this adoption, and it was found that *S* had not authorized the adoption as alleged by the defendants. *Held* that, under the circumstances, *V*'s assent to the adoption did not render it valid. VENKATALAKSMAMMA *v.* NARASAYYA
[I. L. R., 8 Mad., 545

102. ———— *Authority to adopt—Consent to adopt given by husband's family—Adoption in undivided family—Adoption to a husband separated in estate.*—A Hindu widow, who has not the family estate vested in her and whose husband was not separated at the time of his death, is not competent to adopt a son to her husband without his authority or the consent of his undivided co-parceners. Where the husband of a Hindu widow dies separated, and she herself is the heir, or she and a junior co-widow are the heirs, she may adopt without the sanction of the husband (if he have not, expressly or by implication, indicated his desire that she shall not do so) and without the sanction of his kindred. *N* and *J* were two Hindu brothers undivided in estate. *N* died first, leaving a widow, *K*. *J* died next, leaving two sons and a widow, *G* (the defendant). *K* adopted the plaintiff as son to her husband and herself without the consent either of *J*'s two sons or his widow, *G*. On the death of *K* and the two sons of *J*, the plaintiff sued *G* (the widow of *J*) for possession of the family estate. *G* claimed the estate as heir of her last surviving son, and, while admitting the fact of the plaintiff's adoption by *K*, denied its validity on the ground that the members of the family had given no assent to the adoption. It was admitted that *K* had not received from her husband *N* any permission or direction to adopt a son. *Held* that the plaintiff's adoption by *K* was invalid, inasmuch as she had not the authority of her husband or the consent of his undivided co-parceners to adopt, nor did she hold any estate in the property. RAMJI *v.* GHAMAU . . . I. L. R., 6 Bom., 498

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT ADOPT—*continued.*

103. ———— *Undivided Hindu family—Adoption without the consent of husband or his undivided co-parceners and without the authority of her husband to adopt.*—A Hindu widow, who has not the estate vested in her, is not competent to adopt a son to her husband without his authority or the consent of his co-parceners with whom he was united in estate at the time of his death. *K* and *V* were two Hindu brothers. *K* had a son who died in 1849 in the lifetime of his father, but who was then united in interest with him (*K*). *K* died in 1856, leaving him surviving his two nephews, *S* and *P* (the sons of his brother, *V*), and his daughter-in-law, *Y* (the widow of his predeceased son). At the time of his death, *K* was united in estate with his nephews *S* and *P*. In 1871, *Y* adopted the plaintiff as son to her husband and herself. In 1873 the plaintiff sued *P* and the sons of *S* (who died in the meantime) for a share in the family estate. It was found that *Y* had not the authority either of her husband or of her father-in-law, *K*, or of any of his co-parceners to adopt. *Held* that the adoption was not valid. *Held* further that a separated kinsman was not qualified to authorize the adoption. DINKAR SITARAM *v.* GANESH SIVRAM . . I. L. R., 6 Bom., 505

104. ———— *Assent of a majority of sapindas—Presumption of bonâ fides—Degree of relationship of sapindas to husband of adopting widow.*—A widow, having survived her son (who died unmarried and issueless), succeeded to his estate, and made an adoption with the assent of three out of the four of her late husband's sapindas, who were living at the time and who had been divided from the deceased and from each other. The fourth sapinda, who had refused his consent (apparently without giving reasons for such refusal), now impugned the adoption on the ground that the consent of all existing sapindas was necessary to render it valid, at all events when all stood in the same degree of relationship to the husband of the adopting widow, as was the case here. *Held* that the assent of every existing sapinda in such a case was not necessary, and that that of a majority would suffice. *Collector of Madura* v. *Moottoo Ramalinga Sathupathy, 12 Moore's I. A., 397*, and *Parasara Bhattar* v. *Rangaraja Bhattar, I. L. R., 2 Mad., 202*, referred to and considered. Adoption being a proper act, it will be presumed that, when the majority give their assent, such assent was given on *bonâ fide* grounds. If, however, it be shown that the majority gave or withheld their assent from improper considerations, such assent or dissent will be of no avail to the party relying on it. Any distinction based upon the degree of relationship as to whose assent is or is not essential becomes immaterial. VENKATAKRISHNAMMA *v.* ANNAPURNAMMA
[I. L. R., 23 Mad., 486

105. ———— *Adoption without consent of kinsmen—Adoption of a brother's son in pursuance of express authority of husband to adopt—Execution of such authority after a long time since death of husband—Agreement by widow to enjoy property for life, Effect of—Acquiescence—*

HINDU LAW—ADOPTION—*continued.*

3. WHO MAY OR MAY NOT ADOPT—*concluded.*

on appeal, *I L R, 1 All, 688 L R, 5 I A, 87,* referred to MANIK CHAND GOLECHA *v* JAGAT SETTANI PRAN KUMARI BIBI

[I. L. R., 17 Calc, 518

113. ——— *Competency of step mother to give in adoption—Adoption of an adult*—In a suit to set aside an adoption, it appeared

that the adoption was invalid on the ground that under the Hindu law a step mother cannot give her step son in adoption *Semble*—The adoption was not invalid by reason of the age of the alleged *adopted son, or of his having previously taken his* patrimony in his natural family PAPAMMA *v* VENKATADRI APPA RAU. NARASIMHA APPA RAU *v* VENKATADRI APPA RAU I. L. R., 16 Mad 384

114 ——— *Adoption by a*
mot
dea
deceased ...
heir to her son after his death and that of his widow is invalid according to Hindu law. KRISHNARAV TRIMBAK HASABNIS *v.* SHANKARRAV VINAYAK HASABNIS . . . I. L. R., 17 Bom, 164

4. WHO MAY OR MAY NOT BE ADOPTED

115 ——— Adoption not in accord-

such consent to B ...
happening of the event after *B's* death, *A* adopted the plaintiff without the consent of *B's* representatives, who withheld their consent after a demand by ... *Held* that this was not such an adoption as

...

[2 Ind Jur, N. S., 225

116. — Consanguinity—*Adoption of son of person with whom adopter could not intermarry—Invalid adoption.—Semble*—The adoption of the son of a person with whom the adopter could not have intermarried is invalid according to Hindu law. JAVANI BHAI *v* JIVA BHAI . 2 Mad., 462

117. ——— *Adoption of son of person with whom adopter could not intermarry—Relationship prior to marriage*—The rule of Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior t[o] marriage SRIRAMALU *v* RAMAYYA

[I. L. R., 3 Mad., 1[...]

118 ——— *Adoption of so[n]*

could not have legally intermarried is not binding o[n] Sudras CHINNA NAGAYYA *v* PEDDA NAGAYYA

[I. L. R., 1 Mad., 6[...]

119. ——— *Widow adopti[ng] son whose mother her husband could not have legall[y] married*—It is a general rule of Hindu law tha[t] there can be no valid adoption unless a lega[l] marriage is possible between the person for whom th[e] adoption is made and the mother of the boy who i[s] adopted in her maiden state MINAKSHI *v* RAMANADA . . I. L. R., 11 Mad., 4[...]

120. ——— *Sapinda relationship, Limitation of*—Where the natural mothe[r] of an adopted son was seven degrees removed fro[m] the common ancestor and the adoptive fathe[r] five degrees removed *ex-parte paterna,* — *Hel[d]* that the adoption was valid *Quære*—Whethe[r] when the relationship is more than six degrees re[-]moved, sapinda relationship between the natur[al] mother and the adopter does not cease VYA[S] CHIMANLAL *v.* VYAS RAMCHANDRA

[I. L. R., 24 Bom, 47[...]

121. ——— *Validity o[f] adoption—Superior castes*—Consanguinity doe[s] not invalidate an adoption where the parties involve[d] do not belong to any of the three regenerated caste[s] *Per* MITTER, *J* NUNKOO SINGH *v* PURM DHU[N] SINGH . . . 12 W. R., 35[...]

f unre
baqqal
herefor
the rule of law which forbids a Hindu to adopt a bo[y] whose mother he could not have married does no[t] apply to them PHUNDO *v* JANGI NATH

[I. L. R, 15 All., 32[...]

123. ——— Son adopted after pay[-]ment of price—*Contract to give son in considera[-]tion of an annual allowance—Contract Act (IX o[f] 1872), s 23*—An adoption of a son after payment o[f] price is not recognized in the present, the Kali Yuga The only adoption now recognized is that of th[e] dattaka ... contract to give a so[n] in adop[tion]
to the
of 187
would
of the adopted son ...
the Hindu law ISHAN KISHOR ACHARJEE CHOW[-]DHRY *v.* HARIS CHANDRA CHOWDHRY

[13 B. L. R., Ap., 43: 21 W. R., 38[...]

124. ——— Adult Brahman—*Perform[-]ance of upanayana—Validity of adoption.— Quære*—Whether a Brahman adult, whose upanayan[a]

to it as would operate to divest her of her estate. *Per* FULTON and HOSKING, *JJ.*—Subsequent assent to an adoption cannot gave it validity if it was invalid when made. *Per* RANADE, *J.*—The adoption of the plaintiff was invalid for the double reason that *S* had no power to adopt, as she was not the widow of the last male holder, and the nearest heirs, the daughters of the deceased *V*, were not proved to have given their consent to the divesting of the estate, which had come to them by inheritance, in favour of *S* or the plaintiff. Mere presence at the ceremony and the absence of any objection might imply an acquiescence, but mere acquiescence is not equivalent to consent. VASUDEO VISHNU MANOHAR *v.* RAMCHANDRA VINAYAK MODAK . **I. L. R., 22 Bom., 551**

109. ———————— *Adoption by a daughter-in-law of A after the estate has vested in A's widow—Permission by A to adopt—Non-consent of widow—Divesting of estate once vested—Widow's authority to adopt in Bombay—Daughter-in-law must have permission—Co-widows—Adoption by one co-widow—Adoption of a son older than adoptive mother.*—An adoption cannot divest a person of an estate which has once vested in him, unless such adoption is made with his consent. An exception to this rule is where a co-widow adopts. Such an adoption will divest the younger widow of her estate. Another exception is where a daughter-in-law adopts with the authority of her father-in-law, who is head of the family, as in *Vithoba* v. *Bapu, I. L. R., 15 Bom., 110.* Unless prohibited expressly or by implication, a widow in the Presidency of Bombay has authority to adopt, but a daughter-in-law, *i.e.,* the widow of a predeceased son, must be specially authorized by her father-in-law in order that she may make a valid adoption binding as against the heirs of her father-in-law. *S* was the widow of *B*, who died in 1877 in the lifetime of his father *R*. Fourteen years later, *viz.,* in 1891, *R* died, leaving a widow Saibai, who succeeded to his estate as his heir. In March 1892 *S* adopted the plaintiff *G* as son to her husband, alleging that she had *R*'s permission to do so. *G* sued for a declaration that as adopted son of *B* he was entitled to succeed as heir to the property of *R* as against the defendant *V*, who claimed to have been adopted by Saibai as son to *R*. *Held* (confirming the decree of the lower Court) that, as the adoption of the plaintiff *G* was made by *S* without proper authority and without Saibai's consent, it was inoperative and invalid. As Saibai did not give her consent to the plaintiff's adoption, that adoption did not divest her of her exclusive right to succeed as heir of *R*. GOPAL BALKRISHNA KENJALE *v.* VISHNU RAGHUNATH KENJALE . . . **I. L. R., 23 Bom., 250**

110. ———————— *Adoption by widow of a predeceased son—Consent of mother-in-law—Rule that adoption must be by widow of the last full owner—Exceptions to this rule.*—By Hindu law as settled by judicial decisions, it is only the widow of the last full owner who has the right to take a son in adoption to such owner, and a person in whom the estate does not vest cannot make a valid adoption so as to divest (without their consent) third parties, in whom the estate has vested, of their proprietary rights. To this rule there are four exceptions: (1) In the case of co-widows. Though, on the death of the husband without male issue, the estate vests in all his widows, it has been held that the elder widow can, by adopting a son with the express or implied permission of her husband, divest the co-widow or widows of their vested rights. The consent of such younger widows has not been held to be essential. (2) In the case of a mother who succeeds as heir to an unmarried son, legitimate or adopted, who dies after his father. In such a case the right of the widow to take a son in adoption to her husband has been conceded to her, though such a son cannot properly be described as being the heir of the last full owner. (3) When an adoption takes place with the full assent of the party in whom the estate has vested by inheritance, the adoption is validated by such consent. (4) Where there has been ratification by conduct or acquiescence. *Per* PARSONS, *J.*—The mere fact that the adopting widow is not the widow of the last male holder would not make an adoption by her spiritually invalid, while any difficulty as to the inheritance and the estate is cured by the assent to the adoption given by the person in whom that inheritance or estate is vested. One *B* died in 1878, leaving a widow *U* and a daughter-in-law *S* him surviving. His only son *D*, the husband of *S*, had predeceased him. On *B*'s death, his estate vested in his widow *U*. In 1879 *S*, with *U*'s consent, adopted a son (defendant No. 3). The plaintiff in this suit sued to recover certain land which formed part of *B*'s estate, alleging that it had been given to him by *U*. The first defendant alleged and proved that he had bought the land from the third defendant, who was the adopted son of *S*. *Held* (dismissing the suit) that the adoption was valid, and that the first defendant was entitled to the land. PAYAPPA AKKAPPA PATEL *v.* APPANNA **[I. L. R., 23 Bom., 327**

111. ———————— *Inheritance—Sonless widow—Usage of Jains—Right of widow to adopt—Status of widow who has adopted.*—On the evidence given in this case,—*Held* that, according to the usage prevailing in Delhi and other towns in the North-Western Provinces among the sect of the Jains known as Saraogi Agarwalas, a sonless widow takes an absolute interest in the self-acquired property of her husband; has a right to adopt without permission from her husband or consent of his kinsmen; and may adopt a daughter's son, who, on the adoption, takes the place of a son begotten. *Quære*—Whether on such an adoption the widow is entitled to retain possession of the estate either as proprietor or as manager of her adopted son. SHEO SINGH RAI *v.* DAKHO . **I. L. R., 1 All., 688**

Affirming decree of High Court in SHEO SINGH RAI *v.* DAKHO . . . . **6 N. W., 382**

112. ———————— *Widow of Oswal Jain sect—Adoption without authority of husband.*—A widow of the Oswal Jain sect can adopt

HINDU LAW—ADOPTION—*continued.*

4. WHO MAY OR MAY NOT BE ADOPTED —*continued.*

remote, that circumstance could not *ipso facto* vitiate his adoption *Bhyah Ram Singh* v *Bhyah Ugur Singh, 13 Moore's I A, 373,* and *Uma Deyi* v *Gokoolanund Das Mahapattra L R, 5 I A, 40,* referred to According to the Hindu law, as observed by the Benares school the ceremony of upanayana, re

tion in that form implies that the second birth has taken place in the adoptive family, and it cannot be effected after the boy's place in his natural family has become irrevocably fixed by the upanayana representing his second birth therein The age of the boy is material only as determining the term at which the upanayana may be performed *Kerutnarain* v *Bhoobunesree, 1 Sel Rep, 161,* and *Ramkishore*

Singh v *Thakooranee Mehtab Koonwer, 1 N W, 103a,* dissented from The authenticity of the text of the Kalika Purana, which lays down that a child must not be adopted whose age exceeds five years,

various other equally plausible interpretations have been adopted by other authorities. This being so, it would be unsafe to act upon the text in question

tive father's estate upon the single ground that at the time of the adoption the adopted son was more than five years of age In such a case, the onus of proof is upon the person who alleges this adoption to be invalid *Hurmun Chull Singh* v *Koomer Gunsheam Singh, 5 W R, P. C., 69,* referred to In a case where the validity of an adoption was in dispute and the parties to the suit were Chhatriyas, —*Held* that, even if it had been established that five years was the rigid and inflexible limit of age for the validity of all adoptions among the "twice-born" classes, so as to be applicable even to Chhatriyas in the circumstances of the case, it would be necessary to have a full investigation of the question whether, among the clan of the Chhatriyas to which the parties belonged, any such rigid rule prevailed. GANGA SAHAI *v* LEKHRAJ SINGH

[I L. R., 9 All, 253

136 ——— Brother's son—*Invalid adoption.*—A woman may not affiliate by adoption a brother's son BATTAS KOAR *v* LACHMAN SINGH

[7 N. W, 117

137 ——— ——— *Validity of such adoption* Under the Hindu law, a widow may adopt her brother's son BAI NANI *v* CHUNILAL . I. L. R, 23 Bom, 973

138. ——— Adoption of a daughter—*Validity of such adoption*—The adoption of a daughter by a Brahman is invalid under the Hindu law GANGABAI *v* ANANT I L. R., 13 Bom., 690

139. ——— Adoption by naikin or dancing girl—*Custom of adoption of more than one daughter at a time—Rights of adopted daughter.*—*A*, a naikin, or dancing girl, in South Canara affiliated prior to 1849 three girls and a boy These four persons lived together as a joint family till 1849, when a partition of their joint property was decreed between them in equal shares *T*, one of the girls, died in 1880 leaving certain property *V*, claiming to be the sister by adoption of , sued to recover *T*'s estate from *M*, *T*'s uterine brother *Held* (1) that an adoption of a daughter by a naikin or dancing girl can be recognized by the Civil Courts, and does confer rights on the girl adopted *Mathura Naikin* v *Esu Naikin, I L R, 4 Bom, 545,* dissented from; (2) that there being no warrant for a plurality of adoptions in the analogies of Hindu law, and no special custom having been proved, *V* could not claim *T*'s estate VENKU *v.* MAHALINGA

[I. L. R, 11 Mad., 393

thority of the maxim *factum valet quod fieri non debuit* BHAGIRTHIBAI *v.* RADHABAI

[I. L. R., 3 Bom., 298

In Southern India it seems to be a valid adoption. VAYIDINADA *v.* APPU . I. L. R., 9 Mad., 44

141. ——— Daughter's or sister's son —*Invalid adoption—Lingayats—Factum valet, Doctrine of*—It is a general rule and fundamental principle amongst Brahmans, Kshatriyas, and Vaishyas that they are absolutely prohibited from, and incapable of adopting a daughter's or sister's son or son of any other woman whom they could not marry by reason of propinquity The burden of proving a special custom to the contrary amongst any members of these three regenerate classes prevalent either in their caste or in a particular locality lies upon him who avers the existence of that custom. Limits within which the maxim *quod fieri non debuit*

and marriage ceremonies have already been performed in the family of his natural father, can be adopted into another family according to Hindu law. SADASHIB MORESHVAR GHATE *v.* HARI MOORESHVAR GHATE . . . . . . 11 Bom., 190

125. ———— Adoption of person on whom upanayana has been performed.—The weight of authority is against the validity of the adoption of one upon whom the upanayana has been already performed. In strictness, there is no authority upon the other side. VENKATESAIYA *v.* VENKATACHARLU . . . . . . 3 Mad., 28

126. ———————— *Brahmans—Validity of adoption.*—Among Brahmans the adoption of a son for whom the chudakarana and upanayana ceremonies have been performed in his natural family is not on that ground invalid. He notwithstanding acquires the legal status of an adopted son, the fact of those ceremonies having been already performed only rendering necessary, in a religious point of view, their re-performance and the performance of certain additional ceremonies in the adoptive family, the latter being considered to have the effect of annulling those performed in the boy's natural family. LAKSHMAPPA *v.* RAMAVA 12 Bom., 364

127. ———————— *Brahmans—Custom—Validity of adoption.*—According to the custom obtaining amongst Brahmans in Southern India, the adoption of a boy of the same gotra, after the upanayana ceremony has been performed, is valid. *Venkatesaiya* v. *Venkatacharlu, 3 Mad., 28,* overruled. VIRARAGAVA *v.* RAMALINGA

[I. L. R., 9 Mad., 148

128. ———— Adoption of a married asagotra Brahman—*Validity of adoption—Factum valet.*—The adoption of a married asagotra Brahman is not prohibited by the Hindu law in force in the Presidency of Bombay. The circumstance that there was a person better qualified than the adoptee would not by itself render such adoption invalid or prevent the principle of *factum valet* from applying. Where a rule is in effect directory only, an adoption contrary to it, however blameable, is nevertheless, to every legal purpose, good. DHARMA DAGU *v.* RAMKRISHNA CHIMNAJI

[I. L. R., 10 Bom., 80

129. ———— Adoption among Brahmans—*Ceremony of adoption after marriage of person to be adopted—Estoppel.*—An adoption to be valid must take place before the marriage of the person adopted. In a suit for partition of family property, the plaintiff sued as the adopted son of defendant, who had, after performing the usual ceremony of adoption, long treated him as his adopted son. The defendant denied that the plaintiff was his adopted son on the ground (which was established by the evidence) that the plaintiff was married at the date of the ceremony of adoption. The parties were Brahmans and members of the same gotra by birth. *Held* (1) the adoption set up was invalid; (2) that the defendant was not estopped by his conduct from denying the validity of the adoption. PICHUVAYYAN *v.* SUBBAYYAN

[I. L. R., 13 Mad., 128

130. ———— Adoption of Sudra after marriage—*Validity of adoption.—Quære*—Whether a Sudra can be validly adopted after marriage. VYTHILINGA MUPPANAR *v.* VIJAYATHAMMAL

[I. L. R., 6 Mad., 43

131. ———————— *Law in Western India—Validity of adoption.*—According to the Hindu law obtaining in Western India, the adoption of a Sudra who is married at the time of his adoption is not invalid if the adopted person be a sagotra (of the same family) of the person adopting. NATHAJI KRISHNAJI *v.* HARI JAGOJI

[8 Bom., A. C., 67

132. ———————— *Law in Western India—Validity of adoption.*—In Western India an adoption among Sudras is not invalid, although the person adopted was married before his adoption, nor although he may be a son of the adopter's sister, and therefore not a sagotra (*i.e.,* of the same family) with the adopter. Even among Brahmans, marriage does not disqualify for adoption. *Quære*—Whether the adoption of an asagotra married man belonging to any of the three regenerate classes would be invalid. LAKSHMAPPA *v.* RAMAVA . 12 Bom., 364

133. ———— Adoption of self-given adult son—*Law in Bombay Presidency—Invalidity of adoption.*—Amongst Hindus in the Presidency of Bombay, an adoption of a son self-given, although he may at the time of the gift be an adult, is in the present age (the Kali Yuga) invalid. BASHETIAPPA BIN BASLINGAPPA *v.* SHIVLINGAPPA BIN BALLAPPA . . . . 10 Bom., 268

134. ———— Son older than adopting mother—*Validity of adoption.—Semble*—The fact that an adopted son is older than the adopting mother does not make his adoption invalid. The rule prescribing a difference of age in favour of the adopting mother is only directory, and not mandatory. GOPAL BALKRISHNA KENJALE *v.* VISHNU RAGHUNATH KENJALE

[I. L. R., 23 Bom., 250

135. ———— Gotraja relationship—*Limit of age within which person may be adopted.*—In a suit to obtain a declaration that an alleged adoption was null and void, the plaintiff based his own title upon an alleged adoption of himself. He was related to his alleged adoptive father as father's father's brother's son's son's son's son. It was contended on behalf of the defendant, who was related to the plaintiff's adoptive father as brother's son's son, that the plaintiff's relationship was not too remote to admit of his being validly adopted in preference to the defendant and other near relatives. *Held* that the plaintiff, by reason of his natural relationship towards his adoptive father, belonged to the same gotra as the latter, and although such relationship compared with that of the defendant was

HINDU LAW—ADOPTION—*continued*

4. WHO MAY OR MAY NOT BE ADOPTED—*continued*

153. ——— Only son—*Validity of adoption*—The adoption of an only son is when made, valid according to Hindu law CHINNA GAUNDAN v. KUMARA GAUNDAN 1 Mad., 54

SHIVAM GOUNDEN v. COOMARA GOUNDEN [1 Ind Jur., O. S, 115

154. ——— *Validity of adoption*—The adoption of an only son is invalid according to Hindu law OPENDRO LAL ROY v. PRASANNAMAYI 1 B. L. R., A. C., 221

S C OPENDRA LAL ROY v. BROMO MOYEE [10 W. R., 347

155. ——— *Invalidity of such adoption*—The adoption of an only son is, by the general Hindu law, invalid WAMAN RAGHUPATI BOVA v. KRISHNAJI KASHIRAJ BOVA [I. L. R., 14 Bom., 249

156. ——— *Effect of his afterwards becoming not the only son*—The adoption of a person who at the time of his adoption is an only son is invalid The fact that other sons are afterwards born to his parents does not validate his adoption RAIJI JADAV v. BAI MATHURA [I. L. R., 19 Bom., 658

157. ——— *Adoption by Sudra—Validity of adoption*—The adoption by a Sudra of an only son as a kurta putro is not illegal under Hindu law TIKDEY v. LALLA HUREELALL W. R., 1864, 133

158. ——— *Validity of adoption—Factum valet Doctrine of—Held* (TURNER, J., dissenting) that the adoption of an only son cannot, according to Hindu law, be invalidated after it has once taken place HANUMAN TIWARI v. CHIRAI I. L. R., 2 All., 164

159. ——— *Maxim "quod fieri non debuit*
Benares School
of an only son
to the Hindu law, but the adoption of such a son having taken place in fact is not null and void, and the maxim *"quod fieri non debuit factum valet"* is applicable and should be applied to such an adoption. So *held* by the Full Bench *Hanuman Tiwari v. Chirai, I. L. R. 2 All., 164*, approved and followed BENI PRASAD v. HARDAI BIBI [I. L. R., 14 All., 67

Held in the same case by the Privy Council in appeal, on the general question as to the validity by Hindu law of the adoption of the only son of his natural father, that such an adoption is valid by that law. RADHA MOHAN v. HARDAI BIBI [I. L. R., 21 All., 460
L. R., 26 I. A., 113
3 C. W. N., 427

See GURULINGASWAMI v. RAMALAKSHMAMMA [I. L. R., 22 Mad., 398
L. R., 26 I. A., 113
3 C. W. N., 427

160. ——— *Construction of*

but leaving a widow him surviving On the death of his widow, his cousins sued his step-brother for possession of their share of his property on the allegation that he had been adopted by their uncle, and consequently the relationship between him and his step brother had been severed and that they were equally entitled with the step brother to succeed The defendant denied the fact of the adoption The High Court *held* that the intention to adopt and the fact of adoption were proved by the terms of the deed of gift *Held* by the Privy Council, reversing the judgment of the High Court, that the words of the hibbanama ["but as I had no son or daughter, I took you as my pallok putra in the month of Aghran 1211 B S (1803), with the anumati (permission) of your parents, for the purpose of securing future oblations of water and funeral cake and having brought you up like a son performed the ceremonies of your sangskar etc and have constituted you my representative"] were not those which properly import the adoption of a son by gift—dattak putra. *Held* that the presumption which arose from the religious duty of a childless Hindu to adopt was in this case opposed to as strong a presumption that a Hindu would not break the law by giving in adoption an eldest or only son NILMADHUB DAS v. BISWAMBHAR DAS [3 B. L. R., P. C., 25 12 W. R., P. C., 29
13 Moore's I. A., 85

161. ——— *Sudras Validity of adoption*—The adoption of an only son is invalid according to the Bengal school of Hindu law, and the prohibition applies as well to Sudras as to the higher castes. MANICK CHUNDER DUTT v. BHUGGOBUTTY DOSSEE I. L. R., 3 Calc., 443

162. ——— *Age of adopted son—Validity of adoption* *Held* that the adoption by a Hindu widow of an only son if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced age VYANKATRAV ANANDRAV NIMBALKAR v. JAYAVANTRAV BIN MALHARRAV RANADIVE [4 Bom., A. C., 191

163. ——— *Married son—Sudras—Validity of adoption*—An adoption amongst Sudras is not necessarily invalid because the person adopted is an only son and is married, and has been given in adoption by his mother after her husband's death and without his authority MHALSABAI v. VITHOBA KHANDAPPA GULVE [7 Bom., Ap., 26

164. ——— *Validity of adoption—Authority of husband, Absence of*—A gift by a Hindu widow of her deceased husband's only son is invalid in the absence of an express authority

4. WHO MAY OR MAY NOT BE ADOPTED —*continued.*

factum valet applies pointed out. Lingayats are members of the Sudra, and not of the Vaishya class. GOPAL NARHAR SAFRAY *v.* HANMANT GANESH SAFRAY [I. L. R., 3 Bom., 273

142. ——— **Eldest son**—*Validity of adoption.*—The adoption of an eldest son is, under the precedents of the Sudder Court, although improper, not illegal. SEETARAM *v.* DHUNOOK DHAREE SAHYE [1 Hay, 260

143. ——— *Validity of adoption.*—In a suit by a Hindu widow to recover possession of certain property dedicated to idols as heir to her deceased husband, the last shebait, it appeared that the plaintiff's husband was an adopted son of his predecessor in office, and that he was the eldest son of the first defendant who was the nearest male cognate of the adoptive father. On behalf of the defendant it was contended that the adoption of an eldest son was invalid, and that consequently plaintiff's husband did not succeed rightfully to the shebaitship. *Held* that the adoption of an eldest son, where there are several sons, was not invalid by Hindu law. JANOKEE DUBEA *v.* GOPAUL ACHARJEA [I. L. R., 2 Calc., 365

144. ——— *Validity of adoption.*—The prohibition to the adoption of an eldest son—unlike that to the adoption of an only son—is admonitory merely, and does not create any legal restriction. Texts from original Smriti writers, with the opinions of their commentators and the decisions of the High Courts, bearing on the subject referred to and discussed. KASHIBAI *v.* TATIA [I. L. R., 7 Bom., 221

145. ——— *Validity of adoption.*—Adoption of the eldest son upheld. JAMNABAI *v.* RAYCHAND NAHALCHAND [I. L. R., 7 Bom., 225

As to the adoption of an eldest son, *see* also NILMADHUB DAS *v.* BISHWAMBHAR DAS [3 B. L. R., P. C., 27: 12 W. R., P. C., 29 13 Moore's I. A., 85

and LAKSHMAPPA *v.* RAMAVA . 12 Bom., 364

146. ——— **Grandnephew**—*Reflection of a son—Appointment.*—A grandnephew may be validly adopted under Hindu law. *Morun Moyee Dabea* v. *Bejoy Kishen Gossamee, W. R., F. B., 121,* followed. HARAN CHUNDER BANERJI *v.* HURRO MOHUN CHUCKERBUTTY [I. L. R., 6 Calc., 41 6 C. L. R., 393

147. ——— *Validity of adoption.*—The adoption of a grand nephew is not repugnant to Hindu law. An adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs. MORUN MOYEE DABEA *v.* BEJOY KISHEN GOSSAMEE [W. R., F. B., 121

148. ——— **Half-brother**—*Invalid adoption.*—The prohibition of the adoption of a half-brother has nothing to do with the possibility of a legal marriage between the son and his step-mother in her virgin state. SRIRAMULU *v.* RAMAYYA [I. L. R., 3 Mad., 15

149. ——— **Adoption of paternal uncle's son**—*Niyoga, Custom of.*—A member of an undivided Hindu family, consisting of himself, his adopted son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the adopted son was the son of the paternal uncle of the adoptive father. *Held* that the adoption was not invalid by reason of the abovementioned circumstance. VIRAYYA *v.* HANUMANTA [I. L. R., 14 Mad., 459

150. ——— **Maternal aunt's daughter's son**—*Validity of adoption.*—Neither by local usage nor by the law of Mitakshara is the adoption of the son of a maternal aunt's daughter invalid. VENKATTA *v.* SUBHADRA . I. L. R., 7 Mad., 548

151. ——— **Mother's sister's son**—*Validity of adoption—Sudras.*—Adoption of the mother's sister's son is valid among Sudras. CHINNA NAGAYYA *v.* PEDDA NAGAYYA [I. L. R., 1 Mad., 62

152. ——— **Cousin on maternal side**—*Adoption by one of the regenerate classes of a mother's sister's son—Benares school of law.*—*Held* by EDGE, C.J., and KNOX, BLAIR, and BURKITT, JJ. (BANERJI and AIKMAN, JJ., dissenting)—The Hindu law of the school of Benares does not prohibit an adoption amongst the three regenerate classes of a sister's son, of a daughter's son, or of a son of the sister of the mother of the adopter, and consequently the onus of proving that such an adoption is prohibited by usage is upon him who alleges that it is illegal. The authority in the school of Benares of the Dattaka Mimansa of Nanda Pandita considered. The Mimansa is not on questions of adoption an "infallible guide" in the school of Benares, and is not followed when it imposes on the right of adoption restrictions not to be found in the recognized authorities of the school of Benares. *Held* by BANERJI, J. (AIKMAN, J., concurring)—The adoption by a Hindu belonging to one of the three regenerate classes of his mother's sister's son is prohibited according to the Hindu law of the Benares school. Such prohibition is not merely directory, but the adoption is absolutely interdicted and void, and cannot be validated by the rule of *factum valet.* *Held* also by BANERJI, J.—That the Dattaka Chandrika and the Dattaka Mimansa are works of paramount authority on questions relating to adoption as well in those parts of India which are governed by the law of the Benares School as elsewhere BHAGWAN SINGH *v.* BHAGWAN SINGH . . . I. L. R., 17 All., 294

HINDU LAW—ADOPTION—*continued.*

4. WHO MAY OR MAY NOT BE ADOPTED —*continued*

173. —
in adoptio
sued for a
made by the widow of a deceased Hindu It appeared that the alleged adopted son was an only son *Held* that the adoption was not invalid under Hindu law. GURULINGASWAMI *v* RAMALAKSHMAMMA [I. L. R., 18 Mad., 53

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of a widow in reference to adoption not being *identical in different schools of Hindu law, it was held,* on a question peculiar to the appeal from Madras, that it is there established in regard to the

v. RAMALAKSHMAMMA . I. L. R., 22 Mad., 398

See RADHA MOHAN *v* HARDAI BIBI [I. L. R., 21 All., 460
L. R., 26 I. A., 113
3 C. W. N., 427

174. ——— Orphan—*Invalid adoption* —According to Hindu law, an orphan cannot be adopted SUBBALUVAMMAL *v* AMMAKUTTI AMMAL [2 Mad., 129

adopted
[6 Bom., O. C., 83

176 ——— Paluk-putro—*Invalid adoption* —The Hindu law does not allow of the adoption of a paluk-putro. KALEE CHUNDER CHOWDHRY *v.* SHIB CHUNDER . . . . 2 W. R., 281

This decision was not disputed in the Privy Council on this point

See KALI CHANDRA CHOWDHURY *v* SHIB CHUNDER BHADURI [6 B. L. R., 501 : 15 W. R., P. C., 12

177. ——— Putrika-putra—*Invalid adoption* —The adoption of a "putrika putra" is invalid. NURSING NARAIN *v.* BHUTTON LALL [W. R., 1864, 194

178. ——— Sister's son—*Andhra country* —*Invalid adoption.*—In the Andhra country, as in Bengal, a Brahman cannot adopt his sister's son. NARASAMMAL *v.* BALARAMACHARLU . 1 Mad., 420

179. ——— *Validity of adoption* —It is now well settled law that the adoption of a sister's son by a Hindu of the Vaishya caste is valid GANPATRAV VIRESHVAR *v* VITHOBA KHANDAPPA . . . 4 Bom., A. C., 130

180. ——— *Validity of adoption—Custom—Acquiescence in fact of adoption* —Suit to set aside the adoption of the first defendant, the alleged adopted son of plaintiff's undivided brother, to declare plaintiff's title to certain lands and for possession. First defendant pleaded that the question of his adoption was *res judicata,* and the

factorily proved, and that first defendant had done

was referred to a full Court The Court decided that *on the general principles of Hindu law, as expounded by the writers of all schools a Brahman could not legally adopt his sister's son,* but as the existence of a custom, derogating from the general was asserted, they directed an enquiry into the

Brahman. Upon the question coming before the High Court, the finding of the Civil Judge as to the existence of the custom was reversed and the following

against the present defendant the rule of law upon which he now insists?" The Judge found to the

fluence of that course of representation by conduct *the defendant had not altered his situation so that it would be imp* n to that original *situation*, tha.
the adoption
create comm
by the course of conduct of the plaintiff and his family, coupled with the defendant's changed situation which had resulted GOPALAYYAN *v.* RAGHUPATIAYYAN *alias* AYYAVAYYAN 7 Mad., 250

a childless Hindu and a Brahman, adopted Y, his

conferred upon her by him during his lifetime. Such an adoption, being null and void *ab initio*, cannot be supported by the maxim *quod fieri non debuit factum valet*. *Quære*—Whether a gift in adoption of an only son by his father is void in the Presidency of Bombay. LAKSHMAPPA *v.* RAMAVA [12 Bom., 364

165. ——————————— *Absence of authority of husband—Validity of adoption.*—In the Presidency of Bombay a widow may give in adoption a younger son where her husband has not, by direct prohibition or otherwise, indicated his unwillingness that she should, after his death, give such younger in adoption, the husband's assent to such a gift being implied. But it cannot be implied to the gift by his widow after his death of an eldest, and still less of an only, son in adoption, where he did not expressly indicate such assent in his lifetime. *Semble*—Where a father gives his only son in adoption as a dwyamushyayana, he consents to deprive himself of one-half of the spiritual benefit derivable from the performance of religious obsequies. Hence his consent cannot be implied even to such a gift when made by his widow after his death. To such a case the *factum valet* principle is wholly inapplicable because the adoption would be, as regards her, not *quod fieri non debuit*, but *quod fieri non potuit*. The maxim *quod fieri non debuit factum valet* considered, and its application pointed out. There is no authority for drawing any distinction between Sudras and the other classes on the question of the legality of the adoption of an eldest or an only son. *Mhalsabai* v. *Vithoba*, *7 Bom., Ap., 26*, dissented from, so far as it supported the gift in adoption by a widow of an only son without the authority of her husband. LAKSMAPPA *v.* RAMAYA . . . . 12 Bom., 364

166. ——————————— *Lingayats—Gift in adoption by widow without an express authority from her husband.*—The plaintiff, a Sudra of the Lingayat caste, sued for possession of certain property, alleging that he had been adopted by the defendant, a widow of the same caste. The defendant denied the adoption, and contended that it was invalid, inasmuch as he was an only son, and had been given in adoption by his widowed mother without an express authority from her husband. The plaintiff, in support of his adoption, produced two documents executed by the defendant, *viz.*, a deed of adoption and a compromise, in which the defendant had ratified the plaintiff's adoption. It was found that the defendant was very young, and did not act independently in the execution of those documents. *Held* that the adoption was invalid on two grounds, *viz.*, *1st*, that the mother had no authority to give the plaintiff in adoption, because he was the only son of her deceased husband at the time of the adoption; and, *2ndly*, that the defendant (whether an infant or not) was not, either at the time of the alleged adoption or at that of the alleged ratification of it, a free agent, but was subject to undue influence. In the case of an only son the High Court refuses to imply authority in the mother to give such a son in adoption. *Quære*—Whether the plaintiff

was incapable of being adopted by the defendant's husband because his mother was a second cousin of the defendant's husband. *Bayabai* v. *Bala Venkatesh*, *7 Bom., Ap., 1*; *Gopal Narhar* v. *Hanmant Ganesh*, *I. L. R., 3 Bom., 273*, referred to. *Lakshmappa* v. *Ramava*, *12 Bom., 364*, approved. SOMASHEKHARA *v.* SUBHADRAMAJI . . . I. L. R., 6 Bom., 524

167. ——————————— *Adoption of an only son—Validity of such adoption among Lingayats—Custom of Lingayats.*—According to the custom of Lingayats in the districts of Dharwar and Bijapur, the adoption of an only son is valid. BASAVA *v.* LINGANGAUDA . . . I. L. R., 19 Bom., 428

168. ——————————— *Adoption of only son of divided brother—Lingayats—Adoption in dwyamushyayana form.*—Amongst Lingayats, the dwyamushyayana form of adoption is not obsolete. The adoption can take place in cases in which brothers are divided as well as where they are joint. CHENAVA *v.* BASANGAVDA . . . I. L. R., 21 Bom., 105

169. ——————————— *Validity of adoption of only son in Gujarat—Hindu law.*—The adoption of an only son is valid in Gujarat, where the Mayukha is the paramount authority on Hindu law. VYAS CHIMANLAL *v.* VYAS RAMCHANDRA [I. L. R., 24 Bom., 367

170. ——————————— *Gift of son in adoption by a widow after re-marriage—Widow Re-marriage Act (XV of 1856), ss. 2 and 3.*—A Hindu widow has no power, after her re-marriage, to give in adoption her son by her first husband, unless he has expressly authorized her to do so. PANCHAPPA *v.* SANGANBASAWA [I. L. R., 24 Bom., 89

171. ——————————— *Only son given in adoption by widow.*—A widow is competent to give in adoption whenever the husband is legally competent to give and when there is no express prohibition from him. Three principles appear to regulate the power to give in adoption—(1) the son is the joint property of the father and the mother for the purposes of a gift in adoption; (2) when there is a competition between the father and the mother, the former has the predominant interest or a potential voice; and (3) after the father's death, the property survives to the mother. The adoption of an only son is not invalid. *Chinna Gaundan* v. *Kumara Gaundan*, *1 Mad., 54*, followed. NARAYANASAMI *v.* KUPPUSAMI . . . I. L. R., 11 Mad., 43

172. ——————————— *Question as to validity of adoption.*—The Courts below differed as to whether the adoption, if authorized, was validly effected, the boy adopted having been the only son of his natural father. Whether this is a disqualification invalidating an adoption is a question that has not come before Her Majesty in Council for decision. AMMI DEVI *v.* VIKRAMA DEVU

HINDU LAW—ADOPTION—*continued.*

5 SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*continued*

192. ——— Such an adoption is inoperative if made SUDANAND MOHAPATTUR *v* BONAMALLEE Marsh, 317: 2 Hay, 205

193. ——— *Adoption while first adopted son is living* — According to Hindu law, the adoption of a second son is invalid while the first adopted son exists and retains his character of a son LAKSHMAPPA *v* RAMAVA 12 Bom, 364

194 ——— *Acquiescence of first adopted son in division of property* —According to Hindu law, a second adoption (the first adopted son still existing and remaining in possession of his character of a son) is invalid The acquiescence of the first adopted son, after he came of age, in the division of property made by the adopting father be

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power of disposing by an act *inter vivos* without the consent of the first adopted son. RUNGAMA *v* ATCHAMA ATCHAMA *v* RAMANADHA BABOO [7 W. R., P C, 57: 4 Moore's I A, 1

195. ——— *Relinquishment by first adopted son in favour of his adoptive mother of his rights as adopted son—Release* —The plaintiff was adopted in 1850 by *K*, the widow of one *G*. In June 1885, he executed a document which recited that he and *K* had not been on amicable terms, and that his adoption had consequently been cancelled and that she had adopted another son

K died in October 1885, and the plaintiff brought this suit as adopted son, to recover the property of *G* The first defendant, who had been adopted by *K*, subsequently to the plaintiff's adoption, contended that he had been validly adopted, and that he was entitled to the property He relied (*inter alia*)

heir of *K* *Held* also that the defendant's subsequent adoption was invalid, and that nothing would pass to him by force of such adoption MAHADU GANU *v.* BAYAJI SIDU I. L. R, 19 Bom, 239

196. ——— *Adoption by a mother after the death of her son who has left neither child nor widow—Adoption by a grand-*

mother. After his death, his grand-mother adopted

the defendant Subsequently to this adoption, the deceased's mother adopted the plaintiff. Thereupon both plaintiff and defendant claimed the deceased's estate *Held* that the plaintiff was entitled to succeed The deceased's mother having succeeded as heir to her son, her mother-in-law could not by any adoption divest her of her rights as such heir without her consent The defendant's adoption was therefore invalid GAVDAPPA *v* GIRIMALLAPPA [I. L. R., 19 Bom, 331

197 ——— *Jain law*—

husband, it was found that subsequent to the husband's death the defendant had adopted another

make an adoption without the permission of her husband or the consent of his heirs and may adopt a daughter's son, and that no ceremonies are neces-

and that such adoption was to her husband *Held* therefore that the adoption of the plaintiff was valid *Held* also that the effect of the

Rai v Dakho, I. L. R, 1 All., 688 referred to. LAKHMI CHAND *v* GATTO BAI [I. L. R., 8 All, 319

198 ——— Simultaneous adoption—

the ceremonies of adoption may have been performed as regards each, and also at the same time. GYANENDRO CHUNDER LAHIRI *v* KALAPAHAR HAJI [I. L. R., 9 Calc., 50 11 C. L R., 297

In the same case in the Privy Council the case was thus stated and decided. *Two widows of a Hindu* each adopted a son to their deceased husband under an authority from him thus expressed "You the elder widow may adopt three sons successively,

4. WHO MAY OR MAY NOT BE ADOPTED—*continued.*

sister's son, and subsequently, apprehending that the adoption was invalid, executed a will by which he left his estate to *X*. After *B*'s death. *X* obtained possession, and remained in possession of the estate till his death, which occurred before he had attained majority. After this, joint possession of the estate was obtained by *P* and *S*, two widows of *B*, who set up a right of inheritance from *X*, as being in the position of mothers to him, in consequence of his adoption by their deceased husband. A suit was brought by *S* against *P* for partition of the estate. *Held* that the adoption of *X* by *B*, a Brahman, was invalid, and that *P* and *S* were not entitled to succeed him as his heirs. PARBATI *v.* SUNDAR

[I. L. R., 8 All., 1

182. ——————— *Brahman.*—The child whom the testator had purported to adopt was his sister's son. If it had been necessary to determine the point, their Lordships would probably have had little difficulty in accepting the opinion of the High Court that a Brahman cannot lawfully adopt his sister's son. SUNDAR *v.* PARBATI

[I. L. R., 12 All., 51
L. R., 16 I. A., 186

183. ——— *Bohra Brahmans—Custom.*—Amongst the Bohra Brahmans of the northern districts of the North-Western Provinces there exists a valid and legal custom in virtue of which a person of that caste can adopt his sister's son. CHAIN SUKH RAM *v.* PARBATI. MANSA RAM *v.* SUNDAR . . . I. L. R., 14 All., 53

184 ——————— *Sister's son, mother's sister's son, and daughter's son.*—The adoption of a mother's sister's son by a Hindu of any of the three regenerate classes, Brahman, Kshatriya, and Vaisiya, equally with the adoption of a daughter's son or a sister's son is contrary to law and void. The ancient texts condemning such adoptions are not only admonitions, but have been judicially decided to be prohibitions of law for such a length of time that it is now not competent to a Court to treat them as open to question in this respect. The judgment in *Collector of Madura v. Mootoo Ramalinga Sathupathy, 12 Moore's I. A., 437,* gives no countenance to the conclusion that, in order to bring a case under any rule of law laid down by recognized authority for Hindus generally, evidence must be given of actual events to show that in point of fact the people subject to that general law regulate their lives by it. BHAGWAN SINGH *v.* BHAGWAN SINGH

[I. L. R., 21 All., 412
L. R., 26 I. A., 153
3 C. W. N., 454

185. ——————— *Custom—Brahmans—Daughter's son.*—In Southern India the custom which exists among Brahmans of adopting a sister's or daughter's son is valid. VAYINDINADA *v.* APPU . . . . . I. L. R., 9 Mad., 44

186. ——— *Jain law—Validity of adoption.*—The question of the validity of an adoption, the parties between whom the question arose being Jains, was decided in accordance with the law of that sect, and not in accordance with Hindu law. Under Jain law, the adoption of a sister's son is valid. HASSAN ALI *v.* NAGA MAL . . . . I. L. R., 1 All., 288

187. ——— *Mitakshara law—Kayasthas—Sudras.*—As a general principle, Kayasthas are Hindus of the Sudra class, and may, as such, adopt their sister's son. RAJ COOMAR LALL *v.* BISSESSUR DYAL . I. L. R., 10 Calc., 688

188. ——— **Stranger**—*Adoption of stranger where there is a brother's son—Validity of adoption.*—By the Hindu law, the adoption of a stranger is valid, notwithstanding the existence of a brother's son at the time of the adoption. GOCOOLANUND DOSS *v.* WOOMA DAEE

[15 B. L. R., 405 : 23 W. R., 340

In the same case on appeal before the Privy Council, it was laid down that passages in the Dattaka Mimansa and the Dattaka Chandrika, which prescribe that a Hindu wishing to adopt a son shall adopt the son of his brother, if such a person be in existence and capable of adoption, in preference to any other person, although binding upon the conscience of pious Hindus as defining their duty, are not so imperative as to have the force of laws, the violation of which should be held in a Court of Justice to invalidate an adoption which has otherwise been regularly made. WOOMA DAEE *v.* GOCOOLANUND DASS

[I. L. R., 3 Calc., 587 : 2 C. L. R., 51
L. R., 5 I. A., 40

189. ——————— **Wife's brother's son**—*Validity of adoption.*—The son of a wife's brother may be adopted. SRIRAMULU *v.* RAMAYYA

[I. L. R., 3 Mad., 15

5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS.

190. ——— **Second adoption**—*Adoption while first adopted son is living.*—A second adoption cannot take place in the lifetime of the first adopted son. GOPEE LALL *v.* CHANDRAOLEE BUHOOJEE

[11 B. L. R., 391 : 19 W. R., 12
L. R., I. A., Sup. Vol., 131

Affirming the decision of the High Court in CHOUNDAWALEE BAHOOJEE *v.* GIRDHAREEJEE

[3 Agra, 226

RAMABAI *v.* RAYA . I. L. R., 22 Bom., 482

191. ——————— *Second adoption in lifetime of first adopted son.*—By Hindu law, a second adoption cannot be made during the life of a son previously adopted. *Rungama v. Atchama, 4 Moore's I. A., 1,* referred to. MOHESH NARAIN MUNSHI *v.* TARUCK NATH MOITRA

[I. L. R., 20 Calc., 487
L. R., 20 I. A., 30

HINDU LAW—ADOPTION—*continued.*

5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*continued*

receive the letter which was returned to *S* by the postal authorities, and the plaintiff was eventually adopted without the consent of *K*. *Held* that the consent of *K* was not a condition precedent to the validity of the adoption, and that it was not invalid by reason of its having been made without *K*'s advice and consent SURENDRA NANDAN *alias* GYANENDRA NANDAN DAS *v.* SAILAJA KANT DAS MAHAPATRA

[I. L. R., 18 Calc., 385

206. ——— *Adoption under agreement—Validity of adoption by untonsured widow—Agreement at time of adoption effacing rights of adopted son*—The defendant's husband, *V*, died intestate in 1873, leaving his widow (*L*, the defendant) and a son, *B*, him surviving. A posthumous son, *R*, was subsequently born to him, who died an infant aged four months. *B* died in July 1877, aged seven years. The plaintiff alleged that on the 18th April 1878 the defendant adopted him as the heir of her husband, *V*, and on the same date made an agreement with his (the plaintiff's) natural father, whereby he was deprived of the immediate

tant, of the one part, and *L*, widow of *V*, also of Bombay, Hindu inhabitant, of the other part. Whereas the said *V* died intestate at Bombay on or about the 5th day of October 1873, leaving him surviving the said *L* as his only widow, a son named *B*, who was born during his lifetime, and another son, named *R*, who was born after his death, as his

one of his sons, named *S*, who has now attained the age of eleven years, on the terms and conditions hereinafter mentioned, which the said *G* has agreed to do. Now these presents witness that, in pursuance of the said agreement and in consideration of

his majority, absolute power and control over the whole of the immoveable and moveable property, estate, and effects so inherited by her as the heir and surviving legal personal representative of *B* as aforesaid, and shall be at liberty to deal with and

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L shall and will during

with lodging, food, clothes, medical attendance, and all other necessaries, and will generally maintain and educate him at her own expense in a manner

HINDU LAW—ADOPTION—*continued.*

5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*continued.*

family. 3. That after the death of the said *L*, the said *S*, his heirs and legal representatives will be

and 2 and 3 of this agreement shall have full effect and be considered as valid and operative in every respect any provision of law or the Hindu Shastras to the contrary notwithstanding." The plaintiff alleged that since he had attained majority he had always repudiated the validity of the agreement as

deceased husband *V*, and that she thereupon renounced and waived all the benefits which she had tried to retain for herself by the agreement of the 18th April 1878 and expressed her intention to devote herself to a religious life. The plaintiff complained that recently the defendant had begun to interfere in the management of the estate, and that

was invalid, or, in any event, that the defendant had given to the plaintiff all rights to which she might have been entitled under the said agreement, etc. The defendant admitted that she had performed certain ceremonies which she intended to be an adoption of the plaintiff as son of *V*, but she alleged that at the time of the said adoption she had not, nor had she since, undergone tonsure, and that, according to the custom of the Daivadnya community, to which she and the plaintiff belonged, a widow could not adopt until her head had undergone

majority of her

to be invalid,

its validity to

the Court. With regard to the agreement of the 11th April 1878, she contended that, if the adoption was valid, the plaintiff was bound by the terms and conditions contained therein, as she would not, except upon those terms and conditions, have adopted him. She further

husband, *V*,

his estate, a

was the sur

to the estate as heiress to *B*

and you . . . . the younger widow may adopt three sons successively." *Held* that this might more reasonably be construed as giving the elder widow authority to adopt three sons successively, and then a similar power to the younger, than as authorizing simultaneous adoptions. *Held* also that, supposing that the husband had intended to give such an authority, the law did not allow two simultaneous adoptions. The opinion of *W. H. Macnaghten* on the subject referred to and approved. AKHOY CHUNDER BAGCHI *v.* KALAPAHAR HAJI

[I. L. R., 12 Calc., 406 : L. R., 12 I. A., 198

MONEMOTHENATH DEY *v.* ONAUTH NAUTH DEY **[2 Ind. Jur., N. S., 24**

S. C. in Court below . **Bourke, O. C., 189**

SIDDESSORY DASSEE *v.* DOORGACHURN SETT **[2 Ind. Jur., N. S., 22 : Bourke, O. C., 360**

DOSSMONEY DOSSEE *v.* PROSONOMOYEE DOSSEE **[2 Ind. Jur., N. S., 18**

where the question was only raised however, and it was assumed such an adoption would be invalid without deciding it.

See also CHOUNDAWALLE BAHOOJEE *v.* GIRDHAREEJEE . . . . . . **3 Agra, 226**

Affirmed by the Privy Council in GOOPEE LALL *v.* CHANDRAOOLEE BAHOOJEE . **11 B. L. R., 391** **[19 W. R., 12 : L. R., I. A., Sup. Vol., 131**

199. ———— *Adoptions by each of two widows simultaneously made to one father.*—By Hindu law there cannot be simultaneous adoptions by two widows of two sons to one father. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE . . . **I. L. R., 19 Calc., 513** **[L. R., 19 I. A., 108**

200. ———— *Invalidity of gift made to a person as being the adopted son of donor, where the adoption fails—Persona designata.*—A testator gave by will to each of his two wives a power to adopt, and gave his property to his sons so to be apopted, but did not provide, nor did he know who the adopted sons were to be. The adoption which subsequently took place was found to have been a simultaneous adoption by the two widows. *Held* that such an adoption was invalid, and that the persons purporting to be the adopted sons did not answer the description in the will of adopted sons, and that therefore there was not such a sufficient designation of their persons as to enable them to take under the will. *Monemothonath Dey* v. *Onathnath Dey, 2 Ind. Jur., N. S., 24,* distinguished, and *Fanindra Deb Raikat* v. *Bajeswar Das, I. L. R., 11 Calc., 463 : L. R., 12 I. A., 72,* followed on the question of *persona designata.* DOORGA SUNDARI DOSSEE *v.* SURENDRO KESHAV RAI

[I. L. R., 12 Calc., 686

201. ———— **Conditional adoption**—*Position of father giving son in adoption.*—Where a Hindu widow, in whom had vested by inheritance the whole of her husband's property, moveable and immoveable, agreed to accept a boy in adoption on an express agreement by his father that during her lifetime she should be entitled to such property, subject, however, to the boy's maintenance and education, and upon the faith of such agreement adopted the boy, it appearing that she would not have done so at all if it had not been for such agreement,—*Held* that the agreement was binding upon the adopted son, and that the son's proprietary right was subject to the interest thereby created in favour of his adoptive mother. *Held* also that under the Hindu law the power exercised by a father in giving his son in adoption is not only co-extensive with the power of a guardian, but is more like the power of an absolute proprietor. CHITKO RAGHUNATH RAJADIKSH *v.* JANAKI . . . **11 Bom., 199**

202. ———— *Consent given to adoption on conditions—Effect of non-fulfilment of conditions.*—Where the natural father of the son given in adoption wrote to the adoptive mother, a widow, giving his consent to the adoption on certain conditions,—*Held* that a non fulfilment on one of the conditions rendered the adoption invalid, notwithstanding that the condition was unnecessary, and imposed in consequence of a mistake as to the necessity for the assent of Government to the adoption. RANGUBAI *v.* BHAGIRTHIBAI

[I. L. R., 2 Bom., 377

203. ———— *Agreement by natural father restricting son's interest in the inheritance of his adoptive father.*—The natural father of a boy whom the widow of a deceased Hindu proposed to adopt as a son to her husband entered into a written agreement with her to the effect that the boy should inherit only a third of the property of his adoptive father. *Held* that the agreement was not void, but was at least capable of ratification when the adopted son became of age. RAMASAMI AIYAN *v.* VENKATARAMAIYAN . . **I. L. R., 2 Mad., 91** **[L. R., 6 I. A., 196**

204. ———— *Minor adopted on conditions.*—*Semble*—A minor taken in adoption is not bound by the assent of his natural father to terms imposed as a condition for the adoption. LAKSHMANNA RAU *v.* LAKSHMI AMMAL

[I. L. R., 4 Mad., 160

205. ———— *Validity of adoption—Mitakshara law.*—The will of *B*, a Hindu, appointed one *K* manager of all his property, and gave his widow *S* power to adopt a son, and went on to state that *S* "shall manage all the affairs with the consent of the said manager" (*K*), "and she will not be able to do any wrongful act or alienate and waste property uselessly and without his consent. If she do so, it will be cancelled by the said manager or the adopted son; and she will adopt a son with the good advice and opinion of the manager." *S*, wishing to adopt the plaintiff, sent a registered letter to *K*, who had refused to give *S* any advice or assistance, intimating her intention and asking him to come and see the ceremony performed, but he declined to

son does not thereby deprive himself of any power that he may have to dispose of his property by will There is no implied contract on the part of the adopter, in consideration of the gift of his son by the natural father, not to make a will. VENKATA SURIYA MAHIPATI RAMA KRISHNA RAO *v.* COURT OF WARDS I L. R., 22 Mad., 383
[L. R., 26 I A., 83
3 C. W. N , 415

213. — Retrospective effect.—An adoption by a widow has a retrospective effect and, relating back to the death of the deceased husband, entitles the adopted son to succeed to his estate. VYANKATRAV ANANDRAV *v.* JAYAVANTRAV BIN MALHARRAV RANADIVE . 4 Bom , A C , 191

214. ———— *Power of adopted son to set aside gift made before his adoption.* —The adoption of a son by a Hindu widow has a retrospective effect , a son therefore adopted to her husband by a widow is entitled to set aside a gift of ancestral immoveable property made by his adoptive father s widow previous to his adoption. NATHAJI KRISHNAJI *v.* HARI JAGOJI 8 Bom , A. C , 67

215. ———— *Date from which title of son takes effect* —The title of a son adopted by a widow under authority from her husband does not relate back to the death of the husband. LAKSHMANNA RAU *v* LAKSHMI AMMAL
[I. L R., 4 Mad , 160

216. ———— Illatam custom — *Status of son-in-law — Co-parcenary — Survivorship —Proof of special custom* —Although an illatam son-in law and a son adopted into the same family may live in commensality, neither they nor their descendants can, in the absence of proof of custom, be treated as Hindu co parceners having the right of survivorship. CHENCHAMMA *v.* SUBBAYA I. L. R., 9 Mad., 114

217. ——— Custom of adoption of Gayawals of Gaya—*Effect on adopted son as to his rights in family of natural father* —The proved practice of the Gayawals in adopting sons did not sever the adopted child from the family of his natural father, so that he did not lose his rights therein. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR . . I L R., 22 Calc., 609
[L. R., 22 I. A., 51

218. ———— Status of adopted son— *Theory of adoption.*—The theory of an adoption is a complete change of paternity , the son is to be considered as one actually begotten by the adoptive father, and he is so in all respects save an incapacity to contract marriages in the family from which he was taken. NARASAMAL *v.* BALARAMACHARLU
[1 Mad., 420

219 ———— *Rights in his natural family—Inheritance* —The severance between an adopted son and his natural family is so complete that no mutual rights as to succession to property can arise between them SRINIVASA AYYANGAR *v* KUPPAN AYYANGAR. ROYAN KRISHNAMACHARIYAR *v* KUPPAN AYYANGAR .1 Mad., 180

220. ———— *Inheritance in adopted family.*— Adoption is tantamount to the birth of a son to the adopter, and the property inherited from the adopter must be regarded as ances-

to be ancestral HEERA SINGH *v* BURZAR SINGH
[1 Agra, 256

221. ———— *Consent to subsequent adoption —Liability to deprivation of inheritance by will* —Where a Hindu has adopted a son, he acquires the right of a son in the hereditary immoveable property of the adoptive father, and he cannot be deprived of these rights by the adoptive father afterwards assuming to adopt a second son and settling the hereditary property upon such second adopted son, coupled with declarations that the first son was disinherited. According to Hindu law, an adoption of a second son during the lifetime of a previously adopted son is inoperative A childless Hindu adopted *A* as his son , afterwards he adopted *B* as his son and made a will, dividing his property, ancestral as well as acquired, between *A* and *B* *A* filed a petition denying the right of his adoptive father to adopt *B*, and protesting against the will, but afterwards he signed a consent to the will *Held* that, as the father afterwards endeavoured to deprive *A* of all his rights, as well those under the will as by the adoption, the consent did not bind *A*, since it was given on the basis of a family arrangement, from which the adoptive father afterwards departed. *Semble*—That if the consent were given by *A* in ignorance of his right, it would not be binding upon him SUDANUND MOHAPUTTUR *v* BONOMALEE DOSS
[Marsh., 317 : 2 Hay, 205

222. ———— *Right of adopted son to self-acquired immoveable property of his adoptive father* —An adopted son does not stand in a better position with regard to the self-acquired immoveable property of his adoptive father than a natural born son would occupy PURSHOTAM SHAMA SHENVI *v* VASHUDEV KRISHNA SHENVI
[8 Bom , O. C , 196

TARA MOHUN BHUTTACHARJEE *v* KRIPAMOYEE DEBIA 9 W. R., 423

the legitimately begotten sons of his adopted father in the property of kinsmen, he takes the same share as the other heirs. The true meaning of paragraphs 24 and 25 of section V of the Dattaka Chandrika is that an adopted son and the adopted son of a natural son stand in the same position, and this rule does not extend to distinct collateral heirs. DINO NATH MOOKERJEE *v.* GOPAL CHUNDER MOOKERJEE
[9 C. L. R., 370 : 8 C. L. R., 57

of the plaintiff was a valid adoption. From the evidence it appeared that the requisite religious ceremonies had been performed. Before the defendant took part in them, Shastris were consulted as to whether the defendant, while untonsured, could properly do so, and on making certain expiatory gifts she was pronounced competent. Under such circumstances, the Court could not hold her to be incompetent. Even if other Shastris were of a different opinion, a Civil Court could not decide between conflicting opinions upon such a question of ecclesiastical etiquette. If an adoption be performed with all requisite rites, with the assistance of priests and in accordance with the opinions of Shastris, the Court will uphold it, even against the opinions of other Shastris expressing or entertaining contrary views. *Held* that the effect of the agreement of the 18th April 1878 was to give the defendant the beneficial ownership of the estate for her life, with the largest possible discretionary powers of management, subject to the duty of maintaining and educating the plaintiff. *Held* also, following *Chitko* v. *Janaki, 11 Bom., 199,* that the agreement was valid and binding on the plaintiff, and that the defendant had not waived the benefits to which she was entitled under its provisions. RAVJI VINAYAKRAV JAGGANNATH SHANKARSETT v. LAKSHMIBAI

[I. L. R., 11 Bom., 381

207. ——————— *Invalid agreement relating to estate of adopted son.*—A talukhdar by his will authorized his senior widow to select and adopt a minor male child of his family to be the owner of the entire riasat. This power having been exercised, the adoption was questioned on the ground that the widow had agreed, with the natural father of the adopted son, that she should retain the whole estate during her life. *Held* that this had not rendered the adoption conditional, and that it did not affect the rights of the adopted son. Even if it had amounted to a condition, the analogy, such as it was, presented by the equities relating to powers of appointment under English law, suggested that the condition itself would have been void without invalidating the adoption. BHAIYA RABIDAT SINGH v. INDAR KUNWAR . **I. L. R., 16 Calc., 556**

L. R., 16 I. A., 53

208. ——————— *Will of a Hindu in favour of his wife made on his taking a son in adoption—Adoption made on the understanding that the dispositions of the will be observed.*—A Hindu, on taking a son in adoption, executed a "settlement as to what should be done by my adopted son and my wife after my lifetime," providing that on an event which happened the wife should enjoy certain land for life in lieu of maintenance. In a suit by the widow of the executant against the adoptive son for possession of the land,—*Held* that the instrument was a will. On its appearing that the defendant's natural father, when he gave him in adoption, tacitly submitted to the arrangement contained in it,—*Held* that the adoptive son was bound by its provisions. LAKSHMI v. SUBRAMANYA

[I. L. R., 12 Mad., 490

209. ——————— *Adoption made the day after the adoptive father made his will—Adoptive son bound by the will—Inconsistent pleas.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will, and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants, who claimed under a gift from the wife, had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held* (1) that the defendants were not precluded from succeeding on the latter of these inconsistent pleas; (2) that the plaintiff was not entitled to the ancestral property devised by the will to the testator's wife. *Lakshmi* v. *Subramanya, I. L. R., 12 Mad., 490,* followed. NARAYANASAMI v. RAMASAMI

[I. L. R., 14 Mad., 172

210. ——————— *Adoption by widow—Agreement between adoptive mother and natural father.*—A Hindu, who is taken in adoption by a widow, acting under an authority from her husband, is not bound by an agreement entered into by her with his natural father at the time of the adoption. *Bhaiya Rabidat Singh* v. *Indar Kunwar, I. L. R., 16 Calc., 556,* and *Lakshmi* v. *Subramanya, I. L. R., 12 Mad., 490,* referred to. JAGANNADHA v. PAPAMMA. BUCHAMMA v. JAGANNADHA. PAPAMMA v. JAGANNADHA . **I. L. R., 16 Mad., 400**

211. ——————— *Gift by adoptive father at the time of adoption—Gift binding on adopted son.*—Where a Hindu at the time of taking a son in adoption made a gift of a portion of his ancestral property to his daughters, and the deed of gift as well as the adoption deed were executed on the same day, and they mutually referred to each other,—*Held* that the plaintiff's natural father having been a party to the deed of adoption which referred to the deed of gift executed along with it, the case fell under the category of conditional adoptions which are allowed by law. *Held* also that the deed of gift to defendants Nos. 2 and 3 was valid and binding on the plaintiff. *Quære*—Whether the dwayamushayana form of adoption has become obsolete in the southern districts of the Presidency of Bombay. BASAVA v. LINGANGAUDA

[I. L. R., 19 Bom., 428

See CHENAVA v. BASANGAVDA

[I. L. R., 21 Bom., 105

6. EFFECT OF ADOPTION.

212. ——————— **Effect in adopting parent's power of making will.**—A Hindu adopting a

232 ——— *Position of*

an undivided share in the joint property, and a

as trustee for
an and trustee
entitled herself
to a maintenance out of it DHURMO DOSS PANDEY *v* SHAMA SOONDERY DEBIA

[6 W R. P C. 43
3 Moore's I A, 229

233 ——— *Divesting of property—Vested right of inheritance*—An inheritance, having once vested cannot be defeated and divested by an adoption ANNAMMAH *v* MABBU BALI REDDY . 8 Mad, 108

234. ——— *Divesting of property*—In a suit to set aside an adoption on the ground that it had been made after the estate had vested in the widow of *K*, the owner of the estate,—*Held* the adoption was invalid THAYAMMAI *v* VENKATARAMA I. L R., 7 Mad, 401

235 ——— *Succession of adopted son—Divesting of estate*—An adopted son, as such, takes by inheritance, and not by devise A son cannot be adopted to the great grandfather of the last taker after the lapse of several successive years when all the spiritual purposes of a son according to the largest construction of them would have been satisfied When the estate of a son is unlimited and that son marries and leaves a widow his heir, she acquires a vested interest in her husband's property as widow, and a new heir cannot be substituted by adoption to defeat that estate, and take as an adopted son what a natural born son would not have taken By the mere gift of power of adoption to a widow, the estate of the heir of a deceased son vested in possession cannot be defeated and divested. BHOOBUN MOYE DEBIA *v* RAMKISHORE ACHARJEE

[3 W. R, P. C, 115: 10 Moore's I A, 279

GOBINDO NATH ROY *v* RAM KANAY CHOWDHRY [24 W. R., 183

236 ——— *Son adopted after succession opened out—Hindu widow with permission to adopt, position of—Divesting of property*—A Hindu testator died, leaving all his property to *P* and *B*, his two sons absolutely in equal shares *B* died in 1815, leaving a minor son *K* *P* died in

ance with the directions in her will took possession of the property, which *B D* took as widow and under the will of *P* *K* died in 1855 when still a minor, leaving a minor widow and having made a will by which he gave permission to his widow to adopt a son The widow of *K* adopted a son in August 1876 In a suit brought by the plaintiff as adopted son of *A* and heir of *P* to recover the property left by *P*, the issue was raised whether, assuming the plaintiff

once vested cannot, by Hindu law be divested the plaintiff was not entitled to succeed KALLI PROSONNO GHOSE *v* GOCOOL CHUNDER MITTER

[I. L R., 2 Calc, 295

237. ——— *Divesting of property*—*A*, who had a son, *B*, by his wife *C*, during the lifetime of his son executed an unoomuttee puttro in favour of *C* empowering her to adopt a son in the event of the death of *B* *B* on coming of age succeeded to the ancestral and other estate of his father who had died Subsequently *B* died childless and his widow succeeded as heir to her deceased husband *C* afterwards exercised the power of adoption from her husband and adopted *D* *Held* that although as heir to *A* *D* could not displace the widow and full heir of *B* and that although as heir to *B* he came after *B*'s widow and mother, *D* might succeed when on their deaths he united in himself the capacities of heir to *A* and heir to *B* JOY KISHORE CHOWDHRY *v* PANCHOO BABOO

[4 C L R., 538

238. ——— *Adoptive son claiming share in estates already vested in another before the date of the adoption—Fraud*—Shortly before his death in 1862, *A*, by his will gave his widow power to adopt a son In consequence of fraud on the part of *B* the son of a brother of *A* in suppressing this will and setting up another, the will was not proved until 1874, when the widow exercised the power *C*, the widow of another brother had died in 1867, and *B* had succeeded to her estate. The adopted son now sued by his mother to recover a half share in *C*'s estate alleging that his adoptive mother in consequence of the fraudulent act of *B* in suppressing the will under which the power of adoption was given and by setting up a false one was unable to exercise the power of adoption before the death of *C*, and that thus he had been deprived of

obstacles in the way of the adoptive mother of the plaintiff taking a son in adoption earlier, yet that, as

HINDU LAW—ADOPTION—*continued.*

6. EFFECT OF ADOPTION—*continued.*

224. ———— *Succession—Sapinda relationship.*—The rights of an adopted son, unless contracted by express texts, are in every respect similar to those of a natural-born son. An adopted son takes by inheritance from the relatives, on the maternal side, of his adoptive father in the same manner as a son begotten would take. There is no difference as regards sapinda relationship between the adopted and natural-born son. JOY KISHORE CHOWDHRY *v.* PANCHOO BABOO 4 C. L. R., 538

225. ———— *Succession lineal and collateral.*—According to Hindu law, an adopted son succeeds not only lineally, but also collaterally, to the inheritance of his adoptive father's relations. SUMBHOOCHUNDER CHOWDHRY *v.* NARAINI DEBIA . . . 5 W. R., P. C., 100

226. ———— *Termination of authority to adopt—Succession of adopted son to collaterals in gotra not that of father by adoption.*—An instrument of permission (anumati patra) to a Hindu wife to adopt should she be left a widow provided that "dattaka (adopted) son shall be entitled to perform your and my sradh and that of our ancestors, and to succeed to the property." The husband and wife had a son born, who survived his father, succeeded to the property, and died before his mother, leaving a widow, who, as heir, took possession of it for her widow's estate. The mother then professed to exercise the above power, and in the suit arising thereupon—*Bhoobunmoyee Debia* v. *Ramkishore Acharj Chowdhry, 10 Moore's I. A., 279*—it was decided that, the son's widow having acquired a vested interest, a new heir could not be so substituted for her. *Held* that, although such a substitution might have been disallowed without the adoption being held invalid for all other purposes, the above decision had determined that, upon the vesting of the estate in the widow, the power of adoption was incapable of execution, and was at an end; and that this would have been the conclusion if the question of the validity of the power had been raised without any previous decision upon it. An adopted son occupies the same position in the family of the adopter as a natural-born son, except in a few instances which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa, governing authorities in the Bengal school. An adopted son succeeds not only lineally, but collaterally to the inheritance of his relations by adoption. *Sumbhoochunder Chowdhry* v. *Naraini Dibeh, 5 W. R., P. C., 100,* referred to and followed. *Held* in this case that the adopted son of the maternal grandfather of the deceased, though the gotra into which he was adopted was not the same as the latter's, was an heir nearer to him than such maternal grandfather's grandnephew. PADMAKUMARI DEBI CHOWDHRANI *v.* COURT OF WARDS

[I. L. R., 8 Calc., 302
L. R., 8 I. A., 229

Affirming decision of High Court in PUDDO KOOMAREE DEBEE *v.* JUGGUT KISHORE ACHARJEE

[I. L. R., 5 Calc., 615

JUGGERNATH SAHAI *v.* MUKKUM KOONWAR

[3 W. R., 24

TEENCOWRIE CHATTERJEA *v.* DINONATH BANERJEA

[3 W. R., 49

227. ———— *Succession of adopted son on the mother's side.*—An adopted son under the law prevailing in Bengal occupies, as regards inheritance, the same position in the family of the adopter as a natural-born son (except in a few instances defined in the Dattaka Chandrika and Dattaka Mimansa), succeeding collaterally, as well as lineally, his relations by adoption. *Padma Koomari Debi Chowdhrani* v. *Court of Wards, I. L. R., 8 Calc., 302,* referred to and followed. Where a natural-born son, had there been one, would have been entitled to succeed a maternal uncle, as being brother's daughter's son to the latter,—*Held* that an adopted son, who had been adopted by a widow under her deceased husband's authority, was entitled, in like manner, to inherit, at the death of the widow, from her father's brother. KALI KUMUL MOZUMDAR *v.* UMA SONKUR MOITRA

[I. L. R., 10 Calc., 232 : 13 C. L. R., 379
L. R., 10 I. A., 138

Affirming the decision of the High Court in UMA SUNKUR MOITRA *v.* KALI KOMUL MOZUMDAR

[I. L. R., 6 Calc., 265 : 7 C. L. R., 145

228. ———— *Collateral succession—Son adopted in kritrima form.*—A son adopted in the kritrima form in the Mithila provinces does not become a member of the adopting family so far as collateral heirship is concerned, the relation of kritrima for the purpose of inheritance extending to the contracting parties only. He can only succeed to his adoptive mother's property. SHIBO KOOEREE *v.* JOOGUN SINGH. BOOLEE SINGH *v.* BUSUNT KOOEREE . . . . . . 8 W. R., 155

COLLECTOR OF TIRHOOT *v.* HURROPERSAD MOHUNT

[7 W. R., 500

229. ———— **Rights of adopted son**—*Adoption by widow after death of natural-born son—Divesting of property.*—A Hindu widow, who adopts a son after the death of her natural-born son, divests herself of her estate. JAMNABAI *v.* RAYCHAND NAHALCHAND . I. L. R., 7 Bom., 225

BYKANT MONEE ROY *v.* KRISTO SOONDEREE ROY

[7 W. R., 392

230. ———— *Divesting of property.*—An adoption by the widow divests her of the right of inheritance to her husband's property, and vests it in the adopted son. COLLECTOR OF BAREILLY *v.* NARAIN DAY . . 3 Agra, 349

231. ———— *Second adoption—Divesting of mother's estate.*—*Per* TREVELYAN, J.—By a second adoption a widow divests herself of the mother's estate in the same way that she divests herself of her widow's estate on the first adoption. AMRITO LALL DUTT *v.* SURNOMONI DASI

[I. L. R., 25 Calc., 662
2 C. W. N., 389

HINDU LAW ADOPTION—*continued*.

6 EFFECT OF ADOPTION—*continued*

divesting an estate vested in any member of the undivided family of which the husband was himself a member But it does not divest the estate of one on whom the inheritance has devolved from a lineal heir of the husband This rule, however, must be supplemented by the addition that the adoption, though authorized by the husband cannot divest the estate vested in a collateral relation of the husband in succession to some other person who had himself become owner in the meantime CHANDRA *v* GOJARABAI I. L R., 14 Bom, 463

244. ——— — *Effect of an adoption by a co-widow after the estate has been vested in the other widow—Divesting of estate—Sale in execution of decree—Saleable interest*—A Hindu, governed by Mitakshara law, died, leaving him surviving two widows, *G* and *B* and a son *S* by *G* By a will he authorized his widow, *B*, to adopt a son in the event of dying unmarried, but he made no disposition of his property, which was left to devolve according to Hindu law. *S* died unmarried in the year 1290 (1883) and *B* adopted a son in the same year, to which adoption *G* was not a party In the year 1296 (1889) in order to liquidate debts of their husband the widows executed a mortgage bond in favour of one *F*, who obtained a decree in 1299 (1892) In execution of that decree, the mortgaged properties were sold and purchased by a third party. On an application made by the auction purchaser to set aside the sale on the ground that the judgment-debtors had no saleable interest in the property, as it had upon the adoption vested in the adopted son *Held* that, as an adopted son is not entitled to claim as preferential heir the estate of any other person besides his adoptive father when such estate has vested before his adoption in some heir other than the widow who adopted him the adoption by *B* could not have the effect of divesting *G* of the estate which had devolved upon her as heir of her son, and if that was so, it could not be said that the judgment debtors had no saleable interest in the property, and therefore the sale could not be set aside *Held* also that *G* was not under any such religious obligation to give her assent to the adoption by *B* as should have the effect of divesting her of the estate *Lakshman Dada Naik v Ramchandra Dada Naik, I L R, 5 Bom 48 L R, 7 I A, 18, Bhoobun Moyee Debia v Ram Kishore Acharjee Chowdhry, 3 W R, P C 15 10 Moore's I. A, 279, Annammah v Mabbu Bali Reddy, 8 Mad H C, 108; Drobomoyee Chowdhrain v Shama Churn Choudhry, I L R, 12 Calc, 246 Mondakini Dasi v Adinath Dey, I L R, 18 Calc 69,* and *Surendra Nandan v Sailaja Kant Das Mahapatra, I L R, 18 Calc* 385, referred to FAIZUDDIN ALI KHAN *v* TINCOWRI SAHA

[I. L. R., 22 Calc, 565

245 ——— *Adoption not effectual in divesting an estate which had already vested in another person—Consent of such person to adoption*—One *D*, a separated Hindu, died in 1852 childless leaving three widows and a daughter in law *V*, the widow of a predeceased son, *C* *D*'s estate was taken on his death by his widows, and ultimately became vested in *L*, the survivor of them In 1871, while she was in possession, *V* adopted the plaintiff In 1874 a decision was passed against *L*, in execution of which a large portion of her deceased husband's property passed into the possession of the defendant In 1886 the plaintiff filed this suit against the defendant claiming as the adopted son of *V* to be entitled to all the estate of his adoptive grandfather *D* *Held* that he could not recover His adoption by *V* which could only be to her husband *C*, could not divest *L* of the estate which had come to her as heir of her husband *D* On *D*'s death, the estate had vested in his widows with remainder to his collateral heirs and even if *L* had assented to the subsequent adoption of the plaintiff by *V*, his claim would not stand against the rights of *D*'s collaterals who would succeed on *L*'s death From the moment that *D* died and his estate vested in his widows the right of his daughter in law *V* to adopt for the purposes of representation was at an end DHARNIDHAR *v* CHINTO

[I. L R, 20 Bom., 250

246 ——— *Adoption by widow relating back to husband's death—Divesting of estate of heir who had succeeded before the adoption*—*A* and *S* were two divided brothers. *A* died, leaving his brother *S* and a daughter in law (the widow of his predeceased son *G*) him surviving On *A*'s death *S* inherited his property as his heir, but shortly afterwards *S* gave his son *M* in adoption to the widow of *G*, who duly adopted him as son to her deceased husband *Held* that *M* on his adoption

estate in *A*'s property which had vested in *S* *S*,

as relating back to the death of the adoptive father divesting all estates which have during the intermediate period become vested as it were conditionally in another ANAJI *v* RATNOJI KRISHNARAO

[I. L. R., 21 Bom., 319

247 ——— *Adoption by widow in divided family*—An adoption by a widow in a divided family cannot divest any estate other than her own and her co-widow's, except perhaps with the consent of the heir in whom the estate has vested AMAVA *v.* MAHADGAUDA

[I. L. R., 22 Bom., 416

248 ——— *Adoption by a daughter-in law of A after the estate has vested in A's widow—Permission by A to adopt Non-consent of widow—Divesting of estate once vested—Widow's authority to adopt in Bombay—Daughter-in law must have permission—Co widows—Adoption by one co widow*—An adoption cannot divest a person of an estate which has once vested in him, unless such adoption is made with his consent. An

the plaintiff was not in existence at the time the fraud was committed, such fraud was too remote so far as it affected him, and that the Court, as a Court of Equity, could not disturb the estate which had already vested in *B*. The right to succession is a right which vests immediately on the death of the owner of the property, and cannot, under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death. *Keshub Chunder Ghose* v. *Bishen Pershad Bose, S. D. A., 1860, p. 340,* and *Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdury, 10 Moore's I. A., 279,* followed. NILCOMUL LAHURI *v.* JOTENDRO MOHUN LAHURI

[I. L. R., 7 Calc., 178 : 8 C. L. R., 401

Held in the same case by the Privy Council, affirming the decision of the High Court, that the adopted boy could not claim to share along with the nephew the estate which had belonged to the uncle, notwithstanding the nephew's conduct in reference to the exercise of the power to adopt, inasmuch as the date of this boy's birth rendered it impossible for him, under any circumstances, to have been made an adoptive heir to the uncle. According to Hindu law, as laid down in the decided cases, an adoption effected after the death of a collateral relation does not entitle the adopted son to come in among the heirs of such collateral. BHUBANESWARI DEBI *v.* NILCOMUL LAHIRI

[I. L. R., 12 Calc., 18 : L. R., 12 I. A., 137

239. ———————— *Vested estate divested by adoption—Power to adopt.*—*A*, a Hindu, having succeeded to his father's estate, died unmarried, leaving him surviving his father's mother *S* and his step-mother *N*. After *A*'s death, *N*, under a power from her husband, adopted *B* as a son to *A*'s father. *Semble*—That the adoption did not divest the estate of *S*, in whom *A*'s estate had vested on his death. DROBOMOYEE CHOWDHRAIN *v.* SHAMA CHURN CHOWDHRY . **I. L. R., 12 Calc., 246**

240. ———————— *Divesting of estate taken by widow.*—The defendant's husband, *V*, died intestate in 1873, leaving his widow (the defendant) and a son *B* him surviving. A posthumous son, *R*, was subsequently born to him, who died an infant aged four months. *B* died in July 1877, aged seven years. The defendant subsequently, on 18th April 1878, adopted the plaintiff. *Held*, following *Jamnabai* v. *Raichand, I. L. R., 7 Bom., 225,* that the defendant, by adopting the plaintiff, divested herself of the estate of *V*, to which she had succeeded on the death of *B*, and that the plaintiff, upon his adoption, became entitled to the property. RAVJI VINAYAKRAV JAGGANNATH SHANKARSETT *v.* LAKSHMIBAI . . **I. L. R., 11 Bom., 381**

241. ———————— *Inheritance of adopted son—Divesting estate—Effect of adoption by one of two widows.*—A son adopted to the last male proprietor, who was the full owner of an estate, is entitled to take the whole of that estate and to divest the interest of any person in that estate, whose title by inheritance is inferior to his, and who could not have inherited if the adoption had taken place before the death of the last full owner; but such adopted son is not entitled to claim as preferential heir the estate of any other person besides his adoptive father, when such estate has vested before his adoption in some heir other than the widow who adopts him. Where a man died leaving two widows and having given either of them the power to adopt a son, and the younger widow, on the refusal of the elder one to adopt, adopted a son,—*Held* that the estate which was in the elder widow was divested by adoption, and that the adopted son took all the estate of his adoptive father. MONDAKINI DASI *v.* ADINATH DEY . . **I. L. R., 18 Calc., 69**

242. ———————— *Divesting of estate already vested—Mitakshara law.*—*B* and *R* were living as a joint family subject to the Mitakshara law. *B* died on the 28th February 1884, leaving him surviving a widow *S*, to whom he gave power to adopt a son to him, and *R* who succeeded by survivorship to *B*'s share in the joint-family property. *S* adopted the plaintiff on the 27th October 1885. *Held* that on such adoption the plaintiff became entitled to the share of his father *B*, notwithstanding that such share had already vested in *R*. *Mondakini Dasi* v. *Adinath Dey, I. L. R., 18 Calc., 69,* followed. SURENDRA NANDAN *alias* GYANENDRA NANDAN DAS *v.* SAILAJA KANT DAS MAHAPATRA

[I. L. R., 18 Calc., 385

243. ———————— *Widow with express authority from her husband to adopt—Adoption by such widow cannot divest estate vested by inheritance devolved from a lineal heir of the husband—Adoption by elder brother's widow after younger brother's death.*—*K* and his two sons, *B* and *N*, were members of an undivided family. *B* died first, leaving a widow: then *K* died. On his death *N* succeeded to the family property. *N* afterwards died, leaving him surviving his widow, the defendant *G*, who then got possession of the said property. After *N*'s death, however, *B*'s widow adopted the plaintiff as son to her husband, and he brought this suit against *G* to recover the property from her. He alleged that *B* in his lifetime, with the concurrence of *K*, had given express authority to his wife to adopt a son after his death. The Court of first instance gave the plaintiff a decree. On appeal, the District Judge rejected his claim. The plaintiff appealed to the High Court. *Held*, confirming the decree of the lower Court, that the plaintiff was not, by virtue of his adoption, entitled to oust the defendant *G* from the estate of her husband. At the time of his death, *N* was full owner as last survivor of the joint family. The property then devolved as his, and a subsequent adoption, however well authorized to *B*, a collateral heir of *N*, could not divest the defendant *G*, who did not claim through *B* at all. If the question had arisen between the plaintiff and *N*, the plaintiff would have been entitled to succeed. *Virada Pratapa Raghunada Deo* v. *Brojo Kishore Patta Deo, I. L. R., 1 Mad., at p. 83 : L. R., 3 I. A., at p. 193,* referred to. Adoption by a widow under her husband's authority has the effect of

HINDU LAW—ADOPTION—*continued.*

7 FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER—*continued.*

was that, as the son first adopted lived to an age sufficiently mature to perform all the acts of spiritual benefit, to secure which the unoomotee potro was executed, and it should be presumed that he performed all those acts, the power given to *S* ceased to have any operative force *Held* that the contention was not supported by the Privy Council cases cited, and was opposed to the general principles of the Hindu law a son in the situation of the first adopted son in this case cannot exhaust the whole of the spiritual benefit which a son is capable of conferring on his *deceased father.* RAM SOONDUR SINGH *v* SURBANEE DOSSEE . . . . 22 W. R., 121

253. ——— **Widow with authority to adopt, Position of**—*Limitation* —A Hindu died after leaving directions with his widow to adopt a son On a partition of the joint property among his brothers and widow, a certain property was allotted to the widow as her share; afterwards in 1849 the

[2 B. L. R., A. C., 313

254. ——— **Failure to adopt**—*Widow*

taken place, ...

as widow to sue. BAMUNDOSS MOOKERJEE *v.* TARINEE . . . 7 Moore's I. A., 169

all legal purposes it is absolutely non existent till it is acted upon When a Hindu by his will gave his widow authority to adopt, if necessary, from one to three dattaka sons, and she, having neglected to do so, brought a suit to recover possession of her husband's property and for an account of the administration against the administrator of the estate, after

[I. L. R., 7 Calc, 288: 9 C. L. R., 83

See DINO MOYEE CHOWDHRAIN *v.* REHLING [2 W. R., Mis., 25

DENO MOYEE DOSSEE *v.* DOORGA PERSHAD MITTER . . . . 3 W. R., Mis., 6

HINDU LAW—ADOPTION—*continued.*

7. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER—*concluded.*

256. ——— *Omission of widow to adopt as directed in will—Right of inheritance* —When a widow neglects to adopt a second son on the death of the first adopted son, *as directed* by her deceased husband, she commits a wrong, but may nevertheless be the heiress of the first adopted son SHEEMUTTY DOSSEE *v* TARRACHUND COONDOO CHOWDHRY . . . Bourke, A. O. C, 48

8 EFFECT OF INVALIDITY OF ADOPTION

257. ——— **Adoption held to be invalid**—*Position of person adopted.*—Where an adoption is held invalid, the natural rights of the person adopted remain unaffected BAWANI SANKARA PANDIT *v* AMBABAY AMMAL . 1 Mad., 363

But *see* AYYAVU MUPPANAR *v* NILADATCHI AMMAL . . . . . 1 Mad., 45

9 EVIDENCE OF ADOPTION

fully supported the adoption CHUNDERNATH ROY *v.* GOBIND NATH ROY [11 B. L. R., P. C., 86: 18 W. R , 221

COLLECTOR OF MOORSHEDABAD *v* SHIBESSUREE DABEE . 11 B. L. R., P C, 86 [18 W. R., 226

upholding the decision of the High Court.

See KISHEN MONEE DEBIA *v* KASHEE SOONDARI DEBIA . . . W. R, F. B, 106

COLLECTOR OF MOORSHEDABAD *v* ANUND NATH ROY KISTOMONEE DEBIA *v* ANUND NATH ROY [W. R., F. B., 112

dence than from the testimony of witnesses either subscribing the deeds or present at the same time KISHEN MONEE DEBIA *v* KASHEE SOONDAREE DEBIA . . . . W. R., F. B., 106

260. ——— **Suit to establish adoption** —*Test of validity of deeds of adoption* —In cases of adoption careful scrutiny is necessary. The party seeking to establish an adoption is bound to produce the best evidence procurable The rule for testing the validity of a deed of adoption is contemporaneity of execution and publication of the deed of permission. In the absence of the original deed, all the circumstances bearing upon the alleged deed, and all the probabilities for and against its *genuineness, must* be considered. ROOPMONJOREE CHOWDRAIN *v.* RAMLAL SIRCAR. GREESH CHUNDER LAHOREE *v.* RAMLAL SIRCAR . 1 W. R., 144

exception to this rule is where a co-widow adopts. Such an adoption will divest the younger widow of her estate. Another exception is where a daughter-in-law adopts with the authority of her father-in-law, who is head of the family, as in *Vithoba v. Bapu, (1890) 15 Bom., 110.* Unless prohibited expressly or by implication, a widow in the Presidency of Bombay has authority to adopt, but a daughter-in-law, *i.e.*, the widow of a predeceased son, must be specially authorized by her father-in-law in order that she may make a valid adoption binding as against the heirs of her father-in-law. *S* was the widow of *B*, who died in 1877 in the lifetime of his father *R*. Fourteen years later, *viz.*, in 1891, *R* died, leaving a widow Saibai, who succeeded to his estate as his heir. In March 1892, *S* adopted the plaintiff *G*, who was older than herself, as son to her husband, alleging that she had *R*'s permission to do so. The plaintiff sued for a declaration that as adopted son of *B* he was entitled to succeed as heir to the property of *R* as against the defendant *V*, who claimed to have been adopted by Saibai as son to *R*. The lower Appellate Court disallowed the plaintiff's adoption on the grounds that Saibai had not consented to it. *Held* (confirming the decree of the lower Court) that, as the adoption of plaintiff *G* was made by *S* without proper authority and without Saibai's consent, it was inoperative and invalid. As Saibai did not give her consent to the plaintiff's adoption, that adoption did not divest her of her exclusive right to succeed as heir of *R*. GOPAL BALKRISHNA KENJALE *v.* VISHNU RAGHUNATH KENJALE I. L. R., 23 Bom., 250

249. ——————— *Adoption of the vesting of inheritance—Dayabhaga law.*—One *D N L* died many years ago leaving him surviving three sons, *viz.*, *B L L*, the plaintiff, and *K C L* and *T N L*, the defendants. He also left him surviving a widow *P D*, another defendant. The suit was originally instituted against *K C L* and *P D*, the plaintiff having omitted to join *T N L* on the ground that he had been adopted by his uncle *H L*, and that consequently he had no interest in the properties in suit. But subsequently under an order of the Court *T N L* was made a co-defendant. The parties were subject to the Dayabhaga law, and the suit was for partition, the main question being as to the effect of the adoption upon the respective shares of the parties. *Held* that under the Dayabhaga law, when the property descends upon a male owner on the death of the last full owner, he takes therein a full and distinct interest, and in no circumstances is there any abeyance of the rights of property, nor can the property, when once vested, be divested; that therefore, although adoption prior to the vesting of the inheritance entails loss of the right of claiming any share in the estate of the adopted person's natural father or natural relation, yet the interest which is once vested in a son upon the death of his father is not divested by his subsequent adoption into another family; and the parties were accordingly entitled to one-fourth share during the lifetime of the widow and to one-third share absolutely upon her death. *Bhoobun Moyee Debia v. Ramkishore Acharjee, 10 Moore's I. A., 279; Kalidas Das v. Krishan Chandra Das, 2 B. L. R., F. B., 103; Kally Prosonno Ghose v. Gocul Chunder Mitter, I. L. R., 2 Calc., 295;* and *Nilcomul Lahuri v. Jotendra Mohun Lahuri, I. L. R., 7 Calc., 178,* referred to. *Mondakini Dasi v. Adinath Dey, I. L. R., 18 Calc., 69,* and *Surendra Nandan Das v. Sailaja Kant Das, I. L. R., 18 Calc., 385,* distinguished and doubted. BEHARI LAL LAHA *v.* KAILAS CHUNDER LAHA [1 C. W. N., 121

250. ——————— *Mesne profits—Decree made against a widow representing estate enforced against a minor adopted son, through the widow as his guardian—Devolution of liability, along with estate, upon the minor, without his having been made formally a party to the decree—His similar liability in a suit for mesne profits.*—A minor who had been adopted by a widow as a son to her deceased husband was not made a party to an appeal, which she preferred after the adoption, from a decree made against her when she represented the estate. *Held* that, as liability under the decree made when the widow fully represented the estate devolved upon the minor on his adoption, the widow's estate being also thereupon divested, it would be right for her to continue to defend, but only as guardian of the minor. Also that, it having been for the minor's benefit that the widow as guardian should appeal from a decree which had already diminished his estate, the minor was bound by the adverse decree of the Appellate Court, although he had not been made formally a party thereto. The principle of the decision in *Dhurm Dass Pandey v. Shamasoondary Debia, 3 Moore's I. A., 229,* referred to and applied in this case. *Held* also that the minor, by his adoptive mother as his guardian, was liable in a suit for mesne profits brought after the decree upon title, it being made clear that the suit for mesne profits was substantially brought against the minor. *Sureschunder Wum Chowdhry v. Jugutchunder Deb, I. L. R., 14 Calc., 204,* approved. HARI SARAN MOITRA *v.* BHUBANESWARI DEBI . I. L. R., 18 Calc., 40 [L. R., 15 I. A., 195

7. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER.

251. ——————— Death of adopted son—*Estate of Hindu widow—Adopted son dying a minor.*—The widow of a childless member of a divided Hindu family is entitled to a life-interest in her husband's estate after the death of an adopted son before attaining majority. SOONDER KOOMAREE DEBEA *v.* GUDADHUR PERSHAD TEWAREE [4 W. R., P. C., 116: 7 Moore's I. A., 54

252. ——————— *Widow with power to adopt—Power to adopt another son.*—*G* executed an unoomotee potro to his wife *S* to adopt, on the failure of each adopted son, five sons in succession. After his death, *S* adopted a boy who died ten or twelve years later, after which she adopted another, whose adoption it was now sought to have declared invalid. The contention in special appeal

HINDU LAW—ADOPTION—*continued.*

9 EVIDENCE OF ADOPTION—*continued*

which were Nambudri Brahmans following the Marumakkatayam law, the plaintiff sued as the adoptive son of the last member of an otherwise extinct mana for a declaration of his title to certain lands as the sole uralen of a devasom The plaintiff was an adult at the time of his adoption, and no female was adopted at the same time with the plaintiff. *Held* on the evidence that the plaintiff was entitled to succeed The form and evidence of adoption considered SUBRAMANYAN *v.* PARAMASWARAN . . I L. R., 11 Mad., 116

268. ——— *Evidence of authority to adopt*—Whether an elder widow who had purported to adopt a son to her deceased husband

Upon the evidence the finding of the Subordinate Judge that no such authority had been given was maintained. AMMI DEVI *v* VIKRAMA DEVU

[I. L. R, 11 Mad., 486
L. R., 15 I. A., 176

269. ——— *Report of punchayet—Evidence—Family pedigree*—The question was whether a certain adoption was made. It was shown that the dispute had been referred to a punchayet, whose report, dated the 7th February 1819, was filed and preserved in the Collector's office, from whence it was produced It did not appear

took place before a competent local tribunal, and also that the disputants signed the report, each saying that he agreed to what is stated in it, it was held that the findings in the report were strong evidence in matters of family pedigree On a consideration of the evidence and specially of the report of the punchayet,—*Held* (by the Privy Council) that the adoption which was denied by plaintiff was made out AJABSING *v* NANABHAU VALAD DHANSING RAUL . . . 3 C. W. N., 130

270. ——— *Documentary evidence—Old reports of punchayets—Claim to a vatan existing from Maratha rule*—Title to an

1877. On this, the last of the younger of the two surviving lines
succession declar
ancestor of the
member of the fa

HINDU LAW—ADOPTION—*continued.*

9 EVIDENCE OF ADOPTION—*concluded.*

of the family lines, disputing then, as were their successors now The authenticity of the report was not impeached But the adoption now in question could hardly have been the point then in dispute, and the entries as to it had been tampered with The enquiry, however, into the history of the family was minute, it took place before a competent

by the
e held
The

decision of the High Court, which had dismissed the suit (after bringing home the fact of the part obliteration of the entry to the plaintiff), was on the evidence maintained AJAB SINGH *v* NANABHAU

[I. L. R., 25 Bom., 1

10 DOCTRINE OF FACTUM VALET AS REGARDS ADOPTION

271. ——— Application of maxim—*Gift by widow without authority of husband's only*

this maxim, because such an adoption would be, as regards her, not *quod fieri non debuit*, but *quod fieri non potuit* LAKSHMAPPA *v* RAMAVA

[12 Bom., 364

272. ——— *Adoption of daughter's son among Brahmans*—Amongst Brahmans an adoption which is incestuous and invalid, as the adoption of a daughter's son, cannot be supported on the authority of the maxim *factum valet quod fieri non debuit* BHAGIRTHIBAI *v* RADHABAI

[I. L. R., 3 Bom., 298

273. ——— Limitation of maxim.—Limits within which the maxim *quod fieri non debuit factum valet* as to adoption applies pointed out. GOPAL NARHAR SAFRAY *v* HANMANT GANESH SAFRAY . I. L. R., 3 Bom., 273

274. ——— Recognition of maxim—*Schools of Hindu law other than Bengal*—The maxim *quod fieri non debuit factum valet* is recognized to some extent by other schools of law in India besides that of Bengal WOOMA DAEE *v.* GOCOOLANUND DASS

[I. L. R., 3 Calc., 587 : 2 C. L. R., 51

275. ——— Suit by adoptive father to set adoption aside—*Held* that, when an adoption of a son has once been absolutely made and acted on, it cannot be declared invalid or set aside at the suit of the adoptive father SUKHBASI LAL *v.* GUMAN SINGH . . I. L. R., 2 All., 366

276. ——— Applicability of maxim—*Nature of adoption.*—The maxim *quod fieri non debuit factum valet* is applicable not only in the Dayabhaga school of Hindu law which prevails in Lower Bengal, but also in the various subdivisions of the Mitakshara school. Its authority does not depend upon any rule of Hindu law alone, but upon the

HINDU LAW—ADOPTION—*continued.*

9. EVIDENCE OF ADOPTION—*continued.*

261. ———— **Adoption by dhurm-putr** —*Ceremony of dhurm-putr.*—An adoption made by a Parsee immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto, and therefore call for very clear proof to establish its existence. Although in cases of adoption by dhurm-putr (a partial adoption) it is not indispensably necessary that a declaration should be made on the third day after the decease, yet it is usual to make such a declaration and to take a writing from the dhurm-putr. In the absence of any such writing, and upon the whole evidence, the adoption in this case was pronounced to be as a paluk-putr, and not merely as a dhurm-putr. HOMABHAEE *v.* PUNJEABHAEE DOSABHEEN [5 W. R., P. C., 102

262. ———— **Requisition for validity of adoption**—*Registration—Acknowledgment in writing.*—According to Hindu law, neither registration of the act of adoption nor any written evidence of that act having been completed is essential to its validity. In no case should the rights of wives and daughters be transferred to strangers or to more remote relations, unless the fact of adoption by which this transfer is effected be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth. Although the Hindu law does not require that adoptions should be acknowledged in writing, it is usual, when persons in the situation of a zamindar adopt sons, to acknowledge such adoption in writing, to give notice to the ruling power, and to invite the neighbouring zamindars and others to be present at such an adoption. SUTROOGUN SUTPUTTY *v.* SABITRA DYE . . . . 5 W. R., P. C., 109

263. ———— *Deed expressing wish to adopt a particular person.*—A cousin and heir to an insane proprietor having been sued for the amount of a decree, and application having been made for execution against the estate of the said proprietor after his death, it was urged that the estate had become the property of a minor who had been adopted by the insane proprietor previously to his decease, and could not be held liable for the debts of the cousin and heir, who, moreover, had formally relinquished his right to it. The plaintiff's claim rested on the contention that the formalities required to validate an adoption had not been attended to in this case. This contention was met by the plea that the adoption was complete, but that, even if it had not been so, a document declaring the deceased proprietor's desire to adopt the minor had the effect of a testament. *Held* by the High Court that, though the intention of the deceased proprietor to adopt the minor was clear, that intention, even as expressed in the above-mentioned document, which was not testamentary in character, did not amount to an adoption in the absence of the necessary formalities. The estate was accordingly declared liable for the amount of the decree against the cousin and heir. BANEE PERSHAD *v.* COURT OF WARDS . . . . 25 W. R., 192

264. ———— **Evidence of conditional adoption.**—In a suit in which a claim was made in virtue of an alleged adoption to the estate of a deceased Hindu, the widow made a compromise, not in writing, with the claimant where the adoption was admitted, but alleged to have been on condition that the widow should enjoy the entire property for her life without power of alienation, and that, after her death, her minor daughters should take the self-acquired property, and the claimant should succeed to the ancestral estate. *Held* that the evidence to establish such a conditional adoption must, as in the case of a nuncupative will, be very strong. IMRIT KONWAR *v.* ROOP NARAIN SINGH . 6 C. L. R., 76

265. ———— *Deed purporting to make adoption—Giving and taking.*—An ekrarnama executed by the natural father in favour of the adoptive father recited that the former had made over his third son to the sonship of the adoptive father, so that the latter might, whenever he would wish, fulfil the rights of adoption in accordance with the Shastras and the usage of the country, and from that day the natural father would have no claim or right in respect of the said son. *Held* that this deed did not of itself operate to effect an adoption. It did not even amount to a giving and taking of the boy, as it contemplated the subsequent performance of the necessary rites. *Held*, further, that deeds of this kind did not take the place of the necessary evidence as to the actual adoption. MANDIT KOER *v.* PHOOL CHAND LAL . 2 C. W. N., 154

266. ———— *Factum of adoption—Onus probandi—Custom among Shatriyas.*—The ruling of the Privy Council in *Shoshinath Ghose* v. *Krishna Soondari Dasi, L. R., 7 I. A., 250,* has no application to a case in which there is ample evidence, both oral and documentary, to prove the factum of adoption. Where it was sought to set aside an adoption which took place many years ago, which had ever since been recognized as valid and under which the adoptee had ever since been in possession of his adoptive father's estate, on the single ground that at the time of the adoption the adopted son was more than five years of age, it was held that the onus of proof was upon the person who alleges the adoption to be invalid. *Haimun Chull Singh* v. *Koomer Gunsheam Sing, 5 W. R., P. C., 69,* referred to. In a case where the validity of an adoption was in dispute and the parties to the suit were Shatriyas,—*Held* that, even if it had been established that five years was the rigid and inflexible limit of age for the validity of all adoptions among the "twice-born" classes, so as to be applicable even to Shatriyas, in the circumstances of the case it would be necessary to have a full investigation of the question whether, among the clan of the Shatriyas to which the parties belonged, any such rigid rule prevailed. GANGA SAHAI *v.* LEKHRAJ SINGH [I. L. R., 9 All., 253

267. ———— *Nambudris—Marumakkatayam law—Adoption of an adult male—Form of adoption.*—In a suit the parties to

HINDU LAW—ALIENATION—*continued*

1 RESTRAINT ON ALIENATION—*continued*

which descends as an impartible inheritance is not, by reason of its impartibility, restricted to making grants or gifts enuring only for his own life The power of alienation resting upon the general law, inalienability, if existing, must depend upon family custom in this respect and of such custom proof is required *Anund Lall Singh Deo* v *Dheraj Guru Narain Deo, 5 Moore's I A, 82,* followed. In the case of a titular raj of which the lately deceased raja had made a mokurari pottah, or grant in perpetuity, of part of the zamindari lands thereto belonging in favour of a younger son, it was found that the only custom proved was that the raj estate descended to the eldest son, to the exclusion of the other

ble UDAYA ADITYA DEB *v* JADAB LAL ADITYA DEB I L R, 8 Calc, 199

4 ———— *Impartible raj estate—Power to alienate—Custom*—In regard to a raj estate in Gorakhpur by custom impartible and

the Raja's power over the estate would have been restricted by the law declared in Mitakshara, ch I s 1, v 27, and the gift would have been void But *there being the above custom, the question* was how far the general law was superseded and whether the right of the son to control the father's act in this respect was beyond the custom *Held* that in regard to impartible estate the son s right at
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that by
KUARI *v* DEORAJ KUARI I. L. R., 10 All., 272
[L R., 15 I. A, 51

5. ———— *Custom—Impartible zamindari—Right of zamindar to alienate—Suit to set aside the alienation of impartible property*—The holder of an impartible zamindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee On the death of the grantor, his minor son and successor, *by the Collector of the district as his* next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside *Held* by PARKER, *J*, MUTTUSAMI AYYAR, *J*, and WILKINSON, *J*, that the lease was not one which a managing member of an ordinary joint family governed by Mitakshara law could providently enter into. *Per* MUTTUSAMI AYYAR and WILKINSON, *JJ* (reversing the judgment of PARKER, *J*), that in the absence of evidence of any family custom rendering the zamindari inalienable by the zamindar for the time being for purposes other than those warranted by the Mitakshara law, the lease was not invalid as against the plaintiffs *Sartaj Kuari* v *Deoraj Kuari, I L R, 10 All, 272,* discussed and followed. BERESFORD *v* RAMASUBBA
[I. L. R., 13 Mad., 197

6 ———— **Condition not to alienate**—*Restriction of enjoyment of estate*—Upon a division of family property, the parties to the division entered into an agreement that the property of any one of ir heirs dying,
transferred as
divided by the
f the sharehold
ers to recover the share to which the plaintiff was entitled under the agreement from the defendant a purchaser from the son of the person to whom the property was allotted upon the division—*Held* that an estate cannot be made subject to a condition which is repugnant to any of its ordinary legal incidents,

ANNA *v* BRAMMANYA SASTRULU 4 Mad., 345

7 ———— *Alienation and suit by alienee for mutation of names*—On the construction of an ikrarnama or deed of agreement and partition of an ancestral estate among several brothers—*Held* that the terms of the deed were not restrictive upon the power of each brother to alienate his separate share *A*, one of the brothers, had his share registered on the Collector's books as owner, and by deed of sale conveyed such share to his daughter, who was also his heir The Collector, on the objection of one of *A's* brothers (who denied *A's right to alienate on the ground that it was ancestral* property), refused to register the daughter's name as proprietor *Held that the Collector was bound by* Bengal Regulation VIII of 1800 s. 21, to register her name as purchaser, but that such mutation of name was to be without prejudice to the question of the right of succession COWULBAS KOONWUR *v* LAL BAHADUR SINGH 9 Moore's I. A., 39

2 ALIENATION BY SON

8. ———— **Alienation without father's consent**—*Mitakshara law*—Under the Mitakshara law, an alienation by a son without the father's consent is invalid. SHEO RUTTUN KOONWAR *v* GOUR BEHAREE BHUKUT . 7 W. R., 449

3 ALIENATION BY UNCLE.

[4 N. W., 31

HINDU LAW—ADOPTION—*concluded.*

10. DOCTRINE OF FACTUM VALET AS REGARDS ADOPTION—*concluded.*

principles of justice, equity, and good conscience. There is no authority to show that it is to be applied to cases governed by the Hindu law in a manner exceeding the limits recognized by the Roman civil law in which it originated. Its application in cases of adoption should be confined to questions of formalities, ceremonies, preference in the matter of selection, and similar points of moral or religious significance, which relate to what may be termed the *modus operandi* of adoption, but do not affect its essence. There may be cases where matters which in other systems would be regarded as merely formal, are by the express letter of the texts made matters affecting the essence of the transaction, and such texts may be sufficiently imperative to vitiate an adoption in which they have been disregarded; but unless their meaning is undoubted, the doctrine of *factum valet* should be restricted to adoptions which, having been made in substantial conformity to the law, have infringed minor points of form or selection. Adoption under the Hindu law being in the nature of a gift, it contains three elements—capacity to give, capacity to take, and capacity to be the subject of adoption—which are essential to the validity of the transactions, and as such are beyond the scope of the doctrine of *factum valet*. *Uma Deyi* v. *Gokoolanund Das Mahapatra, L. R., 5 I. A., 40; Hanuman Tiwari* v. *Chirai, I. L. R., 2 All., 164; Singamma* v. *Vinjamuri Venkatacharlu, 4 Mad., 164; Dharma Dagu* v. *Ramkrishna Chimnaji, I. L. R., 10 Bom., 80; Lakshmappa* v. *Ramava, 12 Bom., 364;* and *Gopal Narhar Safray* v. *Hanmant Ganesh Safray, I. L. R., 3 Bom., 273*, referred to. GANGA SAHAI *v.* LEKHRAJ SINGH

[I. L. R., 9 All., 253

277. ——— Adoption by younger widow without consent of elder.—Where a younger widow had adopted without the consent of the elder widow, it was contended that the right of the elder widow was merely the right to select, and that in any case it was only a preferential right, and that consequently the doctrine of *factum valet* applied. *Held* that the doctrine of *factum valet* cannot apply to the case of an adoption by a younger widow, for it is plain that, until the elder widow waives her preferential right to adopt, her right is exclusive, and that the other widows have no authority to adopt. The rule of *factum valet* applies in cases of adoption only where "there is neither want of authority to give or to accept, nor imperative interdiction of adoption." PADAJIRAV *v.* RAMRAV . **I. L. R., 13 Bom., 160**

HINDU LAW—ALIENATION.

HINDU LAW—ALIENATION—*continued.*

See CHAMPERTY . **4 B. L. R., O. C., 1**
[9 B. L. R., 76
Marsh., 303 : 2 Hay, 160

See CASES UNDER DECLARATORY DECREE, SUIT FOR—REVERSIONERS.

See CASES UNDER HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

See CASES UNDER HINDU LAW—REVERSIONERS.

See CASES UNDER HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.
[I. L. R., 18 Bom., 534
I. L. R., 19 Bom., 36

See LIMITATION ACT, 1877, ART. 125.
[7 B. L. R., 131
10 Bom., 351
15 W. R., 1
I. L. R., 19 All., 524

See CASES UNDER LIMITATION ACT, 1877, ART. 141.

See CASES UNDER ONUS OF PROOF—HINDU LAW—ALIENATION.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

1. RESTRAINT ON ALIENATION.

1. ——— Restraint invalid as inconsistent with Hindu law—*Restraint by will.*—A restraint on alienation put by a testator on his descendants was considered void as being unknown to, and inconsistent with, Hindu law. NITAI CHARAN PYNE *v.* GANGA DASI

[4 B. L. R., O. C., 265 note

2. ——— Impartibility, Effect of—*Chota Nagpore Raj, Alienation of portion of.*—The fact that the Raj of Chota Nagpore is an impartible one does not prevent the Maharaja for the time being from alienating a portion of it in perpetuity. NARAIN KHOOTIA *v.* LOKENATH KHOOTIA

[I. L. R., 7 Calc., 461 : 9 C. L. R., 243

3. ——— *Alienation of impartible estate—Custom—Succession to raj.*—Impartibility of an inheritance does not, as a matter of law, render it inalienable. The owner of an estate

which he can neither give away nor sell. BHYRO PERSHAD *v.* BASISTO NARAIN PANDEY
[16 W. R., 31

19 ——— **Alienation by man without issue**—*Power of the unborn son to contest alienation subsequently.*—*Held* that alienation of property made by a Hindu, who at the time of such alienation has no issue living, cannot be contested by a son who at the time of alienation was neither born nor begotten. MADHO SINGH *v* HURMAT ALLY
[3 Agra, 432

JADO SINGH *v* RANEE . . 5 N. W, 113

20. ——— **Ancestral property**—*Necessity—Effecting release from prison*—Ancestral property may be sold by a father to effect his release from prison DULEEP SINGH *v.* SEEKISHOON PANDEY . . . . 4 N. W., 83

21. ——— *Right of son to*

held jointly by them, mortgaged the property as security for the repayment of moneys advanced to him by *S R.* The debt was not contracted by *M* for

was not entitled to come in and set aside all done under the decree and execution, and recover back a moiety of the estate SALIG RAM *v* LULTA PERSHAD . . . 6 N. W., 329

Quære—Whether under the Mitakshara law a father who has no child born to him is competent,

I. R., 4 I. A., 159

23. ——— *Power of father*

alienations should be set aside altogether RAYAKKAL *v.* SUBBANNA . I. L. R., 16 Mad., 84

24 ——— **Alienation before birth of son**—*Mitakshara law*—Certain property, which had been mortgaged by a Hindu governed by Mitakshara law while yet childless, was subsequently, after the birth of a son, sold in execution of a decree obtained on the mortgage after the birth, in a suit to which the son was not made a party *Held* that the son could not disturb the possession of the execution-purchaser *Held* also, distinguishing the case of *Luchman Dass v Gridhur Chowdhry, I L R., 5 Calc, 855,* that in the suit upon the mortgage the son was not a necessary party DOOLLEE CHAND *v.* WOOMA SUNKUR PURSHAD 7 C. L. R., 429

25. ——— **Right acquired by son in ancestral property on birth**—*Mitakshara law*—*Inheritance of share in village—Interest of son*

of revenue and became the property of the Govern-

members, one being the plaintiff's father, who thus obtained possession of a five biswas share *Held* that whatever interest the plaintiff as son might have under

by birth acquire an interest, except this five-biswas

SINGH I. L. R., 4 All., 120
[L. R., 8 I. A., 190

26. — **Right acquired by unborn**

SHI *v* VIRAPPA . I. L. R., 8 Mad., 59

27. ——— Under Hindu law,

extent of his share SABAPATHI *v* SOMASUNDARAM
[I. L. R., 16 Mad., 76,

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4. ALIENATION BY FATHER.

10. ——— **Alienation with consent of son**—*Right of grandson to object to alienation.*—An alienation made by a Hindu with the consent of his son cannot, under the Mitakshara law, be questioned by the grandson. BURAIK CHUTTER SINGH *v.* GREEDHAREE SINGH . . . 9 W. R., 337

11. ——— **Grandson's right to set aside alienation**—*Suit by grandsons, sons of a son adopted in kritrima form to set aside alienation.*—Where the son of a certain person, who had been adopted as a kritrima son, sought to set aside certain alienations of self-acquired property which the adoptive father had made, on the double ground that as grandsons they had an interest in that property, and that the alienations were for improper purposes,—*Held* that, as the alienations were proved to be for legitimate purposes, and the relations established by the kritrima form of adoption were confined to the contracting father and did not extend beyond them on either side, the plaintiffs in this case had no right to set aside the alienations which the adoptive father of their father had made. JUSWANT SINGH *v.* DOOLEE CHUND . . . . . 25 W. R., 255

12. ——— **Self-acquired property**—*Mithila law—Separate acquisition.*—According to Mithila law, the owner of self-acquired property has full power of disposition over it. BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER

[12 B. L. R., P. C., 430 : 20 W. R., 137

13. ——— *Power of a father of a joint family to alienate — Self-acquired immoveables—Mitakshara Law.*—A father, being a member of an undivided family subject to the Mitakshara, can exercise full power of disposition at his own discretion over immoveables which he has himself acquired, as distinguished from ancestral property. BALWANT SINGH *v.* RAMKISHORE

[I. L. R., 20 All., 267
L. R., 25 I. A., 54

RAO BALWANT SINGH *v.* RAMKISHORE

[2 C. W. N., 273

14. ——— *Ancestral property—Outcaste, Right of.*—There is a distinction between ancestral and self-acquired property under the Mitakshara law with regard to the right of a father to dispose of it. The fact of his being an outcaste would not prevent him from exercising his rights over the property to the same extent as he might otherwise have done. OJOODHYA PERSHAD SINGH *v.* RAMSARUN . . . . . 6 W. R., 77

15. ——— *Ancestral property.*—*A*, a Hindu, sued *B*, the widow of *C*; claiming to be entitled with others as heirs of *C* under the Mitakshara law to certain property. The suit was compromised on the terms, as to one portion of the property, that it was to be retained by *B* for life, and after her death to be divided according to specified shares between *A* and the other claimants. After *B*'s death, *A* obtained possession of his share under the deed of compromise. *A* alienated the property, and during his lifetime his sons sued to set aside the alienation on the ground that it was ancestral property. *Held A* took the property absolutely, and not as ancestral property. MAHABIR KOWER *v.* JUBHA SINGH

[8 B. L. R., 38 ; 16 W. R., 221

16. ——— *Non-existence of son at date of acquisition.*—Suit to recover a share of the property of the plaintiff's maternal grandfather. The facts found were as follows: Plaintiff's mother and 1st defendant's mother were sisters, daughters of one *M*, who, having no male issue, selected, in pursuance of a special custom, the 1st defendant's father as a son-in-law, who should take his property as if a son. On the death of *M*, the 1st defendant's father entered into possession of the property, and afterwards, during the minority of his son (1st defendant), associated with himself the plaintiff on promise of a share. In accordance with this agreement, the plaintiff joined the 1st defendant's family, and continued for many years aiding in the management and improvement of the property, until, a short time before the present suit was brought, the 1st defendant turned the plaintiff out of doors and refused to give him the promised share. Upon these facts,—*Held* by HOLLOWAY and INNES, *JJ.*, that the 1st defendant's father was what is called in English law a purchaser, and had all the powers of disposition existent over self-acquired property; that also there was a complete adoption or ratification of the father's contract by 1st defendant, and that he ought to be held to it. *By* INNES, *J.*,—That the right of 1st defendant's father to dispose of property self-acquired might depend upon whether 1st defendant was or was not in being at the date of the acquisition. CHALLA PAPI REDDI *v.* CHALLA KOTI REDDI *alias* KOTAPPA . 7 Mad., 25

17. ——— **Property inherited by father collaterally**—*Power of son to prevent alienation.*—In execution of a decree against *A*, a Hindu living under the Mitakshara law, his right, title, and interest in a certain property, part of which he had acquired as heir to his nephew and cousin, was sold. A suit brought by *A*'s sons to obtain possession of their share of the property, on the ground that the debt for which the sale was held had not been incurred under a legal necessity, was dismissed so far as it related to the part of the property which *A* had inherited collaterally. According to the Mitakshara, a son cannot prevent alienation by his father of property which the latter has inherited collaterally. The restriction upon the father's power of alienation only applies to the grandfather's property. NUND COOMAR LALL *v.* RAZEEOODDEEN HOSSEIN . 10 B. L. R., 183 : 18 W. R., 477

LOCHUN SINGH *v.* NEMDHAREE SINGH

[20 W. R., 170

18. ——— **Right of father in undivided Mitakshara family.**—The father in an undivided family under the Mitakshara law has no interest in the ancestral property which can form the subject of a sale beyond his separated share of the proceeds, having merely a life-interest in a common property

HINDU LAW—ALIENATION—*continued.*

4 ALIENATION BY FATHER—*continued.*

the house, ratified the act of his father and elected to take the house in lieu of the ancestral fields, the sale of which was declared to be valid and possession thereof given to the plaintiff GANGABAI *v* VAMANAJI DATAR . . 2 Bom, 301

39. ———— **Power of son to control father's alienation of property liable to obstruction**—*Right of son at birth* —A son cannot control his father's act in respect of a property the succession to which is liable to obstruction It is only in respect of property not subject to obstruction that the wealth of a father and grandfather becomes the property of his sons or grandsons by virtue of birth. JAWAHIR SINGH *v* GUYAN SINGH

[3 Agra, 78

40. ———— **Gift by father of joint family of share of ancestral estate, moveable and immoveable** —A Hindu father, while unseparated from his son, has no power, except for purposes warranted by special texts, to alienate to a stranger his undivided share in the ancestral estate, moveable or immoveable BABA *v* TIMMA

[I L R., 7 Mad, 357

41. ———— **Power of son to set aside alienation**—*Sale of ancestral property—Judgment debt—Evidence of necessity.*—The sale of a joint ancestral estate for the discharge of a judgment debt incurred by a father for moneys borrowed by him, which are not shown to have been borrowed for or applied to improper purposes, is not impeachable or voidable by his sons A judgment debt is a *primâ facie* proof of necessity BHOWNA *v* ROOP KISHORE

[5 N. W, 89

42 ———————— *Ancestral pro-*

whereby he professed to pledge a share of certain family property as security for the repayment of money advanced to him by D Default being made in payment of the loan when due, D brought a suit on the bond against T S, and obtained a decree for the amount secured thereby, in execution of which

the purchaser thereof, and took exclusive possession

nothing amounting to any voluntary representation

of which the decree could be satisfied, no equity arose between T S and D such as entitled the latter to call on T S to divide the property with his son, so as to make the share of T S available by D to the extent of the loan JUGDEEP NARAIN SINGH *v* DEENDIAL

[12 B. L. R., 100: 20 W. R., 174

S C on appeal

[I. L. R , 3 Calc , 198 : 1 C. L. R., 49
L. R., 4 I. A , 247

SOOMRUN THAKOOR *v* CHUNDER MUN MISSER

[3 C. L. R., 282

43. ———————— *Power of father to alienate ancestral property* —F, during the minority of his son R, sold, in order to raise money

property *Held per* PEARSON, J, that R could not recover such property, and that the purchaser, having acted in good faith, took by the sale F's share in such property, and might have such share ascertained by partition CHAMAILI KUAR *v* RAM PRASAD . I. L. R., 2 All., 267

44 ———————— *Power of father to alienate ancestral property* —D, in pursuance of a promise to give his daughter a dowry, about two years after her marriage, made a gift of joint ancestral property to G, her father in law P, D's son, sued his father and G to have the gift set aside as invalid under Hindu law *Held* that the gift, not having been made with the plaintiff's consent, and not being for any purpose allowed by Hindu law, was invalid, and that the plaintiff was entitled to have it set aside not to the extent only of his own share in such property, but altogether. GANGA BISHESHAR *v* PIRTHI PAL

[I. L. R , 2 All., 635

45 ———————— *Mitakshara law —Alienations for joint debts—Waste* —Under the Mitakshara law, according to which the father and son are joint owners of the ancestral estate, the son's power to prevent alienations by the father extends only to acts of waste, and not to alienations for the payment of joint family debts and for the maintenance of the family. BISAMBHUR NAIK *v* SUDASHEEB MAHAPATTUR . 1 W. R., 96

46. ———— **Liability of son for father's debt**—*Decree against father—Execution sale—Son's interests when not affected by such sale—Hindu law* —When ancestral property is sold in executio

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reason of its having been contracted for an illegal or immoral purpose JOHARMAL *v* EKNATH

[I. L. R., 24 Bom., 343

a son and to be unaffected by the sale. The words "on payment" occurring in the last sentence of the judgment in *Sabapathi* v. *Somasundaram, I. L. R., 16 Mad., 76*, do not appear in the original judgment, and are due to a printer's error. VIRABHADRA GOWDU *v.* GURUVENKATA CHARLU [I. L. R., 22 Mad., 312

29. ——— Alienation without consent of children—*Mithila law.*—Under the Mithila law, the father of a Hindu family cannot give a mokurari lease of land at a nominal rent as a reward for faithful service, when his children being infants do not consent to such grant. PRATABNARAYAN DAS *v.* COURT OF WARDS [3 B. L. R., A. C., 21 11 W. R., 343

30. ——— Legal necessity—*Ancestral property—Mitakshara law.*—To justify an alienation of ancestral property, a legal necessity for the sale must be strictly proved to have existed, and such necessity cannot be inferred from the habits and general character of a vendor. MITTRAJIT SINGH *v.* RAGHUBUNSI SINGH . . 8 B. L. R., Ap., 5

NOWRUTTON KOER *v.* GOUREE DUTT SINGH [6 W. R., 193

31. ——— *Alienation by father when binding on son—Burden of proof.*—The father of an undivided Hindu family has no power to alienate the son's co-parcenary share in land in the absence of any debt. One claiming merely as the father's vendee must therefore give evidence that the alienation was made for some purpose which would bind the son, or that it was made with his consent. CHINNAYYA *v.* PERUMAL [I. L. R., 13 Mad., 51

32. ——— *Mortgage—Loan at time of mortgage—Whether mortgage binding on the property of the mortgagor's undivided son.*—In order to justify a sale or a mortgage by a father so as to bind his son's share of the property, there must be in fact an antecedent debt, *i.e.*, a debt prior to the mortgage or sale. Where there was only a loan made at the time of the mortgage, the mortgage was held not to bind the son. SAMI AIYANGAR *v.* PONNAMMAL . . . I. L. R., 21 Mad., 28

33. ——— *Alienation proportionate to the necessity.*—The rule that only so much of the property should be sold as will meet the necessity does not apply to cases where the excess is small or where the money really required cannot otherwise be raised. LUCHMEEDHUR SINGH *v.* EKBAL ALI . . . . . 8 W. R., 75

34. ——— *Mitakshara law—Right of son to prevent or set aside alienation by father.*—According to the Mitakshara law, a son has an equal right with his father in ancestral property. He can compel the father to divide the property during his lifetime, and any alienation by the father made after the birth of the son, without the consent of the son, unless for a purpose justified by the Hindu law as a legal necessity, will not bind the son. If the father, during the minority of the son, alienated any property in fraud of his creditors, such fraud would not bind the son, who was neither a party nor was privy to such fraud. BEER KISHORE SUHYE SINGH *v.* HUR BULLUB NARAIN SING . . . . . 7 W. R., 502

35. ——— *Suit for declaration of future right to a share in joint property.*—A member of an undivided Hindu family living under the Mitakshara law in his father's lifetime brought a suit for declaration of his future right to one-sixth share in a portion of the immoveable property of the family, and to set aside an alienation of it by his father, as having been made without legal necessity. *Held* that no such suit was maintainable. RAOL GORAIN *v.* TEZA GORAIN [4 B. L. R., Ap., 90

36. ——— *Consent of son—Property not partible among members of joint family—Custom.*—Where, in a part of the country the general law of which is the Mitakshara, a custom exists with regard to ancestral immoveable property that it is not partible among the members of the joint family, but descends from the father to his eldest son, the father cannot alienate such property without the concurrence of his son, unless such alienation is justified by family necessity. RAM NARAIN SINGH *v.* PERTUM SINGH . 11 B. L., R., 397 [20 W. R., 189

37. ——— *Family distress—Pious purposes—Mitakshara law.*—According to the Mitakshara law, a father is not incompetent to sell immoveable property acquired by himself. Landed property acquired by a grandfather, and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons, so as to enable them to dispose of it by gift or sale without the consent and to the prejudice of the grandson. The sale by a father of ancestral immoveable property, without the concurrence of his sons, is not necessarily void, though it may be avoided, unless the purchaser can show that it was made, during a season of distress, for the sake of the family or for pious purposes. In the absence of evidence to the contrary, it must be assumed that the price received by the father became a part of the assets of the joint family; and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity and offer to repay the purchase-money, unless he can show that no part of such purchase-money or the produce of it has ever come to his hands. MUDDUN GOPAL THAKOOR *v.* RAM BUKSH PANDEY [6 W. R., 71, 74

38. ——— Alienation without consent of son—*Ratification.*—In a suit to recover possession of certain ancestral fields, sold during the absence of the defendant, who was united in interest, by his father, to the plaintiff in consideration of money advanced by her out of her stridhan for the purpose of building the family house of which the defendant possessed himself after his father's death, —*Held* that the defendant, by retaining possession of

HINDU LAW—ALIENATION—*continued*

4. ALIENATION BY FATHER—continued.

directed the sale to proceed, referring the claimants to a regular suit *Held* that the purchasers at the

by the Court, and to ...

of the plaintiffs' claim, and subject to the result of their suit. *Held* also that, the property having been attached for the debt of a co-sharer during his lifetime, the sale was good for his share, but that, as it appeared on the evidence in the suit that the debt was one for which, according to Hindu law, the other co sharers could not be made liable, the sale was not good for their shares SURAJ BUNSI KOER *v* SHEO PERSAD SINGH I. L. R., 5 Calc, 148 [4 C. L. R., 226 L. R., 6 I. A, 88

50. ———— *Alienation of joint undivided family property by father—Rights of sons*—*Z*, a member of a joint Hindu family consisting of himself and his sons, in January 1869, in order to raise money to pay off family debts and for family necessities, conveyed a two-anna share out of an eight anna share of a village belonging to the family to *B*, who sued him on such conveyance for possession of the two-anna share, and obtained a decree and possession of such share In June 1879, the sons and the grandson of *Z* sued *B* to recover such share *Held*, with reference to the ruling of the Privy Council in *Suraj Bunsi Koer* v. *Sheo Persad Singh*, *I. L R*, *5 Calc*, *148*, that the suit was not maintainable DARSU PANDEY *v* BIKARMAJIT LAL I. L. R., 3 All., 125

51. ———— *Minor sons—Adult sons—Necessity for alienation*—*A*, the father and managing member of a Hindu family subject to ... law, executed bonds mortgaging a por

an adult and the other a minor The mortgagee instituted suits on the bonds, making *A* only a defendant, and in execution of decrees obtained by him in those suits, four portions of ancestral property were attached and sold by the Court, the sale certi

necessity was proved, only the right, title, and interest of *A* passed by the sale, although the loans might have been applied by him to immoral purposes, and the sons might, if properly proceeded against, have been bound to pay *A*'s debt. As against the adult son, only the right, title, and interest of *A* would

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—continued

pass unless necessity were shown *Quære*—Whether, even if necessity were proved, the interests of adult members of the family could be affected without their consent Where, upon a sale under a decree

Lall v *Kantoo Lall*, *14 B L. R*, *187*, *Suraj Bunsi Koer* v. *Sheo Persad Singh*, *I L R*, *5 Calc*, *148*, and *Deendyal Lall* v *Jugdeep Narain Singh*, *I L R*, *3 Calc*, *198*, enunciated and discussed. PURSID NARAIN SINGH *v* HONOOMAN SAHAY [I. L. R., 5 Calc., 845: 5 C. L. R., 576

52 ———— *Joint Hindu family—Joint family property—Joint family debt—Execution of decree against father—Rights of sons*—*R*, a Hindu father, gave certain persons a bond in which he hypothecated the joint undivided property of his family. Such persons obtained a decree against *R* on such bond, in the execution of which "such rights and interests only as *R* had as a Hindu father in a joint undivided family" were put up for sale *Held* that, although *R* might have as a Hindu father a power of dealing with the interests of his sons, that circumstance would not make such interests his own, so as to pass them by a sale which affected his own interests only, and the auction-purchasers could be held only to have purchased his interests NANHAK JOTI *v* JAIMANGAL CHAUBEY [I. L. R, 3 All., 294

53. ———— *Joint Hindu family—Joint family debt—Sale of joint family property in execution of decree*—When a member of a joint Hindu family is sued for a family debt, it may be assumed that he is sued for the same as the representative of the family, and when the decree in such a suit is substantially one in respect of the family debt and against the representative of the

for the repayment of such money, and in a suit to recover such money by the sale of such property

to these facts, it was reasonable to hold that the father was sued as the representative of the family, and such decree was made against him in that capacity, and was so executed against him, and consequently his sons were not entitled to recover their legal shares of such properties from the auction purchaser *Bissessur Lall Sahoo* v *Luchmessur Singh*, ... *Deendyal Lal* v. ... *Calc*, *198*, dis... ...hat the father ... it, and the sons not having been parties thereto either personally or by

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

47. ——— *Necessity—Minor sons—Debt contracted to enable father to earn a maintenance.*—The expression "family necessity," justifying the sale of ancestral property, must be construed reasonably, and the head of the family and those dealing with him must be supported in transactions which, though in themselves diminishing the estate, yet prevent or tend to prevent still greater losses. A reasonable latitude must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so far as to free the persons dealing with him from the need of all precautions where a minor son has an interest in the property. The fact that a mortgage or a bond, to pay off which ancestral property is sold, had some time to run is not a sufficient reason to disprove an otherwise apparent family necessity. The Hindu law recognizes a debt contracted by the father of a family to enable him to earn a maintenance as one contracted under pressure of a family necessity. BABAJI MAHADAJI *v.* KRISHNAJI DEVJI . . **I. L. R., 2 Bom., 666**

48. ——— *Impartible zamindari—Self-acquired property—Zamindari inherited from maternal grandfather.*—The course of decisions in the Madras Presidency from 1818 has been to recognize equal ownership by the son in the grandfather's estate, though it may not be divided between the father and the son, and to uphold the father's alienation only to the extent of his share. *Semble*—The decision in *Gridharee Lall's case, 14 B. L. R., 187*, was not intended to vary the courses of decisions in this presidency. *Semble*—The doctrine of the pious duty of the son to pay his father's debts does not apply in the case of an impartible zamindari, where the son is not able to protect his interest as in the case of ordinary property by electing a division. MUTTAYAN CHETTI *v.* ZAMINDAR OF SIVAGIRI **[I. L. R., 3 Mad., 370**

But,—*Held* on appeal to the Privy Council, which reversed the decision of the High Court, that the estate which a son takes by heritage from his father constitutes assets by descent for the payment of his father's debt not incurred for any immoral or vicious purpose. This estate may be attached and sold in execution of a decree upon such a debt, and that it is an impartible zamindari does not alter the case. The principle that the ancestral property, in which the son acquires an interest by birth, is liable for the father's debt, unless within the above exception, holds good by the Mitakshara law as administered in Madras as well as in Bombay and Bengal. *Gridhari Lall* v. *Kantoo Lall, 14 B. L. R., 187: L. R., 1 I. A., 321,* referred to and followed. Part of an impartible zamindari inherited from a maternal grandfather was hypothecated by the zamindar as security for a debt not within the above exception. *Held* that all the right, title, and interest which had come to his son by heritage from the indebted zamindar, as well in the hypothecated part as in the rest of the zamindari, were liable, so far as they had not been administered in payment of the father's debt, to be attached and sold in execution of a decree against the father, based on his admission of the debt. A zamindari inherited from a maternal grandfather is not "self-acquired" property. *Quære*—Whether the zamindar, having inherited from his maternal grandfather, was under the same restriction, in reference to alienation as against the son, as he would have been if the property had come through the male line. MUTTAYAN CHETTI *v.* SANGLI VIRA PANDIA CHINNATAMBIAR . **I. L. R., 6 Mad., 1 [L. R., 9 I. A., 128: 12 C. L. R., 169**

49. ——— *Ancestral property—Son's share—Rights of co-parceners—Purchaser, Right of.*—Under the law of the Mitakshara, each son upon his birth takes a share equal to that of his father in ancestral immoveable estate, and can compel his father to make partition of such estate. The rights of the co-parceners in a joint Hindu family consisting of a father and his sons do not differ from those of the co-parceners in a like family consisting of undivided brethren, except in so far as the sons are affected by the obligation of the Hindu law to pay their father's debts, and by the fact that he is naturally the manager of the joint family estate. It is settled law in the Madras Presidency that one co-parcener may dispose of ancestral undivided estate to the extent of his own share, even by private conveyance, whether for value or by gift. In the Bombay Presidency, unauthorized alienations, voluntarily made by one co-parcener, are good, even for his own share, only when made for value. In Bengal, the law which prevails in the other Presidencies as to alienation by private deed has not yet been adopted, but it is now settled that the purchaser of undivided property, sold in execution of a decree during the life of the debtor for his separate debt, acquires the debtor's interest in such property, with the power of ascertaining and realizing it by partition. Under the Hindu law, subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of sons for the debts of their father. Accordingly, where ancestral property has passed out of the family either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were of a kind for which they would not have been liable, and that the purchasers had notice to that effect; and a purchaser at an execution-sale, being a stranger to the suit without such notice, is not bound to make enquiry beyond what appears on the surface of the proceedings. In a suit by the members of an undivided Hindu family governed by the law of the Mitakshara to set aside a sale of joint ancestral property which had been sold in execution of a decree obtained against their deceased father, on the ground that the debt was not one for which such property could be made liable, it appeared that prior to the sale the plaintiffs had preferred a claim of objection thereto on the same grounds, and that the Court of execution had declined to adjudicate the claim, and had

HINDU LAW—ALIENATION—*continued.*

4 ALIENATION BY FATHER—*continued.*

MUNBASI KOOER v NOWRUTTUN KOOER [8 C. L. R., 428

58. ———— *Son's interest in the ancestral estate* —The interest which a son by birth acquires in the ancestral estate of his father under the Mitakshara law does not entitle him to claim exemption from all debts contracted by the father subsequent to his birth Such exemption can only be claimed when the debts are of an illegal nature, or have been contracted for immoral purposes An alienation made by the father by way of

in paras 28 and 29, s 1, Ch I of the Mitakshara MUDDUN GOPAL LALL v GOWRUNBUTTY GIRDHARI LALL SAHOO v. GOWRUNBUTTY POOSUN LALL SAHOO v GOWRUNBUTTY [15 B. L R, 264: 23 W. R., 365

59. ———— *Suit on promissory note given by father for family purposes* —*Per* INNES, J —*Semble*—A suit on a promissory note made by a Hindu father would lie against sons joined in the suit with the father as defendants on an allegation that the debt was incurred for proper family purposes. RAMASAMI MUDALIAR v SELLATAMMAL . . I. L. R., 4 Mad, 375

60 ———— *Nature of debts.* —In a suit to set aside a sale of ancestral property in which it was contended, *firstly*, that the debt in satisfaction of which the sale had taken place was contracted for an immoral purpose, *secondly*, that a debt might be immoral either in respect of the object for which it was contracted or in respect of the means by which the money was obtained, and, *thirdly*,

passed in the sale WAJID HOSSEIN v NANKOO SINGH . . . 25 W. R., 311

61. ———— *Right of son to set aside alienation—Immorality* —Following a ruling of the Privy Council, *Gridharee Lall* v

decree. Where this is done, the heirs of the deceased judgment-debtor are not entitled to come in and set aside the proceedings and recover the property. A son's freedom from obligation to discharge his father's debt has respect to the nature of the debt, and not to the nature of the property, whether ancestral or acquired. If the debt of the father had been contracted for any immoral purpose, the son might not be under any pious obligation to pay it. Attending nautches, and occasionally giving nautches at one's own expense cannot be considered immorality absolving from such obligation BUDREE LALL v KANTEE LALL . . 23 W. R., 260

62. ———— *Mitakshara law —Son's interest in ancestral estate—Burden of proof* —In a suit by a son to set aside an alienation

there was no legal necessity for effecting it The suit was brought seven or eight years after the plaintiff attained his majority *Held* that, notwithstanding the partition by the plaintiff's father, the property was ancestral property in which the plaintiff at his birth acquired an interest *Held* also, reversing the decision of the Courts below, that the question to be tried in the suit was, according to the decision of the Privy Council in *Gridharee Lall* v. *Kantoo Lall, 14 B L R, 187*, not whether there was any legal necessity for the alienation, but whether the debt of the father, in satisfaction of which the alienation was made, was incurred for an immoral purpose, and that, under the circumstances, the onus was on the plaintiff to show that it was.

debts of the ... it immoral? ... RAIR KUR [I. L. R., 3 Calc., 1

63. ———— *Sale in execution of personal decree, of decree to enforce mortgage against father—Son's right to set aside sale.* —*R*, the father of an undivided Hindu family, borrowed R700 from *P* in 1867, and executed a mortgage bond hypothecating family property to secure the debt In suit No 193 of 1870 *P* recovered

P intervened, and was made a party In 1877 *P* took out execution of his decree, and the mortgaged property was brought to sale and purchased by *P*

held that *P* only acquired by his purchase the father's share in the land under the authority of

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

a formally constituted representative, and such decree being against the father alone, the rights and interest of the sons in the family properties were not affected by the sale of such properties in execution of such decree, and the sons were entitled to recover their legal shares of such properties from the auction-purchaser. *Deendyal Lal* v. *Jugdeep Narain Singh* followed. RAM NARAIN LAL v. BHAWANI PRASAD

[I. L. R., 3 All., 443

54. ——————— *Joint Hindu family—Debts contracted by father as manager of family business—Sale of ancestral property in execution of decree against father—Son's share.*—*N*, a member of a joint Hindu family, consisting of himself, his wife, and his minor son, *L*, managed the joint family business, which was carried on under the style of "Atma Ram Anokhe Lal." As manager of such business, he contracted certain debts, for which he was sued as the "proprietor" of the firm of "Atma Ram Anokhe Lal," and for which decrees were passed against him in execution of which ancestral property of the family was sold. *L*, his minor son, sued to have such sale set aside and to recover his share of such property on the ground that such decrees had been passed against his father personally and only his interests in such property passed by such sale. *Held* that, looking at the capacity in which *N* was sued and the nature of the debts for which such decrees were given, such decrees must be taken to have been passed against *N* as the managing head of the family, and *L* was therefore not entitled to recover his share of such property. PHUL CHAND v. LACHMI CHAND I. L. R., 4 All., 486

55. ——————— *Mitakshara law—Ancestral property—Sale of joint family property—Debts legally contracted by father—Sale in execution of decree.*—There is no foundation either in the Mitakshara law itself or in any decisions passed by the Judicial Committee for the broad proposition that in all cases under a sale in execution of a money-decree against the father in a joint family, consisting of a father and sons, whether adults or minors, nothing but the father's share passes. The result of an examination of the leading cases on the subject is, that in each such case the question as to what was sold in execution must be first determined (the mere circumstance that a decree was obtained against the father alone is not conclusive upon the point); and it should further be enquired whether the father was sued in his representative capacity or not, and if not so sued, then whether the sons are entitled to set aside the sale *qua* their shares. The decision of the Privy Council in *Deen Dyal Lall* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198*, in no way conflicts with the principle laid down in the case of *Muddun Thakoor* v. *Kantoo Lall, 14 B. L. R., 187.* UMBICA PROSAD TEWARY v. RAM SAHAY LALL

[I. L. R., 8 Calc., 898: 10 C. L. R., 505

56. ——————— *Ancestral property—Father and son—Right of father to alienate for debts—Insolvency of father—Vesting order—Insolvent Act, 11 & 12 Vict., s. 7—Death of insolvent—Subsequent sale by Official Assignee—Title of purchaser—Rights of son.*—A father and son were possessed of immoveable ancestral property consisting of certain houses. The father, becoming insolvent, took the benefit of the Insolvent Act; and the usual vesting order, under s. 7 of the Insolvent Act, 11 & 12 Vict., c. 21, was thereupon made. Shortly afterwards the father died, and soon after his death the Official Assignee sold the houses in question to the defendant in order to raise money to pay off the deceased insolvent's debts. The son now brought a suit to recover the whole or a portion of the said houses, contesting the right of the Official Assignee to convey any interest, or at least his interest in the said houses, to the purchaser. *Held* that the sale was valid, and conveyed to the purchaser the interest of the plaintiff as well as that of his deceased father. Under the Mitakshara law, a father has the right to dispose of his son's interest in ancestral immoveable estate for the payment of his own debts not contracted for immoral purposes; and a vesting order made under s. 7 of the Insolvent Act vests that right in the Official Assignee, who can therefore give a good and complete title to such ancestral immoveable estate to a purchaser. The death of the insolvent had no effect on the proceedings in his insolvency or on the power of the Official Assignee. The ancestral estate previously vested in the Official Assignee was not therefore divested from him, and vested in the son by right of survivorship. *Semble*—In the event of the father's estate producing a surplus over and above the amount required to satisfy his debts, such surplus might be made available to answer the claims of the son in respect of his interest in ancestral immoveable property sold in the realization of the father's estate. FAKIRCHAND MOTICHAND v. MOTICHAND HURRUCKCHAND . . . I. L. R., 7 Bom., 438

57. ——————— *Mithila law—Son's interest in ancestral estate.*—Ancestral property which descends to a father under the Mithila law is not exempted from liability to pay his debts because a son is born to him. Such exemption can only be pleaded when the nature of the debts incurred by the father is such as would free the son from the usual obligation of discharging his father's debts out of the ancestral estate. A decree properly obtained against the father can be executed by sale of such ancestral estate, and the interests of the sons as well as of the father will be bound by it. A purchaser at such sale is not bound to enquire into the circumstances under which the decree was made. GIRDHAREE LALL v. KANTOO LALL. MUDDUN THAKOOR v. KANTOO LALL . . . 14 B. L. R., 187

[22 W. R., 56: L. R., 1 I. A., 321

Reversing the decision of the High Court in KANTOO LALL v. GIRDHAREE LALL . 9 W. R., 469

ANOORAGEE KOOER v. BHUGOBUTTY KOOER. SHAM SOONDER KOOER v. JUMNA KOOER

[25 W. R., 148

RAM SAHOY SINGH v. MOHABEER PERSHAD. KESHO LALL v. MOHABEER PERSHAD

[25 W. R., 185

HINDU LAW—ALIENATION—*continued*

4. ALIENATION BY FATHER—*continued.*

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before *Girdharee Lall's case* in which the son's obligation was not treated as a mere moral duty But, granting that the judgment may be enforced as a legal obligation, it would be a good defence under the ancient Hindu law for the son to plead that the obligation could not arise in his father's lifetime to pay a debt contracted by the father for his own purposes The decision in *Girdharee Lall's case* ought not to be followed in this Presidency—(1) because of the peculiar view which has prevailed, as to the nature of the pious obligation, for more than forty years, (2) because of the doctrine of alienability of undivided interest which has been generally recognized as a matter of equity for more than sixty years, and as a matter of right for upwards of twenty years, (3) because the son's right of interdiction and power to defraud creditors, provided by the Mitakshara, have been taken away by recognizing that an undivided interest is on the footing of the co-parcener's separate property for the

against a Hindu father by his creditors, there is nothing special to warrant a fictitious extension of the parties There is no legal basis for any distinction between a decree in which there is a direction for the sale of mortgaged property and a simple money decree. The interest that passes by a Court sale must be determined with reference to the decree that led to it, and cannot be determined by a future inquiry as to the character of the debt. The son's interest does not pass by reason of the direction for the sale of the mortgaged property. *Per* KERNAN, *J*—A sale or mortgage by a father alone of ancestral property, after the birth of a son, for the purpose of raising money, not for family necessity or benefit, but to pay a debt incurred by the father, not for immoral consideration, binds the son and his interest at birth, and from this it necessarily follows that the obligation of the son arises and may be made effectual against the son in the lifetime of the father. *Per* KINDERSLEY, *J.*—The obligation of the son to pay his father's debt is a part of the law of inheritance, not of contract. According to the true doctrine of the Hindu law, the obligation of the son to pay his father's debt does not arise until the father's death. It is the duty of the father to pay his own separate debts, but the decision in *Girdharee Lall's case* goes further, and rules that even in the undivided father's lifetime, when there has been

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued*

a decree against the father for debts which were neither immoral nor illegal, and ancestral immoveable property has been sold in execution of such decree

PAPPUVAYYANGAR . . I. L. R., 4 Mad., 1

64. ———— *Alienation for family purposes—Sale in execution of decree against father—Suit by son to set aside sale*—When a mortgage debt has been contracted for family purposes by the father, and a decree passed against him and family property sold in satisfaction of the decree, the son cannot sue for his share of the property sold on the ground that he was no party to the suit The ruling in *Girdharee Lall* v *Kantoo Lall, 14 B L R, 187*, affirmed in *Suraj Bunsi Koer* v. *Sheo Prasad Singh, I L R, 5 Calc, 148*, must be followed in accordance with the decision in the Full Bench ruling in *Ponnappa Pillai* v *Pappuvayyangar, I L R, 4 Mad, 1.* SUNDRARAJA AYYANGAR *v.* JAGANADA PILLAI

[I. L. R., 4 Mad., 111

65. ———— *Sale in execu-*

decree against the father under such circumstances is protected against the suit of the sons seeking to set aside all that has been done under the decree and execution, and to recover back the estate as part of ancestral property *Girdharee Lall* v. *Kantoo Lall, 14 B. L R, 187*, followed. SIVASANKARA MUDALI *v.* PARVATI ANNI . I. L. R., 4 Mad., 96

66 ———— *Sale of family property by father—Right of son to set aside sale*—In the Madras Presidency a sale of ancestral land by an undivided Hindu father to procure funds for the satisfaction of debts incurred by himself must be sustained as against the sons on the authority of the decision of the Judicial Committee of the Privy Council in *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R, 187*, but when the sale is also disputed by a (minor) co-parcener not a son, but a nephew (the sale-deed having been executed by his uncle and his mother as *de facto* guardians), the ruling in *Girdharee Lall's case* is not applicable, and the purchaser must show, in addition to the fact that the debts existed at the time of the sale, that the debts were such as it was incumbent on the minor to discharge GANGULU v ANCHA BAPULU . I. L. R., 4 Mad., 73

Deendyal Lall's case, I. L. R., 3 Calc., 198, or by the Subordinate Judge, who held, on the authority of *Girdharee Lall's case, 14 B. L. R., 187,* that the plaintiff's claim against *P* was invalid, considering the decree against the father sufficient evidence of the debt. *R* also borrowed R450 from *A*, and in 1872 executed a mortgage-bond hypothecating other family lands to him as security. In 1876 *A* brought a suit (No. 35) against *R* to recover the amount due on the bond from *R* personally and by sale of the mortgaged land, and in 1877 the mortgaged lands were sold in execution of the decree and a certificate issued, in the same form as in *P*'s suit, to *A*. *A* also intervened in the partition suit, and was made a party. The amount due by *R* to *A*, secured by the mortgage, was not disputed, nor was it alleged that the debt was contracted for immoral purposes. The lower Courts decided the plaintiff's claim against *A* in the same way as his claim against *P*. *Held* (INNES and MUTTUSAMI AYYAR, *JJ.*, dissenting) that the decision of the Privy Council in the case of *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R., 187,* is binding on and must be followed by the Courts in this Presidency, and that the liability of a son to discharge his father's debts is commensurate with the whole interest the son takes in the ancestral as well as in the self-acquired property of his father. *Held* also that it was necessary to determine whether the amount alleged by *P* remained due on the bond of 1876, because, if it was established by the plaintiff that the debt was substantially less than it was asserted to be, the plaintiff might have a claim to equitable relief, inasmuch as the decree-holder brought the land to sale after the institution of the partition suit. *Held*, lastly, that if the sale to *A* was made in execution of so much of the decree as was purely personal, the plaintiff's claim was properly dismissed as against *A*, but if the sale was made in execution of the order for the enforcement of the mortgage, it could not bind the plaintiff, inasmuch as it was the duty of the mortgagee to make plaintiff a party to suit No. 35 and afford him an opportunity of redemption, but that, if the sale was set aside, the plaintiff could not claim to be placed in a better position than he would have occupied had the sale not taken place, and that, as his interest was bound by the mortgage, he would hold that interest subject to a proportionate part of the mortgage-debt. *Per* TURNER, *C.J.*—The obligation under the ancient Hindu law of the son and grandson to discharge the debt of the father and grandfather has been preserved, while the power of the father to deal with ancestral immoveable property has been curtailed. A personal obligation arising from the filial relation and independent of assets exists as well as an obligation attaching to the heritage in the hands of lineal descendants of the debtor. The question as to the extent of the son's liability is not one of contract, but the duty is an incident of inheritance. Assets available for the payment of a father's debts mean and include the whole estate in which the son by birth acquired rights. The validity of an alienation to a purchaser for consideration in Bombay, as in Madras, did not originate in any local usage, but in an exceptional doctrine established by modern jurisprudence. The duty of the son is incidental to the heritage and subsists from the inception of the son's interest therein. As a father can make a valid alienation of ancestral property so as to bind the son's interest, the law will execute the father's power for the benefit of creditors. There are substantial differences between a sale in execution for a money decree and a sale under a decree ordering a sale to enforce a mortgage. In the former case the Court proposes to sell whatever interest in the property would, under any circumstances, be available to creditors at the date of the attachment; in the latter case, whatever interest the mortgagor was, under any circumstances, competent to create and intended to create at the time of the mortgage. Although a son's interest may pass by a sale in execution of a decree in a suit to which he was no party, yet the son is not concluded by the decree. It is competent to him to contest the sale in subsequent proceedings on any grounds which, had he been a party, he might have advanced to protect his interest. *Per* INNES, *J.*—The question of the extent of the liability of the son is a question of contract and not a question of succession, and to be determined not by Hindu law, but by the statute law or the law of equity and good conscience. Since 1837 the decisions in Madras have determined that the liability of the son exists only to the extent he may have taken assets. According to the Mitakshara, the son has property by birth in the estate of his grandfather, and since 1813 the right to alienate his share without the consent of his co-parceners has been established. The father cannot leave assets in the property of his son. The share of the father in ancestral estate does not accrue to the son by survivorship instead of becoming available as assets, because of the rule of Hindu law which requires the taker of wealth, whether by survivorship or inheritance, to discharge the debts. The decision in *Girdharee Lall's case* cannot alter the law as to rights in property so as to make the son's interest the father's estate. Until the decision in *Girdharee Lall's case,* the son's freedom from liability to pay the father's personal debt in the father's lifetime was universally supposed to exist, and that decision ought not to be followed in the Madras Presidency so far as it lays upon the son the duty of discharging his father's debt in his lifetime, or so far as it limits the son's right to question charges made by the father upon the family property to the case of debts immorally contracted. The rules laid down in *Saravana Tevan* v. *Muttayi Ammal, 6 Mad., 371,* should be followed, and when a decree is against the father for his separate debts, the purchaser of ancestral property under the decree takes at most only the share or interest to which the father was entitled at the date at which the charge was created. *Per* MUTTUSAMI AYYAR, *J.*—The power of a Hindu father to sell ancestral lands is limited. The rights of co-parceners in an undivided Hindu family governed by the Mitakshara, which consists of a father and sons, do not differ from those of co-parceners in a family which consists of undivided brothers, except so far as they are affected by the peculiar obligation which the Hindu law imposes

HINDU LAW—ALIENATION—*continued*

4 ALIENATION BY FATHER—*continued.*

74 ———————— *Son's interest ... ither during* ... the Mitak... joint Hindu ... oveable pro perty during the minority of his sons In a suit by the mortgagee against the father and sons to recover the mortgage debt "by sale of the mortgaged property, and out of other properties, as well as from the person" of the father, —*Held* that it was incumbent upon the plaintiff to show for what purpose the loan was contracted, and that that purpose was one which justified the father ... immoveable property BHEKNARAIN SINGH *v.* JANUK SINGH I. L. R., 2 Calc., 438

75. ———————— *Alienation by father to pay off antecedent debt*—An alienation of ... that the debt was contracted for immoral purposes The case of *Bheknarain Singh* v. *Januk Singh, I. L. R., 2 Calc., 438*, being opposed to the decision of the Privy Council in the case of *Girdharee Lall v Kantoo Lall, L. R., 1 I. A., 321*, as explained by that of *Ram Sahai* v. *Sheo Prosad Singh, I. L. R., 5 Calc., 148 L. R., 6 I. A., 88*, cannot now be followed GUNGA PRASAD *v.* SHEODYAL SINGH [5 C. L. R., 224

76 ———————— The manager of ... on the one hand, that there was legal necessity for raising the money, nor, on the other hand, that the money was raised or expended for improper purposes, or that the lender made any enquiry as to the purpose for which the money was required *Held* that, ... to a decree directing the debt to be raised out of the whole ancestral estate, including the mortgaged property He would, assuming the minor to be the only son, also be entitled to a similar decree against the son after the father's death Supposing the mortgagee, under the above circumstances, to have obtained a decree against the father alone for payment and sale of the property, and at the sale to have himself become the purchaser, he could not be considered a *bonâ fide* purchaser for value, and would not be entitled to the property as against the infant son, except to the extent of the father's interest therein A mortgagee, under the same circumstances (but supposing the son to have attained majority at the time of the loan, and to have been made a party to the suit), would be entitled to a decree directing the debt to be raised out of the whole ancestral estate. In the case of a joint Mitakshara family consisting of two brothers and their two minor sons, the former, being the managers, raised money by executing a zurpeshgi ... property from the zurpeshgidar and continued in possession, and the zurpeshgidar sued for rent and obtained a decree, and in execution became the purchaser and obtained possession It was found as ... not shown for what purpose the money was raised *Held* the minor sons, not having been made parties to the suit by the zurpeshgidar, would be entitled to recover their shares against the purchaser. LUCHMUN DASS *v.* GIRIDHUR CHOWDHRY [I. L. R., 5 Calc., 855: 6 C. L. R., 473

77 ———————— *Mitakshara law* —Under Mitakshara law, according to the rulings of the judicial committee, the payment, even in the father's lifetime, of an antecedent debt due by him is a pious duty on the part of the son, and its discharge is therefore such a necessary purpose as to give validity to a sale or mortgage by the father as against his minor sons Such antecedent debt means a debt antecedent to the transaction, ... property would be bound, notwithstanding v 29, chap I, s 1, and v 10, chap I, s. 11 of the Mitakshara In respect of ancestral property the son is equally liable for his father's debts, if not incurred for immoral purposes, as for his own debts. The interest of an adult son, however, could not ordinarily be affected by a decree against the father alone Where, however, an adult son, although neither an executant of the bond on which the suit was brought nor a party to such suit, yet was shown to be himself liable for a large proportion of the antecedent debt due on the bond, and by his conduct had made it apparent that he approved of and fully acquiesced in the sale of the whole ancestral property, and, moreover, that he allowed the mortgagee to take and remain in possession for upwards of eleven years and to go to expense in paying off encumbrances on the estate, it was, in a suit by the son to recover his share of such ancestral property, held that he was not entitled to succeed. Under the circumstances, the son ought to have been made a party to the suit brought by the mortgagee The principles laid down by the Privy Council and in the Full Bench case of *Luchmun Dass v Giridhur Chowdhry, I. L. R., 5 Calc., 855*, by the High Court, discussed. LALJEE SAHOY *v.* FAKEER CHAND [I. L. R., 6 Calc., 135 7 C. L. R., 97

78 ———————— *Mitakshara law —Mortgage of ancestral estate by father for*

67. ——————— *Alienation for family purposes—Sale in execution of decree against father—Right of son to have sale set aside.*—Where a judgment-creditor of a Hindu father has purchased the right, title, and interest of the judgment-debtor in family land at a Court-sale in execution of his decree and been put in possession of the whole of the land, the son of the judgment-debtor cannot recover his share of the land in a subsequent suit unless he can show that the debt of his father, for which the property was sold, was illegal or immoral. GOPALASAMI PILLAI *v.* CHOKALINGAM PILLAI

[I. L. R., 4 Mad., 320

68. ——————— *Sale of family property in execution of decree.*—*Per* MUTTUSAMI AYYAR, J.—The decision in *Girdharee Lall* v. *Kantoo Lall, L. R., 1 I. A., 321,* does not declare that a Court is to sell the son's property in satisfaction of a decree against the father during the father's life. GURUSAMI CHETTI *v.* SAMURTA CHINNA MANNAR CHETTI. GURUSAMI CHETTI *v.* SADASIVA CHETTI

[I. L. R., 5 Mad., 37

69. ——————— *Right of son to set aside in execution of decree against father.*—The result of the Full Bench decisions in *Ponnappa Pillai* v. *Pappuvayyangar, I. L. R., 4 Mad., 1,* and in *Gangulu* v. *Ancha Bapulu, I. L. R., 4 Mad., 73,* is that where there has been a decree against an undivided Hindu father for debt, and the right, title, and interest of the father in ancestral property has been sold under the decree, and the purchaser has been placed in possession of the entire mass of the property advertised for sale, instead of the mere interest of the judgment-debtor in the property, which was all that was advertised to be sold, a son, desiring to obtain his share of the property (which by an error of execution has thus got into the possession of the purchaser), cannot avail himself of the decision of the Judicial Committee in *Deendyal Lall* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198,* and is not entitled to recover his share unless he can show that the debt for which a decree was obtained against his father alone was an illegal or immoral debt. VELLIYAMMAL *v.* KATHA CHETTI . . . . **I. L. R., 5 Mad., 61**

BEER PERSHAD *v.* DOORGA PERSHAD

[W. R., 1864, 310

70. ——————— *Decree for partition and mesne profits against father—Son's liability, Suit to declare.*—*T,* a member of an undivided Hindu family, sued *K,* the manager, to obtain his share of the family estate without making the sons of *K* parties to the suit. *K* offered to abide by the oath of *T,* and a decree was passed in *T*'s favour declaring him entitled to a one-sixth share of the land, jewels, and money, and to mesne profits and interest. In execution of this decree, *T* attached lands belonging to *K* and his sons who had remained in union. The attachment was raised on the intervention of the sons of *K.* *Held,* in a suit to declare the shares of the sons of *K* liable for the decree against *K,* that the rule in *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R., 187 : L. R., 1 I. A., 321,* was not applicable, and that the suit would not lie. TIMMAPPAYA *v.* LAKSHMINARAYANA . . **I. L. R., 6 Mad., 284**

71. ——————— *Mortgage by father—Son's rights—Burden of proof.*—In a suit by a Hindu against his two brothers to recover his one-third share of the family estate, a mortgagee, who was in possession of a portion of the estate under a mortgage executed by the deceased father of the family, was made a party to the suit. It was not proved that the mortgage-debt was incurred for the benefit of the family, nor was it proved that it was incurred for immoral or illegal purposes by the father. *Held* that the mortgage was only binding on the father's one-fourth share, and that the plaintiff was entitled to recover one-fourth of the property mortgaged from the mortgagee. YENAMANDRA SITARAM ASAMI *v.* MIDATANA SANYASI

[I. L. R., 6 Mad., 400

72. ——————— *Burden of proof.*—Where the holder of a decree against the father of an undivided Hindu family, obtained upon a bond whereby certain land was hypothecated as security for a debt, attached the land hypothecated and other land belonging to the family, and the attachment was raised on the intervention of the sons of the defendant to the extent of their shares in the land, and the decree-holder then brought a suit to have it declared that the shares of the sons were liable to be sold for the father's debt,—*Held* that, the decree-holder having failed to prove that the debt for which he had attached the family property was incurred for the benefit of the family, the suit must be dismissed. ARUNACHALA *v.* MUNISAMI

[I. L. R., 7 Mad., 39

73. ——————— *Debt properly contracted—Usurious rate of interest—Purchaser at execution sale of joint family property.*—In a suit by a Hindu subject to the Mitakshara law, against certain auction-purchasers at a sale in execution of a decree against the father, to recover a portion of the ancestral estate by cancellation of the sale, it appeared that the property which was mortgaged by the bond upon which the decree was passed was not put up for sale. The decree provided "that the plaintiff recover the amount with costs and interest, and that the decree be executed against the property specified in the bond," and it also allowed interest at about 50 per cent., the rate in the bond, to the decree-holders. It was contended on behalf of the plaintiff that, upon a proper construction of the Privy Council ruling in *Muddun Thakoor* v. *Kantoo Lall, 14 B. L. R., 187,* the decree under which the property had been sold was an improper one. *Held* that, under the Privy Council ruling, the purchaser is not bound to look beyond the decree. *Held* also that an usurious rate of interest cannot be treated, within the principles of the above case, as showing that the decree was for a debt which the son was not bound to discharge. LUCHMI DAI KOORI *v.* ASMAN SING

[I. L. R., 2 Calc., 213 : 25 W. R., 421

lawful debts—Sale of the whole joint estate in

debt had been incurred for lawful purposes, proceeded to execute his decree by attaching and selling the

of the joint family property. *Held* also that the ruling in the case of *Deendyal Lal* v *Jugdeep Narain Singh, I. L R, 3 Calc, 198,* had no application to the facts of this case RAMDUT SINGH v. MAHENDER PRASAD I L. R, 9 Calc., 452
[12 C. L. R., 47

83. ——— *Sale by one of several co-sharers in a joint estate—How far alienation by father of joint family property is binding on sons—Antecedent debts*—Although no

was made for the payment of antecedent debts, and not merely in consideration of a loan or of a payment made to the father on the occasion of his making the alienation. In the case of a voluntary sale, the purchase-money does not constitute an antecedent debt such as to render that sale binding on the sons, unless they prove the transaction to have been immoral HANUMAN KAMAT v. DOWLUT MUNDAR
[I. L. R., 10 Calc, 528

84. ——— *Right of father to alienate—Suit by sons to set aside alienation.*—A Hindu governed by Mitakshara law devised an 8 annas 11½ gundas share of his ancestral estate to his son *A*, and the remainder to another son *A*, subsequently becoming much involved, borrowed R45 000 on a usufructuary mortgage by two deeds in favour of *C* and *D* respectively, the transaction being one and the same and the money borrowed being to pay off antecedent debts. The mortgagees, having been ejected, brought a suit to recover possession with mesne profits and obtained a decree against *A*, in execution of which "the 8 annas 11½ gundas share of the judgment-debtor" was attached and sold and purchased by the defendant, who was put in possession

to dispose of it without the consent of the grandsons *Muddun Gopal Thakoor* v *Ram Buksh Pandey, 6 W. R, 71,* followed HARDAI NARAIN v. HARUCK DHARI SINGH 12 C. L. R., 104

85. ——— *Mitakshara—Suit by sons to set aside alienation by father—Necessity—Debt due by father—Purchase-money treated as debt due by father—Refund of whole*

debts contracted by his father, unless he can show

DAS . I. L. R., 11 Calc, 396

86. ——— *Ancestral estate—Son's interest in Mitakshara law*—Under the Mitakshara and Mayukha, the son takes a vested interest in ancestral estate at his birth. But that interest is subject to the liability of that estate for the debts of his father and grandfather. The ancestral property of a Hindu father may be sold either by himself or by a Civil Court having jurisdiction in satisfaction of his debts not contracted for illegal or immoral purposes, and such sale will bind sons in esse at the time of the sale. *Girdharee Lall* v.

family purposes—Attachment of property in execution of decree—Death of judgment-debtor prior to sale.—Where a decree on a mortgage was obtained against the father of a joint Hindu family governed by the Mitakshara law, the debt having been incurred for joint family purposes, and in execution thereof the joint family property was attached, but prior to sale the judgment-debtor died; in a suit subsequently brought by the other members of the joint family, praying for a partition of their shares, and for a declaration that such shares were not liable to be sold in execution of the mortgage-decree,—*Held* that there could not be a partition as between a person already dead and his sons, and that the whole of the ancestral property was liable for the mortgage-debt, the only declaration to which the plaintiffs could be entitled being that they were not liable to pay the debt. GOBURDHUN LALL *v.* SINGESSUR DUTT KOER

[I. L. R., 7 Calc., 52 : 8 C. L. R., 277

79. ———————— *Mitakshara law —Ancestral property—Right of mortgagee to sell.*—A Hindu governed by the Mitakshara law mortgaged certain property to the plaintiffs. In a suit to recover the money due under the mortgage, and for a sale of the property brought against the mortgagor, his four sons, and the purchaser of the mortgagor's right and interest at an execution-sale, the lower Court gave the plaintiffs a decree against the mortgagor alone, holding that no necessity for the loan had been proved, but did not decide whether the property was the self-acquired property of the mortgagor or ancestral property. The High Court remanded the case for the trial of an issue upon this point. The lower Court found that the property was ancestral, and affirmed the original decree. *Held* that, assuming the property in dispute was ancestral, and that the mortgage was not valid against the sons, the plaintiffs were still entitled to recover the debt by the sale of the property of the father and the sons, because, supposing that the debt was contracted for personal purposes of the father, still the ancestral property in the hands of the sons was liable for the debt, it being not proved to have been contracted for immoral purposes. *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R., 5 Calc., 855,* followed. GUNGA PROSAD *v.* AJUDHYA PERSHAD SINGH

[I. L. R., 8 Calc., 131
9 C. L. R., 417

80. ———————— *Sale or mortgage of joint family property—Suit by son to recover possession of share—Limitation—Parties—Right of purchaser at execution-sale.*—A suit by a Hindu governed by the Mitakshara law, to recover possession of property sold during his minority by his father, is within time if brought within three years after he attains the age of twenty-one. A father governed by the Mitakshara law may alienate the family property to discharge debts incurred by him for purposes not illegal or immoral. If the son seeks to set aside such alienation as to his own interest, he will have to show that the purposes of the alienation were illegal or immoral. If the son, being adult, has joined in the conveyance or led the alienee by his conduct to suppose that he assented to the alienation, he will be estopped from disputing its validity. These propositions apply to a mortgage, so as to place the purchaser at an execution-sale under a decree upon a mortgage-bond in the position of an alienee by private sale. If the son has been a party to the suit in which the decree upon the mortgage-bond was obtained, he is concluded; but if he has not been a party to the suit, he is not concluded, but must show that the original debt was contracted for illegal or immoral purposes, in order to recover his share of the property from the purchaser. Where the father has neither aliened nor mortgaged the family property, but it is sought by suit to make that property liable to satisfy a debt incurred by the father, the son as well as the father must be a party to the suit. When the creditor sues the father alone for a debt contracted by him alone, and in execution sells the right, title, and interest of the father only, the purchaser at this sale does not take the son's interest. RAMPHUL SINGH *v.* DEGNARAIN SINGH

[I. L. R., 8 Calc., 517 : 10 C. L. R., 489

81. ———————— *Joint family—Sale in execution of money-decree against father of Mitakshara family.*—The mere fact of a decree being passed against the father only of a joint family governed by the Mitakshara law will not lead necessarily to the conclusion that what was sold in execution of that decree is only the father's interest in the joint family property. Notwithstanding the decree being against the father only under certain circumstances, there may be a valid sale of a joint property belonging to the family in execution thereof. In execution of two money-decrees against *A* alone, the right, title, and interest of *A* in certain joint family property was sold, and the entire share of the joint family was taken possession of by the auction-purchasers. In a suit by the minor son and the wife of *A*, who with *A* constituted a joint family governed by the Mitakshara law, to recover possession of their shares in the property sold,—*Held* that, although the plaintiffs were not parties to the decrees in execution of which the sales took place, the mere fact of *A* being sued alone was not sufficient to justify the finding that only his right, title, and interest passed under the sales; and that, as the facts of the case showed that the decrees were passed with reference to transactions which clearly concerned the joint family, the whole of the share of the joint family in the properties sold passed to the auction-purchaser; the plaintiffs having failed to show that the debts, which were the foundation of the decrees in the execution of which the sales were held, were contracted for immoral purposes. *Umbica Prosad Tewary* v. *Ram Sahay Lall, I. L. R., 8 Calc., 898,* and *Ponnappa Pillai* v. *Pappuayyangar, I. L. R., 4 Mad., 1,* followed. *Ramphul Singh* v. *Degnarain Singh, I. L. R., 8 Calc., 517,* dissented from. SHEO PROSHAD *v.* JUNG BAHADOOR

[I. L. R., 9 Calc., 389 : 12 C. L. R., 494

82. ———————— *Mitakshara law —Decree against the father of a joint family for*

HINDU LAW—ALIENATION—*continued.*

4 ALIENATION BY FATHER—*continued*

the purchaser at the execution sale (the plaintiff) was the mortgagee's son the question arose whether he could be held to be a stranger to his father's suit on

on it, of their redeeming the whole of the house Unless the mortgage-deed expressly provided for the redemption of the son's interests on payment of a

the father's share, does not apply TRIMBAK BALKRISHNA *v.* NARAYAN DAMOODAR

[I. L. R., 8 Bom., 481

90 ——————— *Mitakshara law*

joint Hindu family, consisting of a father and his sons, while in the possession and management of the father, was mortgaged by him, with the knowledge of the sons, as security for the repayment of moneys borrowed and lent for the use and benefit of the family. The lender of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale, and sought to bring the family estate to sale in the execution of this decree *Held*, in a suit by one of the

cution of it, but such suit and decree must be regarded as against the father as representing the joint family, and the whole of the family estate was saleable in execution of such decree *Bissessur Lal Sahoo v. Luchmessur Singh, L R, 6 I A, 233*, followed *Deendyal Lal v. Jugdeep Narain Singh, I L R, 3 Calc, 198*, distinguished. DEVA SINGH *v.* RAM MANOHAR

I. L. R., 2 All., 746

91. ——— ——————— *Mitakshara law*

sons, while in the possession and management of the father, was mortgaged by him as security for the repayment of moneys borrowed by him. The lender

HINDU LAW—ALIENATION—*continued.*

4 ALIENATION BY FATHER—*continued.*

of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale The right, title and interest of the father only in the family estate was sold in the execution of this decree The auction-

shares of the estate, inasmuch as the auction-purchasers had only acquired by their auction-purchase the rights and interests of the father in the estate, and that for the same reason it was unnecessary to enquire into the nature of the debt on account of which the father's rights and interests in the estate were sold *Deendyal Lal v. Jugdeep Narain Singh, I L R, 3 Calc., 198*, followed *Girdharee Lal v. Kantoo Lal, 14 B L. R, 187*, distinguished. *Held* also that the rulings in those two cases are perfectly consistent. BIKA SINGH *v.* LACHMAN SINGH

[I. L. R., 2 All., 800

92. ——————— *Joint Hindu family property—Alienation by father—Son's rights.*—*G*, a member of a joint undivided Hindu family consisting of himself and his sons, having wrongfully converted to his own use the property of another person, such person sued him for damages for such conversion and obtained a decree, in the execution of which *G*'s rights and interests in the family property were put up for sale and purchased by *C*, who, in execution of such decree, took possession of such property *G*'s sons thereupon sued *C* to recover their shares, according to Hindu law, of such property *Held per* OLDFIELD, *J*, that although the father's debt was not one which the sons were in duty bound to pay, it might be that, had the family estate passed out of the family under the execution sale, the sons could not have recovered it from *C*, who was an auction-purchaser and a stranger to the suit against the father Inasmuch as, however, the claim in that suit was not for a joint family debt, but a personal claim against the father, who was alone represented in that suit, and the decree in that suit was against him personally, and it was only his rights and interests that were put up for sale and purchased by *C*, the sons were entitled to recover from *C* their shares of the family property *Suraj Bunsi Koer v. Sheo Persad Singh, I L R, 5 Calc, 148*, distinguished. *Per* STRAIGHT, *J*, that the sons were entitled to recover their shares of the family property, the decree being purely a personal decree against the father, and his rights and interests only in such property having been put up for sale and purchased by *C* CHANDRA SEN *v.* GANGA RAM

[I. L. R, 2 All., 899

93. ——————— *Mitakshara law—Mortgage of joint ancestral property by father*—

Kantoo Lall and *Muddun Thakoor* v. *Kantoo Lall, L. R., 1 I. A., 321 : 14 B. L. R., 187 : 22 W. R., 56,* followed. NARAYANACHARYA *v.* NARSO KRISHNA [I. L. R., 1 Bom., 262

KOOLDEEP KOOER *v.* RUNJEET SINGH [24 W. R., 231

87. ———————— *Sale of ancestral property by father for debts incurred for immoral purposes—Son's interest in ancestral estate.*—The plaintiffs (two of whom were minors) sued to set aside the sale and recover possession of certain ancestral lands on the ground that they had been sold by their father to pay off debts contracted for immoral purposes. The documentary evidence in the case showed that the lands had been originally mortgaged by the grandfather and father of the plaintiffs to the father of the defendant for R1,600; that they had subsequently taken from him other loans which, together with the mortgage-debt, amounted to R4,400-15-0; that on the 23rd May 1858 an agreement (exhibit No. 38) was made between the plaintiffs' father and the father of the defendant by which the former was to sell the equity of redemption in the mortgaged property to the latter in consideration of the latter realizing the former from the said debt of R4,400-15-0 and paying him the sum of R235; that accordingly on the 25th May 1858 the plaintiff's father conveyed the property to the defendant's father for R235 by a deed of sale (exhibit 17), which, however, did not refer either to the agreement (exhibit 38) or to the debts for R4,400-15-0. There was no allegation or evidence in the case showing that the plaintiffs' grandfather had contracted the debt of R4,400-15-0 for any immoral purposes, nor that their father applied the sum of R235 to the payment of debts incurred for immoral purposes, although it was in evidence that he drank to excess. The Court of first instance dismissed the suit, holding, *inter alia,* that the plaintiffs had failed to prove the property to have been sold by their father for debts incurred for excessive drinking. One of the issues raised by the Assistant Judge in appeal was whether there was any necessity for the sale of the property by the plaintiffs' father. He found this issue in the negative, and held the sale invalid, except as to the plaintiffs' father's own share. On special appeal to the High Court,—*Held* that, on the above facts, the plaintiffs had failed to establish any case entitling them to set aside the sale of the lands by their father. *Held* also that it ought to have been ascertained whether the minor plaintiffs were born before the date of the sale,—*viz.,* 25th May 1858,—because if they had not been born before that date, their suit would have been unsustainable, as they never could have had any interest in the property. *Quære*—Even supposing that the plaintiffs' father had applied the sum of R235 to the payment of debts incurred for the immoral purpose of excessive drinking, whether the trivial amount would have justified the setting aside of the sale of the 25th May 1858, the main consideration for which was the release of the pre-existing debts for R4,400-15-0. KASTUR BHAVANI *v.* APPA . . I. L. R., 5 Bom., 621

88. ———————— *Alienation of ancestral property by father—Son's interest in ancestral estate—Debt incurred for immoral or illegal purposes.*—Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes), the whole of the estate of a Hindu undivided family is, in the hands of sons or grandsons, liable to the debts of the father or grandfather. In 1865 certain lands, the ancestral property of *D,* were sold under a decree passed against *D,* and were bought by *J.* These lands had been mortgaged in 1863 by *D* to *N,* in which transaction *D* had been principal and *J* his surety. In 1866, *N* sued on his mortgage, and on the 21st January 1868 a decree was made, directing the sale of the lands. Under that decree, the right, title, and interest of *J* were sold on the 1st April 1869 to *C,* and *C* afterwards sold the lands to *M.* In the present suit the plaintiffs (*D's* sons) sued *D* and *M* for possession of their two-thirds shares, alleging that the land was ancestral, and that the whole of it had been illegally sold under the decree of the 21st January 1868. Both the lower Courts held that the land was ancestral; that the plaintiffs were united in interest with their father *D* when the mortgage-debt was contracted by the latter; that the burden lay upon them (plaintiffs) to prove that the debt had been incurred for immoral or illegal purposes, and they failed to discharge it; that they were therefore bound by the sale. The lower Courts accordingly dismissed the plaintiffs' claim. On second appeal, the High Court affirmed the decrees of the Courts below on the grounds mentioned above. SADASHIV JOSHI *v.* DINKAR JOSHI . I. L. R., 6 Bom., 520

89. ———————— *Father's authority to bind the interests of his sons in an ancestral property—Mortgage by father of ancestral property—Rights of a purchaser at Court sale of an undivided share of a co-parcener—Decree against father upon a mortgage of family property—Effect of decree ordering sale of mortgaged property—Purchaser at Court sale when bound to go behind decree and enquire as to whether the debt was properly incurred.*—*D,* the father of the defendants, by a mortgage dated October 1869, mortgaged a house together with other property to *B,* the father of the plaintiff. *B* sued *D* upon the mortgage and obtained a decree directing the sale of the mortgaged property. The execution sale took place in July 1877, and the plaintiff (the mortgagee's son) became the purchaser of the house. On attempting to take possession, he was resisted by the defendants (sons of the mortgagor), who alleged the house to be ancestral property, and denied the plaintiff's right to more than the third share to which the father had been entitled. *Held* by the High Court on appeal, upon the authority of *Gridhareelall* v. *Kantoo Lall, 14 B. L. R., 187,* as explained in *Suraj Bunsi Koer* v. *Sheo Prasad, I. L. R., 5 Calc., 148,* that the shares of the defendants were validly bound by their father's mortgage, as it had been found by the lower Court that the debt, in respect of which the mortgage had been executed, had not been contracted by their father for improper or immoral purposes; but that, as

HINDU LAW—ALIENATION—*continued*

4 ALIENATION BY FATHER—*continued.*

same under the Mitakshara and the Mithila shasters. From the above must be distinguished the question how far the joint sons can be precluded from disputing the liability attaching to their shares, where *proceedings have been taken by or against the father alone* If the father's debt, not having been contracted for an immoral purpose, is such as to support a sale of the entirety of the joint estate, either he *may sell the latter without suit*, or the creditor may

raised whether what has been sold is the interest of the father alone or the joint estate, the absence of the sons from the proceedings may be a material consideration But if the purchaser has bargained

deep Narain Singh, L R, 4 I A, 247 I L R, 3 Calc, 198, does not lay down as an invariable rule that co parcenary interests will not pass by an execution sale unless the co parceners are joined in the suit, or that only the father's interest passes to the ... against the father

sale NANOMI BABUASIN *v* MODHUN MOHUN [I. L. R., 13 Calc, 21 L. R, 13 I. A, 1

98. ———— *Effect of sale in execution of mortgage-decree and of money decree against the father—Transfer of Property Act, s 85*—Where the property of an undivided Hindu family, consisting of father and sons, has been sold in execution of a decree obtained against the father only for a debt contracted by him for purposes neither immoral nor illegal, the sons cannot recover their shares from the purchaser, if the decree has been obtained upon a mortgage or hypothecation of the property directing such property to be sold to realize the debt It is otherwise if the decree in execution of which the sale takes place is a mere money decree. *Per* KERNAN, *J*—It will still be necessary *in all cases where a creditor seeks in a suit* to bind a son's estate in ancestral or other property for a debt incurred by his father and not by him, that the son should be made party to the suit. *Girdharee Lall v. Kantoo Lall, L R, 1 I A, 321, Muddun Thakoor v Kantoo Lall, L R, 1 I. A, 321,* and *Deendyal Lall v Jugdeep Narain Singh, L. R, 4 I A, 247,* discussed. *Hardi Narain Sahu v. Ruder Perkash Misser, I. L R, 9 Calc, 626,* followed. *Ponnappa Pillai v. Pappuvayyangar, I L R, 4 Mad, 1,* modified PONNAPPA PILLAI *v* PAPPUVAYYANGAR I. L. R., 9 Mad., 343

99. ———— *Decree against*

bound by the decree against his father, may contest the sale by suit, but unless he proves that the debt was not such as to justify the sale, he cannot succeed The revised ruling of the Full Bench in *Ponnappa v Pappuvayyangar, I L R, 9 Mad, 343,* as to sales in execution of money-decrees against the Hindu father has been overruled by the decision of the Privy Council in *Nanomi Babuasin v Modun Mohun, L. R 13 I. A, 1 I L R 13 Calc 21* NARASANNA *v* GURAPPA I. L. R, 9 Mad., 424

100. ———— *Power of the father to alienate ancestral property for pious purposes*—According to the Hindu law, the power of the father to make alienations of joint ancestral estate without his son s consent extends to provision of a permanent shrine for a family idol *Gopal*

ing contended that the real motive for the gift was not piety to the gods, but malice against him, the Court remitted an issue to the lower Appellate Court for the purpose of ascertaining whether the endowment had been made *bonâ fide* for the satisfaction of the idol and the benefit of the donor's soul, or from motives of spite against the plaintiff RAGHUNATH PRASAD *v* GOBIND PRASAD I. L. R., 8 All., 76

101. ———— *Joint Hindu family—Liability of ancestral estate for satisfaction of father's debt, when not incurred for immoral purposes*—A suit was brought against *G*, the head of a joint Hindu family, by *S*, to whom he had mortgaged ten biswas of ancestral estate as security for a loan, to recover the amount of the loan by enforcement of the mortgage against the entire ten biswas. During the pendency of the suit, *G* died, and his son *Z* and his widow *B* were brought on the record as his legal representatives. In support of his claim to enforce the mortgage against the entire ten biswas, and not merely against the share therein which *G*, *during his lifetime*, might have got separated, the plaintiff pleaded that the debt incurred by *G* was of such a character that, according to the Hindu law, his son *Z* was under a pious duty to discharge it out of his own estate It was found

4. ALIENATION BY FATHER—*continued.*

repayment of moneys borrowed for the use and benefit of the family. The lender of these moneys sued the father to recover them by the sale of the estate, and obtained a decree against him directing its sale, and sought to bring the estate to sale in the execution of such decree. *Held,* in a suit by the minor son to protect his share in the estate from sale in the execution of such decree, that the suit in which such decree was made, and such decree, being regarded as a suit against the father, and as a decree made against him as representing the family, such decree might be executed against the estate, notwithstanding the minor son had not formally been joined as a defendant in such suit. *Bissessur Lal Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233,* followed. *Deendyal Lal* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198,* distinguished. GYA DIN *v.* RAJ BANSI KUAR . . . . I. L. R., 3 All., 191

94. ——— *Joint Hindu family property—Right of son.*—*B*, a member of a joint undivided Hindu family consisting of himself and his son *R*, as the manager of the family, borrowed moneys for lawful purposes and executed a bond for their repayment, in which he hypothecated a share of mouzah B, such share being ancestral property, as collateral security for their repayment, with the knowledge and approbation of *R*. The obligee of such bond sued *B* thereon and obtained a decree, which directed the sale of such share, and such share was put up for sale and was purchased by *C*. *R* subsequently sued *B* and his mother for partition of the family property, including such share, claiming a one-third share of such property. *C* was made a defendant in the suit, and so was *P*, *R*'s grandmother, who claimed to share equally with the other members of the family in such property. *Held* that it must be presumed that *B* was sued on such bond, and that the decree in such suit was made against him as the head of the family, and *R* could not recover from *C* the share of mouzah B. RADHA KISHEN MAN *v.* BACHHA MAN . . . I. L. R., 3 All., 118

95. ——— *Adult son—Mortgage of family property by father—Decree against father—Right of son.*—The father in a joint undivided Hindu family governed by the law of the Mitakshara mortgaged the ancestral property of the family as security for a debt incurred by him. His son was of age at the time of the mortgage, but the mortgagee did not make the son join in the mortgage. When the mortgagee brought a suit to enforce the mortgage, he brought it against the father alone; and he obtained a decree against the father alone for the sale of the property. On the property being attached in execution of the decree, the son objected to the sale of the property, so far as his own share according to Hindu law was concerned. This objection having been disallowed, he sued the mortgagee for a declaration that such share was not liable to be sold in execution of the decree, claiming on the ground that he was not bound by the mortgage or the decree, not having joined in the mortgage or been a party to the suit in which the decree was made, and that the debt secured by the mortgage had been incurred by his father for immoral purposes. *Held* that the son was not entitled to succeed in such suit merely because, although he was of age, he was not required by the mortgagee to join in the mortgage, and was not made a party to the suit to enforce the mortgage; but that he was in the same position as he would have been had he been a minor at the time the mortgage was made and the decree was passed, and was therefore only entitled to succeed if he showed that the debt incurred by his father was incurred for immoral purposes of his own. *Held* further that, inasmuch as the debt in question was incurred for necessary purposes, and as the son was aware of the mortgage and did not protest against it, but on the contrary stood by and benefited thereby, and as he was aware of the suit and did not apply to be made a party thereto, he was asking too late for the relief which he sought. *Ram Narain Lall* v. *Bhawani Prasad, I. L. R., 3 All., 443,* referred to. PHUL CHAND *v.* MAN SINGH . I. L. R., 4 All., 309

96. ——— *Alienation of ancestral property by father—Suit by son to recover his interest—Burden of proof.*—Where a Hindu, a minor, governed by the law of the Mitakshara, sued to set aside an alienation of ancestral property by his father, on the ground that such alienation was made to satisfy a debt contracted for immoral purposes,—*Held* by STRAIGHT, *J.*, that the burden of proving that the debt was contracted for such purposes, and that the defendant had notice that it was contracted for such purposes, lay on the plaintiff, and that the plaintiff was not discharged from such burden because he had proved generally that his father had been guilty of extravagant waste of the ancestral property. *Hanooman Pershad Pandey* v. *Babooee Munraj Koonweree, 6 Moore's I. A., 392;* and *Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc., 148,* referred to. *Held* also by STRAIGHT, *J.*, that it could not be presumed from such conduct of the father that the debt in question had been contracted for immoral purposes. *Per* STUART, *C.J.*, that the plaintiff's father having been guilty of extravagant waste of the ancestral property, the burden of proof in this case lay on the defendant. As, however, there was reason to suspect that the suit was a collusive one, brought at the instance of the plaintiff's father, if not really by him, and it was very doubtful whether the alienation was objectionable on the ground taken in the name of the plaintiff, it would not be safe to give the plaintiff a decree. HANUMAN SINGH *v.* NANAK CHAND [I. L. R., 6 All., 193

97. ——— *Mitakshara and Mithila law—Execution of decree—Sale of ancestral estate in satisfaction of father's debt—Parties to proceedings.*—There is no conflict of authority as to the principle that sons cannot set up their rights, which are to take present vested interests, on their birth, jointly with their father in ancestral estate, against their father's alienation for an antecedent debt, or against his creditors' remedies for his debt, if such debt has not been contracted for an immoral purpose; the law on this point being the

HINDU LAW—ALIENATION—*continued.*

4 ALIENATION BY FATHER—*continued.*

106. ——————— *Joint family—Mortgage by father—Decree subsequently to father's death against eldest son as heir of father—Minor sons not parties—Sale in execution of family property other than that comprised in mortgage—Subsequent suit by minor sons to recover their shares—Minor sons when bound by decree*

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B brought a suit on the mortgage against *K* by his heir *R* for the amount due, and obtained a decree, whereby it was ordered that the amount should be recovered from the mortgaged property and, if that proved insufficient, from the other estate of the deceased. The minor sons were not made parties to

ficate of sale showing that the right, title, and interest of *K*, deceased, by his heir *R*, was attached and sold and conveyed to the purchaser The three minor sons

some of the

were not bo

intention was that the estate in its entirety should be sold The minor sons were therefore bound by the sale, unless they could prove that the father's debt had been incurred for an immoral and improper purpose The case was accordingly sent back for trial of an issue upon that point, with a direction that the burden of proof should lie upon the plaintiffs JAIRAM BAJABASHET *v* JOMA KONDIA

[I. L. R., 11 Bom, 361

107. ——————— *Mortgage of*

suits in which they respectively prayed for decrees

half of the plaintiffs in connection with this decree that, although the judgment-debtor was a person of

they were professedly borrowed, namely, for the purpose of an indigo factory in which the family had an interest. *Held* that the plaintiffs were not entitled to any declaration in respect of the execution proceedings under the decree for enforcement of hypothecation The second of the decrees above referred to was a simple money-decree for the princi-

HINDU LAW—ALIENATION—*continued*

4. ALIENATION BY FATHER—*continued*

Held that the creditor's remedy was to have brought his suit, if he desired to obtain a decree which he could execute against the family property and not against

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Virapandia Chinnatambiar, I L. R, 6 Mad, 1, distinguished. *Nanomi Babuasin v Modun Mohun I. L R, 13 Calc, 21,* and *Basa Mal v Maharaj Singh, I. L R, 8 All, 205,* referred to BALBIR SINGH *v* AJUDHIA PRASAD I. L. R, 9 All, 142

debt RAMASAMI NADAN *v* ULAGANATHA GOUNDAN I. L R., 22 Mad., 49

109. ——————— *Decree against father for money due, the sons not being joined as defendants—Death of father after original debt barred by limitation, the decree subsisting—Suit against the sons on the decree—Period of limitation how calculated—One cause of action.*—Certain creditors, having in 1882 obtained a decree, kept alive that decree until 1893, when the judgment-

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arisen in 1893, the date of their father's death The sons pleaded limitation, and the question was whether the period of limitation against the sons began to run from the date of death of their father or from the date at which the debt originally became due On a

father's lifetime for such debt,"—*Held* that in such a case there are not two causes of action, and such a creditor has not a further right to sue the son for his father's debt on the death of the father, apart from the right to sue him in the father's lifetime for such debt, and that, in consequence, the suit was barred by limitation. *Arunachala v. Zamindar of Sivagiri, I L R, 7 Mad, 328,*

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

necessity or laid out in necessary expenses, but used in *G*'s personal expenses. *Held* that this evidence did not justify the lower Court in decreeing that the debt should be charged on the share of the father alone in the ten biswas mortgaged, as it did not establish that he had wasted the money on immoral purposes, or that the debt was such that a pious son would be free to repudiate it. *Nanomi Babuasin* v. *Modun Mohun, I. L. R., 13 Calc., 21,* followed. SITA RAM *v.* ZALIM SINGH . **I. L. R., 8 All., 231**

102. ———————— *Suit by sons to set aside alienation—Burden of proof.*—The rule enunciated by the Privy Council in *Muddun Thakoor* v. *Kantoo Lall, 14 B. L. R., 187,* and *Suraj Bunsi Koer* v. *Sheo Pershad Singh, I. L. R., 5 Calc., 148,* "that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debt, cannot recover that property, unless they show that the debts were contracted for immoral purposes to the knowledge of the vendee or mortgagee," is limited to antecedent debts, *i.e.,* to debts contracted before the sale or mortgage sought to be impeached by the son; and it does not cover cases in which a sum in ready money has been paid over to the father by the vendee or mortgagee. The authorities seem to come to this, that in those cases where a person buys ancestral estate, or takes a mortgage of it from the father, whom he knows to have only a limited interest in it, for a sum of ready money paid down at the time of the transaction, such person, in a suit by the sons to avoid it, must establish that he made all reasonable and fair inquiry before effecting the sale or mortgage, and that he was satisfied by such inquiry, and believed, in paying his money, that it was required for the legal necessities of the joint family, in respect of which the father, as head and managing member, could deal with and bind the joint ancestral estate. LAL SINGH *v.* DEO NARAIN SINGH

[I. L. R., 8 All., 279

103. ———————— *Creditor's remedy against sons how affected by reason of his having sued the father separately.*—Although a decree may have been obtained against the father of a joint Hindu family for a debt incurred by him, a subsequent suit is maintainable against the son in respect of the same debt for the enforcement of the son's liability for it, such debt being one which the son is legally bound to pay. The creditor may in his original suit implead the son, but his omitting to do so will not deprive him of his subsequent remedy against the son. There is no difference in principle as regards the subsequent remedy of the creditor against the son between the case of a debt secured by a mortgage and a simple money debt. *Lachmi Narain* v. *Kunji Lal, I. L. R., 16 All., 449; Balmakund* v. *Sangari, I. L. R., 19 All., 379; Bhawani Prasad* v. *Kallu, I. L. R., 17 All., 537; Ramasami Nadan* v. *Ulaganatha Goundan, I. L. R., 22 Mad., 49; Ariabudra* v. *Dora Sami, I. L. R., 11 Mad., 413;* and *Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21,* referred to. The obligation of a Hindu son to pay his father's debt is not an obligation which he has incurred jointly with his father, and the creditor's cause of action is not a single cause of action which is exhausted upon a decree being obtained against one of them only. *Hemendro Coomar Mullick* v. *Rajendro Lall, I. L. R., 3 Calc., 353; Dhunpat Sing* v. *Sham Soondar Mitter, I. L. R., 5 Calc., 292;* and *Hoare* v. *Niblett, L. R. (1891), 1 Q. B., 781,* referred to. DHARAM SINGH *v.* ANGAN LAL

[I. L. R., 21 All., 301

104. ———————— *Joint family property sold in execution of a decree on a mortgage against the father alone—Decree satisfied—Subsequent recovery by the sons of part of the mortgaged property—Remedy of mortgagee.*—A mortgagee held a mortgage of joint family property given by the father alone. He sued on his mortgage without making the sons parties to the suit, and, having obtained a decree, brought the whole of the joint family property to sale and purchased it himself. This purchase, together with a further cash payment of R59, satisfied the mortgage-debt. After the mortgage had been thus satisfied, the sons brought a suit for recovery of their shares in the joint family property amounting to one-fourth, and obtained a decree, and got possession of the property claimed. The mortgagee then brought a suit against the sons to recover from them a share of the mortgage-debt proportionate to the share in the joint family property owned by them. *Held* that, the original mortgage having become extinct, the plaintiff was entitled to a decree for one-fourth of the price realized by the mortgaged property at auction-sale and to recover the same by sale of the interest of the sons in the joint family property. *Bhawani Prasad* v. *Kallu, I. L. R., 17 All., 537,* referred to. *Dharam Singh* v. *Angan Lal, I. L. R., 21 All., 301,* followed. LACHHMAN DAS *v.* DALLU **I. L. R., 22 All., 394**

105. ———————— *Joint family—Decree against the father alone—Attachment of family property in execution of such decree—Son's interest in the family property when bound by decree against the father or by sale effected by the father.*—Where in a joint Hindu family the father disposes of family property, the son's interest is bound, unless the son can show, in proceedings taken for that purpose, that the disposal of the property by his father was made under circumstances which deprived his father of his disposing power. So also, where family property is sold under proceedings taken against the father alone, the son's interest is bound, unless the son can show that the sale was on account of an obligation to which he was not subject. The father is, in fact, the representative of the family both in transactions and in suits, subject only to the right of the sons to prevent an entire dissipation of the estate by particular instances of wrong-doing on the father's part. JAGABHAI LALUBAI *v.* VIJBHUKANDAS JAGJIVANDAS . . **I. L. R., 11 Bom., 37**

113. ———————— *Ancestral pro- y father—Pur-* overned by the father's aliena- pur- ecrees show passed poses, ...

passed against ... adult at the time, was not a party to the suits in which the decrees were passed against the father, nor to the execution-proceedings In the certificates of sale granted to the different purchasers, the property sold was described as being a four anna share which would be equal to the shares of the father and the son together, but this description was qualified by the statement that "the right, title, and interest

... never disturbed, though the sharers had each a separate possession of distinct portions of the ancestral property *Held that, under the circumstances, the* father's interest alone passed to the auction purchasers KRISHNAJI LAKSHMAN *v.* VITHAL RAVJI RENGE . I. L. R., 12 Bom., 625

114. ———————— *Joint family—Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale ... parties to the ...* the case of a ... perty is sold ... ance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale is to enquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money-decree In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage-

... against the first defendant alone The first defendant was the father of the remaining defendants, and they ...

... operty decree KA- GAL GANPAYA *v* MANJAPPA
[I. L. R., 12 Bom, 691

115. ———————— *Ancestral zamindari sold in execution of decree for money against the father, including the son's right of succession—Debt not immoral*—A sale in execution of a decree against a zamindar, for his debt, purported to comprise the whole estate in his zamindari In a suit brought by his son against the purchaser, making the father also a party defendant, to obtain a ... against ... estate, ... s debt ... illegal purpose *Held* that, the impeachment of the debt failing, the suit failed, and that no partial interest but the whole estate had passed by the sale, the debt having been one which the son was bound to pay *Hardi Narain Sahu v Ruder Perkash Misser, I L. R, 10 Calc, 626* (where the sale was only of whatever right, title, and interest the father had in property), distinguished. MINAKSHI NAYUDU *v* IMMUDI KANAKA RAMAYA GOUNDAN
[I. L. R., 12 Mad., 142
L. R., 16 I. A., 1

116. ———————— *Money-decree against father—Attachment of ancestral estate*—In execution of a money-decree, ancestral property of ...

... decree. *Held* that the nature of the debt should be determined, since the creditor's power to attach and sell depends on the father's power to sell, which again depends on the nature of the debt. *Nanomi Babuasin v. Modhun Mohun, L R, 13 I. A., 1: I. L R, 13 Calc, 21,* discussed and followed. RAMANADAN *v.* RAJAGOPALA
[I. L. R., 12 Mad., 309

117. ———————— *Liability of ancestral estate for father's debts—Improper and immoral debts of father—Evidence of general immoral character of father—Burden of proof—*

Natasayyan v. *Ponnusami, I. L. R., 16 Mad., 99; Ramayya* v. *Venkataratnam, I. L. R., 17 Mad., 122,* considered. MALLESAM NAIDU *v.* JUGALA PANDA. . . . **I. L. R., 23 Mad., 292**

110. ——— *Joint Hindu family—Mortgage by father—Suit to enforce the mortgage against sons' shares—Legal necessity—Burden of proof.*—As a general rule, a creditor endeavouring to enforce his claim under a hypothecation-bond given by a Hindu father against the estate of a joint Hindu family in respect of money lent or advanced to the father having only a limited interest should, if the question is raised, prove either that the money was obtained by the father for a legal necessity or that he made such reasonable inquiries as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt, or for the other legal necessities of the family. There is a distinction between such cases as this and cases in which a decree has been obtained against the father and the property sold, or cases in which the sons come into Court to ask for relief against a sale effected by their father for an antecedent debt. Where a decree is obtained against the father and a sale effected, the presumption is that the decree was properly made. Where a son comes into Court to ask for relief against a sale effected by his father for an antecedent debt, it is for the son to make out a case for the relief asked for. In a suit against the members of a joint Hindu family upon a bond given by their father, and in which family property was hypothecated, no evidence was given on either side as to the circumstances in which the bond was given. There was no evidence to show that any inquiry had been made by the plaintiff as to the objects for which the bond was executed by the father. *Held* that the burden of proof was upon the plaintiff to show either that the money was obtained for a legal necessity or that he had made reasonable inquiries and obtained such information as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family, and that, no evidence having been given, the suit must be dismissed. JAMNA *v.* NAIN SUKH

[I. L. R., 9 All., 493

111. ——— *Sale of joint family estate in execution of decree upon the father's debt—Exoneration of son's share only where debt has been incurred for an immoral or illegal purpose—Burden of proving the nature of the debt.*—The sons in a joint family under the Mitakshara cannot set up their rights of inheritance in the family estate against their father's alienation for an antecedent debt or against a sale in execution of a decree upon such debt, although the sons may not have been parties to the decree, unless the sons can establish that the debt has been contracted for an immoral or illegal purpose. The son's position is distinct in this respect from that of other relations in the joint family, inasmuch as it is his duty to pay, out of the family estate, his father's debt. A decree against indebted fathers, in a family consisting of fathers and sons, charged the family estate, and the sale in execution was not merely of the right, title, and interest of the debtors, but of the property being such interest. On the other hand, before the sale, notice was given on behalf of the sons that the property was ancestral and joint. *Held,* in a suit on behalf of the sons against the purchaser at the sale to recover their shares, that it was for the plaintiffs to show affirmatively that the debts were contracted for an illegal or immoral purpose, and that to establish general extravagance against the fathers was insufficient. It was not necessary for the purchaser to show that there had been a proper inquiry as to the purpose of the loan or to prove that the money was borrowed for family necessities. BHAGBUT PERSHAD *v.* GIRJA KOER. . . . **I. L. R., 15 Calc., 717**

[L. R., 15 I. A., 97

112. ——— *Joint family—Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interset and costs.*—The plaintiff's father mortgaged certain ancestral property for a limited term. A suit was brought on the mortgage against the father, and a decree was passed, directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father. In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question. Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father, on the ground that the debts contracted by the father were for immoral purposes, and that therefore the estate could not be bound by the decree at all. The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit. On appeal to the High Court,—*Held* that under the decree passed against the father the interest and costs became a debt upon the whole estate, from which it could not escape, unless it was clearly made out that the debt was the result of fraud or immorality. Although the father alone was primarily liable for the fulfilment of the decree, still the debt was one which was rightly chargeable to the whole estate, and the sons would be liable, just as they would have been liable if the father had compromised the suit, unless the transaction were tainted with fraud or immorality. In a united family the father is capable of acting as the representative of the family, except in the case of borrowing for fraudulent or immoral purposes. In this case he entered into litigation, which resulted in loss to himself and the family which he represented, and he could make the family responsible for any loss so incurred. The judgment-creditor could also make them liable, although where the father desires to represent the whole estate he can do so, yet he is not necessarily bound to do so, nor is the whole estate liable where he explicitly or impliedly binds only his own portion. NARAYANRAV DAMODAR *v.* JAVHERVAHU

[I. L. R., 12 Bom., 431

of the balance from the defendants personally,—*Held* that a junior member of the joint family, who was liable for his share of the debt sued on, but who was *not made a party to the suit, could not successfully* plead that, the decree being a personal one in regard to the unsatisfied balance, he was not liable in regard

v. BISHNATH SINGH I. L. R., 22 All., 408

123. ——— *Mortgage executed by father on the whole joint family property in respect of his own debts—Liability of sons—Burden of proof*—The father of a joint and undivided Hindu family executed a mortgage over the whole immoveable property of a joint family The mortgagees having obtained a decree on their mort

inasmuch as the debts in respect of which the mortgage had been executed had been contracted for immoral purposes, and were not such as they, by the Hindu law, were under a pious obligation to discharge *Held* that the burden of proving that the debts in question were contracted for the purposes alleged lay on the plaintiffs. *Beni Madho* v *Basdeo Patak, I L R, 12 All, 99,* followed *Lal Sing* v *Deo Narain Singh, I L R, 8 All, 279, Basa Mal* v. *Maharaj Singh, I L R, 8 All, 205 Subramanya* v *Sadasiva I. L R, 8 Mad, 75, Hanooman Persaud Panday* v. *Munraj Koonweree 6 Moore's I A, 393* and *Bhagbut Pershad Singh* v *Girja Koer, I. L R., 15 Calc, 717,* referred to. BHAWANI BAKHSH v RAM DAI

[I. L. R., 13 All., 216

124. ——— *Hypothecation by father* ... de... *scribed as* ... cree *enforcing* ... te— *Suit by son for declaration that only father's interest is affected by hypothecation—Burden of proof*—In a suit by the sons of a Hindu for a

Held by the ... not show that the interest which was hypothecated was a limited interest, the Court must take it, as against the plaintiffs, that the family property was hypothecated *Beni Madho* v *Basdeo Patak, I. L R, 12 All, 99,* and *Bhawani Bakhsh* v *Ram Dai, I L R, 13 All, 216,* approved PEM SINGH v PARTAB SINGH I. L. R., 14 All., 179

125. ——— *Simple money-*

MUHAMMAD HUSAIN v DIPCHAND

[I. L. R., 14 All., 190

126. ——— *Immoral origin of debt—Suit by a decree-holder against the sons of deceased judgment debtor whose property had passed to them*—A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it The judgment debtor having died the decree holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit He now brought a suit against the

illegal or immoral nature so as to exclude the pious obligation of the sons to discharge it NATASAYYAN v PONNUSAMI I. L. R., 16 Mad., 99

127. ——— *Liability of*

of immorality or for purposes which, if the father

No. IV of 1882 BADRI PRASAD v MADAN LAL

[I. L. R., 15 All., 75

128. ——— *Mortgage*

an antecedent debt, and not being shown to have been for any immoral purpose, is valid and binding on the

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

Pensions Act, Certificate of Collector under.—The power of the father, as representative of the family, to bind the son's interests in the family estate, except in special cases, being judicially recognized, the onus of establishing the existence of those special circumstances necessarily lies on the sons for the purpose of defeating his creditor's remedies against the ancestral estate. The plaintiff sued to recover the balance of a debt due on a mortgage-bond alleged to have been executed in 1878 by the defendant's father (since deceased) to the plaintiff's father. The defendant (*inter alia*) pleaded that the loan was contracted without his knowledge and for immoral purposes, and that his share in the mortgaged property was not answerable for the debt. He also contended, as to a sum of R109-8-0 claimed by the plaintiff, that this sum was claimed in respect of saranjam, and was not recoverable by the plaintiff without a certificate under the Pensions Act. The lower Court found that the defendant's father had been a man of extravagant and vicious habits, but *held* that the defendant had failed to prove that the debt in question had been contracted for immoral purposes. The Judge therefore awarded the plaintiff's claim. On appeal by the defendant to the High Court,—*Held*, confirming the decree of the lower Court, that the burden lay on the defendant of proving that the loan to the father secured by the mortgage-bond in the suit was for an illegal or immoral purpose, and that the defendant had not discharged this burden. The mere proof that his father had been a man of extravagant and immoral habits was not enough. *Held* also that, as no certificate from the Collector had been produced, as required by the Pensions Act, the claim to R109-8-0 should be disallowed. CHINTAMANRAV MEHENDALE *v.* KASHINATH

[I. L. R., 14 Bom., 320

118. ———— *Debts contracted for immoral and improper purposes—Burden of proof—Proof of immoral habits.*—In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that the decree was in respect of debts contracted by *V* for immoral and improper purposes. *Held* that proof of immoral habits in the debtor did not throw the onus on to the plaintiff and oblige him to prove that the debt was not incurred for an illegal or immoral purpose. *Chintamanrav Mehendale* v. *Kashinath, I. L. R., 14 Bom., 320*, followed. VASUDEV MORBHAT *v.* KRISHNAJI BALLAL . . . . **I. L. R., 20 Bom., 534**

119. ———— *Mortgage effected by and decree passed against father only—Father's debt—Effect of mortgage and decree on son's rights and interests.*—Where a Hindu son comes into Court to assail either a mortgage made by his father, or a decree passed against his father, or a sale held or threatened in execution of such decree—whether it be upon a mortgage-security or in respect of a simple money-debt—where there is nothing to show any limitation of the extent of interest sold or threatened with sale or charged in a security or dealt with by a decree, it rests upon him, if he seeks to escape from having his interest affected by the sale, to establish that the debt he desires to be exempted from paying was of such a character that he, as the son of a Hindu, would not be under a pious obligation to discharge it, or that his interests in the property were not covered by the mortgage or touched by the decree, or affected by the sale certificate. BENI MADHO *v.* BASDEO PATAK . **I. L. R., 12 All., 99**

PEM SING *v.* PARTAB SING

[I. L. R., 14 All., 179

120. ———— *Joint Hindu family—Money-decree against father alone for his personal debt—Attachment of joint-family property—Suit by sons to set aside attachment.*—Where in execution of a simple money-decree obtained against the father only in a joint Hindu family in respect of a bond debt incurred by him personally, the decree-holders attached the whole of the joint-family property, and before sale in execution took place the sons of the judgment-debtor objected to the attachment under s. 278 of the Civil Procedure Code, and the objection having been disallowed sued for a declaration that they were entitled to a share in the property and for its release from attachment,—*Held* that the plaintiffs were entitled to impeach the attachment upon the ground that it affected interests which the decree could not touch, and which therefore could not be attached under it, and that they were in a position to ask to have those interests exempted from the threatened sale in execution. RAM DAYAL *v.* DURGA SINGH

[I. L. R., 12 All., 209

121. ———— *Decree against father how far binding against sons—Question of fact—Acquiescence by sons in father's defence.*—In a suit against a Hindu father a decree had been obtained, the execution of which interfered with land belonging to the undivided family of which the father was the manager and his two sons members. The sons had not been joined as defendants in that suit, though they were of age at the time; but they had known of it and had not objected to family funds being spent in its defence. On their suing for an injunction to restrain the decree-holder from executing the decree, on the ground that it was not binding on them,—*Held* that the question how far the sons are bound by a decree against the father must be decided with reference to the particular facts of each case. If the father is manager and the question in issue is one which equally affects him and the other members of the family, and if the suit is properly defended, the adjudication will bind all the persons interested with the father, since in that case it will be presumed that the father represents their interests. The sons will still more clearly be bound if, being of full age, and knowing of the litigation, they acquiesce in the conduct of it by the father. KUNJAN CHETTI *v.* SIDDA PILLAI . . **I. L. R., 22 Mad., 461**

122. ———— *Liability of member of joint family, though not made a party to the suit—"Personal" decree, meaning of.*—Where

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

obligation created by the bond, and a suit for such a relief must, under the Limitation Act, be instituted within six years from the due date of the mortgage-bond. *Lachman Dass* v *Giridhur Choudhry, I L R, 5 Calc, 855*, and *Khalilul Rahman* v *Gobind Persad, I L R, 20 Calc, 328*, relied upon SURJA PROSAD v. GOLAB CHAND I. L. R, 27 Calc, 762

131. ———— *Mitakshara law—Ancestral property, alienation of—Suit by mortgagee against father and minor son for sale of ancestral property—Antecedent debt—Interest, rate of*—In the case of a Mitakshara family consisting of a father and minor sons, where the father hypothecates ancestral property, there being no proved necessity, but, on the other hand, no proof of immoral or illegal

sons to a decree directing the debt to be raised out of the whole ancestral estate inclusive of the mortgaged property Debts incurred in transactions the charac-

[I. L. R., 20 Calc, 328

132. ———— *Execution of*

the estate of the judgment-debtor under attachment at the time of his death was liable after his death, even though it had passed to the surviving members of the joint Mitakshara family *Suraj Bunsi Koer* v. *Sheo Persad Singh, I L R, 5 Calc 148 L R, 6 I. A, 88*, relied on *Karnataka Hanumantha* v *Andukuri Hanumayya, I L R, 5 Mad 232*, distinguished BENI PERSHAD v PARBATI KOER

[I. L. R., 20 Calc., 695

133. ———— *Conditional contract to sell family lands—Birth of vendor's son before fulfilment of condition—Vendor and pur-*

should be obtained. Before possession was obtained, a son was born to him A decree for specific performance

plaintiff had an existing right in the property which was not bound by the decree and the subsequent proceedings, and that he was entitled to the relief sought *Semble*—That a contract for sale of land made by a Hindu before a son is born to him is not binding on the son born before the transfer of the property takes place PONNAMBALA PILLAI v SUNDARAPPAYYAR

[I L R, 20 Mad, 354

134. ———— **Suit to set aside alienation**—*Cause of action—Limitation*—A son under the Mitakshara law, whatever right he may have during his father's lifetime may within twelve years from *his father's death, sue to recover ancestral property* improperly alienated by the father PROTAPNARAIN SINGH v MONOHUR DOSS W. R., 1864, 96

135 ———— *Cause of action*

deed of absolute sale, and possession was taken by the alienee at the time In 1863, *L*, who was born in 1837, sued on his own account and as guardian of his minor brother *R* who was born in 1856, to set aside the sale The father died in 1857 *Held L's* cause of action accrued when possession was taken ... death. ... on in *L* ... erefore, ... enation ... decrees *for foreclosure* and possession to which *L* and *R* were not parties,—*Held* the cause of action accrued when possession was taken under the decree RAJA RAM TEWARI v LUCHMUN PRASAD

[B L R, Sup Vol, 731: 2 Ind. Jur, N S. 216
8 W. R., 15

BEER KISHORE SUHYE SINGH v. HUR BULLUB NARAIN SINGH . 7 W. R., 502

136. ———— *Ancestral property—Cause of action—According to the Mitakshara law*, a son has a right, during the lifetime of his father, to set aside alienations of ancestral property made without his consent His cause of action arises

sons. *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R., 5 Calc., 857; Ramayya* v. *Venkataratnam, I. L. R., 17 Mad.,* 122, distinguished. *Girdharee Lall* v. *Kantoo Lal, 22 W. R., 56; Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc., 148; Laljee Sahoy* v. *Fakeer Chand, I. L. R., 6 Calc., 135; Khalil-ul-Rahman* v. *Gobind, I. L. R., 20 Calc., 328,* approved of. The liability of the sons in a Mitakshara family to discharge the father's debt is not limited, with regard to interest, by the provision of the Hindu law, which does not authorize the taking of interest exceeding the principal in amount, the provision being inapplicable to the mofussil where the amount of the father's debt must be determined with reference to the law of the land. *Deen Doyal Poramanick* v. *Koylas Chunder, I. L. R., 1 Calc., 92; Luchman Das* v. *Khunnu Lal, I. L. R., 19 All., 36,* referred to. PRAN KRISHNA TEWARY *v.* JADU NATH TRIVEDY . . . **2 C. W. N., 603**

129. ——————— *Mitakshara family—Liability of son to pay father's debt incurred during son's minority—Representative capacity of father—Antecedent debt—Mortgage—Suit for sale on mortgage by father without joining sons—Nonjoinder of parties—Transfer of Property Act (IV of 1882), s. 85—Notice of interest in mortgaged property—Civil Procedure Code (Act XIV of 1882), ss. 28, 42.*—In the case of a joint Mitakshara family consisting of a father and minor son where the father executed a mortgage-bond hypothecating ancestral family property during the minority of his son, and the mortgagee, with notice of the interest of the son in the mortgaged property, brought a suit against the father alone to enforce the mortgage, without making the son a party to the suit, and obtained a decree declaring that the mortgaged property was liable to be sold in execution thereof, and where the debt was not proved to have been incurred for illegal or immoral purposes,—*Held per* GHOSE, *J.*—That the share of the son in the ancestral property was liable for the satisfaction of such decree notwithstanding the provisions of s. 85 of the Transfer of Property Act (IV of 1882), the father having incurred the debt in his representative capacity and as managing member of the family and the son having been substantially a party to the suit in which the said decree was passed through the representation of his father. S. 85 of the Transfer of Property Act lays down only a rule of procedure; and the words "all person" in the section could have hardly been intended to include a Mitakshara son—much less a minor son—in a suit where the father is sued in his representative capacity. *Suraj Bansi Koer* v. *Sheo Pershad Singh, I. L. R., 5 Calc., 148: L. R., 6 I. A., 88; Bissessur Lal Sahoo* v. *Maharajah Luchmissur Singh, L. R., 6 I. A., 233: 5 C. L. R., 477; Nanomi Babuasin* v. *Modun Mohun, I. L. R., 13 Calc., 21: L. R., 13 I. A., 1; Doulat Ram* v. *Mehr Chand, I. L. R., 15 Calc., 70: L. R., 14 I. A., 187; Pursid Narain Singh* v. *Honooman Sahai, I. L. R., 5 Calc., 845; Bhagbut Persad* v. *Girja Koer, I. L. R., 15 Calc., 717: L. R., 15 I. A., 99; Mohabir Prosad* v. *Maheswar Nath Sahai, I. L. R., 17 Calc., 584: L. R., 17 I. A., 11; Jagabhai Lalubhai* v. *Vijbhukan Das, I. L. R., 11 Bom., 37,* relied on. *Bhawani Prosad* v. *Kallu, I. L. R., 17 All., 537,* dissented from. *Syad Emam Momtazuddin Mahomed* v. *Raj Coomar Dass, 23 W. R., 187; Ramasamayyan* v. *Virasami Ayyar, I. L. R., 21 Mad., 222; Palani Goundan* v. *Rangayya Goundan, I. L. R., 22 Mad., 207,* referred to. *Semble*—(*a*) In the case of a joint Mitakshara family consisting of a father and minor sons, the father is "necessarily" the manager of the joint family, and as such, for all purposes, is the representative of the family. (*b*) And where the father, the managing member, mortgages family property for an antecedent debt, and a suit is brought and decree obtained against the father, such suit and decree should be regarded as instituted and pronounced against him in his representative capacity. (*c*) And that if a son, after a decree being obtained against the father upon a mortgage executed by the latter, sues to have it declared that his share is not liable to satisfy the said decree, or after a sale in execution thereof sues to recover possession of his share, he cannot succeed unless he proves that the debt was contracted for an immoral or illegal purpose, or that it was of an illusory character. *Per* HARINGTON, *J.*—That having regard to the provision of s. 85 of the Transfer of Property Act and those of ss. 28 and 42 of the Civil Procedure Code, the mortgagee was bound to make the plaintiff (the son) a party to the mortgage-suit, and that, not having done so, he was not entitled to obtain a decree affecting the plaintiff's interest in the mortgaged property. *Bhawani Prasad* v. *Kallu, I. L. R., 17 All., 537,* followed. *Rothschild* v. *Commissioners of Inland Revenue, L. R., 2 Q. B., 142; Ramasamayyan* v. *Virasami Ayyar, I. L. R., 2 Mad., 222; Palani Goundan* v. *Rangayya Goundan, I. L. R., 22 Mad., 207,* referred to. LALA SURJA PRASAD *v.* GOLAB CHAND

[I. L. R., 27 Calc., 724
4 C. W. N., 701

130. ——————— *Mitakshara family—Alienation of ancestral property by father—Liability of sons for father's debts—Mortgage—Suit by mortgagee against son for sale of ancestral property—Antecedent debt—Legal necessity—Illegal or immoral purpose—Money-decree—Limitation Act (XV of 1877), art. 116, sch. II.*—In the case of a joint Mitakshara family where the father raised money on a mortgage hypothecating certain ancestral family property, and it was not proved that the money was required for payment of any antecedent debt, or that the money was raised or expended for illegal or immoral purposes, or that any enquiry was made on behalf of the mortgagee as to the purpose for which the debt was incurred,—*Held* that the mortgage security could not be enforced against the son (the father having died), unless it could be shown that the debts for which the mortgage was created were antecedent to the transaction in question. Under the above circumstances, the mortgage is not binding on the son, but

bond. *Lachman Dass* v *Girdhur Choudhry, I L R.*, 5 *Calc*, 855, and *Khalilul Rahman* v *Gobind Persad, I L R*, 20 *Calc*, 328, relied upon SURJA PROSAD v GOLAB CHAND I. L R, 27 Calc, 762

131. ———— *Mitakshara law —Ancestral property, alienation of—Suit by mortgagee against father and minor son for sale of an*

ancestral property, there being no proved necessity, but, on the other hand, no proof of immoral or illegal purposes, and no proof that the lender made any enquiry as to the purpose, the debt itself is an antecedent debt within the rulings of the Privy Council, and the mortgagee is entitled in a suit against father and sons to a decree directing the debt to be raised out of the whole ancestral estate inclusive of the mortgaged property. Debts incurred in transactions the character of which is no more than imprudent or unconscientiously imprudent or unreasonable, are debts to

terest KHALILUL RAHMAN v GOBIND PERSHAD [I. L. R., 20 Calc, 328

132. ———— *Execution of*

made "In this case the sale was stayed awaiting the disposal of the regular suit It being not necessary to keep the case pending, it is ordered that, attachment being allowed to stand, the case be struck off for the present" The judgment debtor, the father of a joint Hindu family subject to the Mitakshara law, having died, a fresh application for execution was subsequently made against his estate The heirs of

shara law *Held* that, inasmuch as there was an attachment subsisting at the time of the application, the estate of the judgment-debtor under attachment at the time of his death was liable after his death, even though it had passed to the surviving members

of the joint Mitakshara family *Suraj Bunsi Koer* v *Sheo Persad Singh, I L R*, 5 *Calc* 148 *L R*, 6 *I. A*, 88, relied on *Karnataka Hanumantha* v *Andukuri Hanumayya, I L R*, 5 *Mad*, 232, distinguished BENI PERSHAD v PARBATI KOER [I. L. R., 20 Calc., 895

133. ———— *Conditional contract to sell family lands—Birth of vendor's son before fulfilment of condition—Vendor and purchaser—Sale while vendor is out of possession—Suit by son to set aside alienation* —A Hindu entered into a contract to sell certain land, being family property, of which he was not in possession as soon as possession

brought on to the record In a suit by the son for partition of the property in question,—*Held* that the plaintiff had an existing right in the property which was not bound by the decree and the subsequent proceedings, and that he was entitled to the relief sought *Semble*—That a contract for sale of land made by a Hindu before a son is born to him is not binding on the son born before the transfer of the property takes place PONNAMBALA PILLAI v SUNDARAPPAYYAR [I L. R, 20 Mad, 354

his father's death, sue to recover ancestral property improperly alienated by the father. PROTAPNARAIN SINGH v MONOHUR DOSS W. R, 1864, 96

135. ———— *Cause of action*

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was barred by lapse of time Where the alienation was by deed of conditional sale, followed by decrees for foreclosure and possession to which *L* and *R* were not parties —*Held* the cause of action accrued when possession was taken under the decree RAJA RAM TEWARI v LUCHMUN PRASAD [B L R., Sup Vol., 731: 2 Ind. Jur, N S. 316 8 W. R., 15

BEER KISHORE SUHYE SINGH v. HUR BULLUB NARAIN SINGH 7 W. R., 502

136. ———— *Ancestral property—Cause of action* —According to the Mitakshara law, a son has a right, during the lifetime of his father, to set aside alienations of ancestral property made without his consent. His cause of action arises

HINDU LAW—ALIENATION—*continued.*

4. ALIENATION BY FATHER—*continued.*

sons. *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R., 5 Calc.*, 857; *Ramayya* v. *Venkataratnam, I. L. R., 17 Mad.*, 122, distinguished. *Girdharee Lall* v. *Kantoo Lal, 22 W. R.*, 56; *Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc.*, 148; *Laljee Sahoy* v. *Fakeer Chand, I. L. R., 6 Calc.*, 135; *Khalil-ul-Rahman* v. *Gobind, I. L. R., 20 Calc.*, 328, approved of. The liability of the sons in a Mitakshara family to discharge the father's debt is not limited, with regard to interest, by the provision of the Hindu law, which does not authorize the taking of interest exceeding the principal in amount, the provision being inapplicable to the mofussil where the amount of the father's debt must be determined with reference to the law of the land. *Deen Doyal Poramanick* v. *Koylas Chunder, I. L. R., 1 Calc.*, 92; *Luchman Das* v. *Khunnu Lal, I. L. R., 19 All.*, 26, referred to. PRAN KRISHNA TEWARY *v.* JADU NATH TRIVEDY . . . **2 C. W. N., 603**

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4 C. W. N., 701

130. ———— *Mitakshara family—Alienation of ancestral property by father—Liability of sons for father's debts—Mortgage—Suit by mortgagee against son for sale of ancestral property—Antecedent debt—Legal necessity—Illegal or immoral purpose—Money-decree—Limitation Act (XV of 1877), art. 116, sch. II.*—In the case of a joint Mitakshara family where the father raised money on a mortgage hypothecating certain ancestral family property, and it was not proved that the money was required for payment of any antecedent debt, or that the money was raised or expended for illegal or immoral purposes, or that any enquiry was made on behalf of the mortgagee as to the purpose for which the debt was incurred,—*Held* that the mortgage security could not be enforced against the son (the father having died), unless it could be shown that the debts for which the mortgage was created were antecedent to the transaction in question. Under the above circumstances, the mortgage is not binding on the son, but

6 ALIENATION BY WIDOW

(*a*) ALIENATION OF INCOME AND ACCUMULATIONS.

146. ———— Alienation of income—

DHANARAYAN. KAILASNATH GHOSE *v* BISWANATH BISWAS . . . . 4 B. L. R , O. C., 41

147. ———————— *Accumulations —Purchase of property out of income for maintenance of family—Reversioners* —A Hindu widow cannot alienate moveable or immoveable properties acquired

income c

descend

widow

which conveyed the property to her to enjoy for her lifetime and to incur all needful expenses,—*Held* she was entitled to invest sums out of the income for the benefit of her daughter and granddaughter in the purchase of immoveable property for their maintenance CHOWDRY BHOLANATH THAKOOR *v.* BHAGABATTI DEBI BHAGABATTI DEBI *v.* CHOWDRY BHOLANATH THAKOOR

[7 B. L. R., 93: 15 W. R., 63

Reversed on the merits by the Privy Council [I. L. R., 1 Calc., 104

148. ———————— *Accumulations* —It being doubtful whether the purchase of the land in dispute by the plaintiff's mother was made out of the current income (in which case it is her self-ac-

spend it if she chose. *Grose* v. *Amritamayi*, 4 *B L. R , O. C , 1*, explained and reconciled, and *Gonda Kooer* v *Ooodey Singh, 14 B. L R., 159*, distinguished. PUDDO MONEE DOSSEE *v* DWARKANATH BISWAS . . . . . 25 W. R., 335

149. ———— Alienation of property purchased with funds derived from husband's estate.—A widow is not competent to alienate property which she has purchased with funds derived from her husband's estate after his death, and purchases with such funds would not belong to the widow otherwise than as the land from which the money arose belonged to her NEHAL KHAN *v* HURCHURN LALL . . . 1 Agra, 219

150.———— Alienation of house erected by widow out of savings of land inherited from husband.—A Hindu widow has no power to sell a house erected by her out of savings of her income on land inherited from her husband. FAKIRA DOBEY *v.* GOPI LALL . 6 C. L. R., 66

6 ALIENATION BY WIDOW—*continued.*

151. ———— Alienation of property purchased with accumulations derived from husband's estate—*Income—Accumulations —Quære*—Whether a Hindu widow has power to alienate, beyond her own life-interest, property which she has purchased from accumulations of income derived from her late husband's estate, made after his death, and while she was entitled to a Hindu widow's interest in such estate? HUNSBUTTI KOERAIN *v* ISHRI DUT KOER

[I. L. R., 5 Calc., 512: 4 C. L. R., 511

both the family property and property purchased by the widow out of savings from her income were alienated by her, with the object of changing the succession,—*Held* that accretion was clearly established, and that the after-purchases were inalienable by her for any purpose that would not justify alienation of the original estate A daughter, obtaining a transfer from her deceased father's widows of their interests in his estate, does not acquire thereby an estate valid against the title of the father's collateral heirs expectant on the deaths of the widows ISRI DUTT KOER *v* HANSBUTTI KOERAIN

[I. L. R., 10 Calc., 324: 13 C. L. R., 418 L. R., 10 I. A., 150

152. ———— Widow's power over land

the heirs of her husband as an increment to the estate, and not to her heirs as property over which she had absolute control ANUND CHUNDRA MUNDUL *v.* NILMONY JOURDAR

[I. L. R., 9 Calc., 758: 12 C. L. R., 352

153.———————— *Inheritance to*

to the original estate. The authority upon this matter is found in *Isridut Koer* v. *Hansbutti Koerain, I. L. R , 10 Calc , 324 L. R , 10 I. A., 150*, where a widow having made no distinction between the original estate and the after-purchases, the latter were held inalienable by her for any

from the date when possession is taken by the purchaser. AGHORI RAMASARAG SINGH *v.* COCHRANE [5 B. L. R., Ap., 14

In such a case the cause of action arises at the date of the alienation. BEER PERSHAD *v.* DOORGA PERSHAD . . . . . . W. R., 1864, 215

SEETUL PERSHAD SINGH *v.* GOUR DYAL SINGH [1 W. R., 283

137. ———— *Alienation by father without son's consent—Enquiry as to legal necessity by mortgagee.*—A mortgagee acquiring by operation of law the possession of an estate mortgaged by a Hindu father without the son's consent is bound to enquire whether the debt on account of which the mortgage was given was a legally necessary one or not; otherwise it will not avail him that the Court has on his application declared the mortgage foreclosed, or the conditional sale rendered absolute. PURMANUND *v.* ORUMBAH KOER W. R., 1864, 143

138. ———— *Sale effected to pay ancestral debt—Obligation on purchaser to enquire whether it could have been paid from other sources.*—Under Hindu law, where there is found to be an ancestral debt, and a sale is effected to pay it, the purchaser at such sale is not bound to enquire whether the debt could have been met from other sources. AJEY RAM *v.* GIRDHAREE . 4 N. W., 110

139. ———— *Obligation on purchaser to show necessity for sale—Onus probandi.*—Where a son under the Mithila law sued to set aside sales by his father,—*Held* that the purchasers were not bound to show an absolute necessity for the sales, it being sufficient if they have acted *bonâ fide* and with due caution, and were reasonably satisfied, at the time of their respective purchases, of the necessity of the sales in order to meet debts which the father had a right to discharge. The *onus probandi* in such cases will vary according to the circumstances. BHOORUM KOER *v.* SAHEBMADEE [6 W. R., 149

140. ———— *Onus probandi.*—In a suit brought by a Hindu to contest an alienation of family property made by his father, the onus of proving that the alienation is binding on the son lies upon those who claim the benefit of the alienation. SUBRAMANYA *v.* SADASIVA [I. L. R., 8 Mad., 75

141. ———— *Mitakshara law—Ancestral property—Refund of purchase-money.*—Under the Mitakshara law, when a sale of ancestral property by the father has been set aside in a suit by the son on the ground that there was no such necessity as would legalize the sale, and that the son had not acquiesced in the alienation, the son is entitled to recover the property without refunding the purchase-money, unless such circumstances are proved by the purchaser as would give him an equitable right to compel a refund. MODHOO DYAL SINGH *v.* KOLBUR SINGH [B. L. R., Sup. Vol., 1018

S. C. MODHOO DYAL SINGH *v.* GOLBUR SINGH [9 W. R., 511

142. ———— *Mitakshara law—Legal necessity—Ancestral property—Refund of purchase-money.*—*A*, a Hindu, subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent of his co-sharers, and not for the benefit of the estate, but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held* that, in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of *A*, deceased, were entitled to recover possession without making any refund of the purchase-money. NATHU LAL CHOWDRY *v.* CHADI SAHI [4 B. L. R., A. C., 15: 12 W. R., 446

143. ———— *Bonâ fide purchaser from vendee of father—Refund of purchase-money.*—In a suit by some members of a joint family under Mitakshara law to set aside an alienation of some of the joint family property effected by their father, it appeared that ten years had elapsed since the alienation; and that about six years before the suit was brought, the purchaser from the father sold again to the principal defendants for valuable consideration, and there was no suggestion that these defendants did not purchase *bonâ fide*, the plaintiffs apparently acquiescing in the sale, and not interrupting during that time the enjoyment of the property by the father's vendee. The Court refused to set aside the alienation. The alienation would not have been set aside at any rate without a refund of the purchase-money to the defendants. SURUB NARAIN CHOWDRY *v.* SHEW GOBIND PANDEY [11 B. L. R., Ap., 28

5. ALIENATION BY MOTHER.

144. ———— **Mortgage by a married woman of property inherited from her father**—*Legal necessity—Expenses of daughter's marriage.*—Ordinarily it is the duty of the father in a Hindu family to provide for his daughter's marriage, but whether the father was not possessed of sufficient means to do so, and the mother, to raise money to meet the expenses of the daughter's marriage, mortgaged property of her own which had come to her from her father, it was *held* that the mortgage was made for legal necessity, and was a valid mortgage. RUSTAM SINGH *v.* MOTI SINGH [I. L. R., 18 All., 474

145. ———— **Woman's estate**—*Power of alienation—Gift of land on daughter's marriage.*—A Hindu, in whom the whole of the family property had vested, died without issue and his mother took the estate. She subsequently gave a portion of the property to her son-in-law on the occasion of his marriage with her daughter. The gift was not found to be otherwise than reasonable in extent. *Held* that the gift was binding on the reversioner. RAMASAMI AYYAR *v.* VENGIDUSAMI AYYAR [I. L. R., 22 Mad., 113

HINDU LAW—ALIENATION—*continued*

6. ALIENATION BY WIDOW—*continued.*

161. ———— Alienation of moveable property—*Widow's estate* —The restriction placed by the Hindu law on a widow's power of alienation of her husband's estate extends to moveable as well as immoveable property. NARASIMAH *v.* VENKATADRI [I. L. R., 8 Mad., 290

162. ———— A Hindu widow is not at liberty to defeat the rights of reversioners by alienating or wasting moveable property inherited from her husband. BUCHI RAMAYYA *v* JAGAPATIH [I. L. R., 8 Mad., 304

163. ————
—*Duration of*,
a childless Hin...
life of the widow MOHUN KOOWUR *v.* ZORRAMUN SINGH . Marsh., 166; 1 Hay, 372

164. ———— Alienation of husband's property—*Validity of conveyance for life of widow* —Alienation by a Hindu widow of property *inherited from her deceased husband is valid for the period of her own life*, though the conveyance may purport to convey a greater interest MELGIRAPPA BIN SOLBAPPA TELI *v* SHIVAPPA BIN ERAPPA [6 Bom., A. C., 270

RAMGUTTY KURMOKAR *v* BOISTUB CHURN MOZOOMDAR . 7 W. R., 167

165. ———— Alienation of husband's immoveable property—*Power to make absolute alienation.*—A purchaser of immoveable property from a Hindu widow, in order to show that the property is absolutely conveyed to him, ought to aver and prove that she sold it under such special ... fy a Hindu widow in alienating

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perty sold to him by the first defendant, a Hindu widow. The second defendant answered that his father and the first defendant's husband were un*divided brothers*, and that, as a childless widow, she had no right to sell the property Both the lower Courts upheld the sale as absolute on the ground that she was competent to make it as widow of a separate Hindu The High Court, on second appeal, *held that the decrees of the lower Courts were un*sustainable, as they did not contain the limitation

KANTH *v.* KRISHNAJI I. L. R., 4 Bom., 462

166. ———— *Mortgage* —A Hindu, governed by the Mitakshara school of law, died on the 12th May 1867, leaving him surviving a widow *B* and a brother *R*, who was admittedly the next reversioner In July 1867, *B* purported to adopt a son *D* to *A*, and subsequently in September 1867 obtained a certificate under Act XL of 1858 In 1872 *B* obtained a loan from the plaintiff *M* of R9,000, and to secure its repayment executed a mortgage of seven mouzahs in favour of *M* as guardian of *D* The money was advanced and

as applied towards, the payment of decrees obtained

purchaser of the mortgagor's interest in one of the mouzahs included in his mortgage On the 26th June 1882, *M obtained* a decree declaring that he was entitled to recover the amount due by sale of the mortgaged mouzahs. In the proceedings taken in execution of that decree *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1880,

mortgaged property in the hands of *S* It was found as a fact that the adoption of *D* was invalid, that the advance by *M* to *B* was justified by legal necessity, and that *L* was the benamidar of *S* It also appeared that *M* had himself become the purchaser of one of the mortgaged mouzahs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage-money from the five mouzahs in the hands of *S*. *L* and *S* appealed, and *M* filed a cross appeal, alleging the adoption to be valid and binding on *S*. It was contended that *S*, as the representative of *R*, was estopped from denying the validity of *D's* adoption, and thus having been a party to *M's* first suit, the question as to the liability of the mouzahs to satisfy the mortgage-lien was *res judicata* as against him It was also contended that the five mouzahs should not be saddled with the whole of the mortgage debt, but that the mouzah in the hands of *M* should bear its proportionate part thereof. *Held* that, though *B* purported to execute the mortgage as guardian for *D*, though *D* was not the adopted son of *A*, the substance of the transaction

of *R*, the next reversioner, it really created a valid charge upon the property, and that the mouzah in the hands of *M* must bear its share of the mortgage debt, and that the decree of the lower Court was

purpose not justifying alienation of the former. SHEOLOCHUN SINGH *v.* SAHEB SINGH [I. L. R., 14 Calc., 387
L. R., 14 I. A., 63

154. ———— *Accumulations by Hindu widow—Accumulations—Period up to which they may be dealt with—Legacy to Hindu widow.*—The right of a Hindu widow to the income and accumulations of her husband's estate arising subsequently to his death is absolute, and is not affected by the fact that she may receive them in a lump sum; but whether she receives them as they fall due or after they have accumulated in the hands of others, her right is the same. The question to be sought for in determining her right to deal with such income and accumulations of income is one of intention. If she has invested her savings in such a manner as to show an intention to augment her husband's estate, she cannot afterwards deal with such investments, except for reasons which would justify her dealing with the original estate; but if she has evinced no such intention, she can, at any time during her life, deal with the profits. Where she invests her income, making a distinction between the investments and the original estate, she can at any time thereafter deal with such investment, save in the case of the purchase of other property as a permanent investment. But should she invest her savings in property held by her without making any distinction between the original estate and the after-purchases, the *primâ facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate. GRISH CHUNDER ROY *v.* BROUGHTON . . I. L. R., 14 Calc., 861

155. ———— *Hindu widow's estate—Her right to dispose of accumulated income not made part of the inheritance—Intention of the widow in regard to it.*—The executor of the will of a Hindu testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her husband's death, undisposed of by his will. The money was not received by her as a capitalized part of the inheritance, but as income that had been accumulated during her tenure of her widow's estate. The widow did not act showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years, she disposed of it as her own. *Held* that the money so invested by the widow belonged to her as income derived from her widow's estate, and was subject to her disposition. SAODAMINI DASI *v.* ADMINISTRATOR-GENERAL OF BENGAL . . . I. L. R., 20 Calc., 433
[L. R., 20 I. A., 12

(*b*) ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS.

156. ———— General power of widow to alienate—*Status of widow as distinguished from that of manager—Liabilities of alienees.*—A widow stands in a different position from that of a manager of a joint family. The latter can act only with the consent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. She can therefore do what the body of co-parceners can do, subject always to the condition that she act fairly to the expectant heirs. The rights of these heirs impose, on persons dealing with a widow, the obligation of special circumspection, failing which they may find their securities against the estate to be of no avail after the widow's death. CHIMNAJI GOVIND GODBOLE *v.* DINKAR DHONDEV GODBOLE
[I. L. R., 11 Bom., 320

157. ———— Legal necessity—*Necessity, Evidence of.*—A sale by a Hindu widow of land inherited by her from her husband is valid *only* when made of necessity and for certain purposes; but on this point, where the plaintiff in a suit to set aside such a sale has relied in the Court below solely on the ground that the land had been devised inconsistently with the exercise of the widow's power of sale, the Appellate Court will be satisfied with evidence less complete and positive than would otherwise have been required. RANGASVAMI AYYANGAR *v.* VANJULATAUMAL . . . . . 1 Mad., 28

158. ———— *Suit by reversioner—Cause of action.*—*A*, a Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband. The mortgagee obtained a decree, and in execution thereof caused the property to be sold. In a suit by *A*'s daughter's son, the next reversionary heir, for a declaration that the sale was invalid as against him, the lower Appellate Court held that there was no cause of action. *Held* in special appeal that the existence of a cause of action depended upon whether the widow incurred the debt under legal necessity; and the case was remanded for trial of that question. BISTOBEHARI SAHOY *v.* LALA BAIJNATH PRASAD
[7 B. L. R., 213 : 16 W. R., 49

159. ———— Alienation of ancestral property—*Jain law.*—The alienation by gift by the widow of a Bindala Jain of her husband's ancestral property is invalid according to the Mitakshara, which is the ordinary law governing Bindala Jains in the absence of custom to the contrary. BACHEBI *v.* MAKHAN LAL . . . I. L. R., 3 All., 55

160. ———— *Alienation without necessity.*—A conveyance of ancestral property by a Hindu widow without proof of necessity can only operate as a conveyance of her life-interest. The purchase of a kismut sold for Government revenue does not destroy the pre-existing rights of the holders of the tenure. Reversioners are as much entitled to have a sale of their share in such a kismut set aside as a sale of any other property by the widow without necessity. TARINEE CHURN BANERJEE *v.* NUND COOMAR BANERJEE . . 1 W. R., 47

HINDU LAW—ALIENATION—*continued.*

6 ALIENATION BY WIDOW—*continued.*

maintenance, and the dedication was *primâ facie* one for the widow's own spiritual welfare, not for that of her deceased husband *K*, and because the property alienated was of considerable value, the

171. ———————— *Mortgage of*

by her to make good her claim to the estate The widow,

after his death These sums were appropriated to the payment of the widow's debt by the mortgagee, who, after her death, brought the present suit against the deceased zamindar's mother then come into possession of the estate, his undivided half brothers being joined also as defendants *Held* (1) that the widow was entitled to mortgage the estate for the payment of her husband's debts, and was not bound to discharge them out of income, (2) that the two payments by the widow of money belonging to the ... ave been ... *Hurro* ... *I. L. R.*, ... RAMASAMI CHETTI *v.* MANGAIKARASU NACHIAR

[I. L. R., 18 Mad., 113

172. ———————— *Debt incurred by a Hindu widow for legal necessity, but without any charge on the ancestral property in the hands of the widow—Liability of ancestral property in the hands of the reversioners*—The creditors of a Hindu widow cannot, after her death, have recourse

upon was incurred for legal necessity, and was one in respect of which such property might have been made liable beyond the widow's lifetime, if in fact no instrument charging the property beyond the widow's lifetime has been executed by the widow. *Shamanand* v *Har Lal, I. L. R., 18 All., 471*, *Ramasami Mudaliar* v *Sellattammal, I. L. R., 4 Mad., 375*, referred to. *Ramcoomar Mitter* v. *Ichamoyi Dasi, I. L. R., 6 Calc., 36*, dissented from DHIRAJ SINGH *v.* MANGA RAM

[I. L. R., 19 All., 300

173. ———————— *Estate of*

held an interest for life, comprised a family trade, carried on by a manager on her account *Held* that the restriction upon her power to alienate remained the same, notwithstanding the trade, without being relaxed on that account. Justifying necessity or good grounds, after due inquiry, for belief in its

consent among the members of the family depends on proof that the charge was necessary or was believed to be so by the mortgagee after due inquiry The manager appointed by the daughter, on whom the family estate has devolved, has no larger power to pledge the ancestral assets than his principal. It is not incumbent on the defendant who relies on the absence of legal necessity for the borrowing by

Amarnath ... *All., 426* ... followed. ——

[I. L. R., 21 All., 71
L. R., 25 I. A., 183
2 C. W. N., 729

Upholding decision of High Court in ACHHAN KUAR *v.* THAKUR DAS . I. L. R., 17 All., 125

174. ———————— *Mortgage taken from Hindu widow—Unpaid interest claimed on her deceased husband's mortgages—Will, Construction of*—A pardanashin widow executed a mortgage of part of the family estate to secure payment of the balance of interest alleged to be due on three previous mortgages which had been executed by her husband in his lifetime. Justifying necessity for her to encumber was not shown, nor enquiry by the mortgagee as to her authority Even if the transaction had been properly explained to her, as a Hindu widow she would have exceeded her powers. By his will her husband had declared that his widow should have full powers, but that during the life of his minor son she should not have power to transfer without legal necessity, and that she should have power to mortgage to pay revenue and other debts. *Held* that the will conferred on her no greater power of alienating the family estate than she had under the Hindu law; and that, under the circumstances, the mortgage executed by her was invalid. Notes

wrong in declaring that the five mouzahs in suit were to bear the whole amount of the debt. LALA PARBHU LAL *v.* MYLNE . I. L. R., 14 Calc., 401

167. ———— *Adopted son's right to impeach alienation unnecessarily made by his adoptive mother before his adoption—Widow, Alienation by—Alienee from widow bound to inquire if legal necessity for alienation—Evidence—Onus of proving necessity for alienation by the widow.*—The plaintiff claimed, as the adopted son of one *K*, to recover possession of his adoptive father's property, which had been mortgaged by his (*K*'s) widow, *R* (defendant No. 1), to the third defendant, *B*, prior to the plaintiff's adoption by her. The property had come into *R*'s possession incumbered with a mortgage effected by her husband, and, in order to redeem that mortgage, she mortgaged the property again to one *Y*. She subsequently paid off *Y*'s debt, amounting to R3,629, and in 1876 she mortgaged the property for R5,999 to *B*, who was put into possession. In 1881 she adopted the plaintiff, and in 1882 the plaintiff brought this suit to recover the property. He contended that *R* had no power to alienate or mortgage the ancestral immoveable property of her deceased husband, and he claimed, as the adopted son of *K*, to be entitled to the property free from the mortgages or other incumbrances with which *R* had attempted to charge it. For the defendants it was contended (*inter alia*) that the plaintiff could not impeach transactions effected by his adoptive mother prior to his adoption. *Held* that the plaintiff, as the adopted son of *K*, had a right to impeach the unauthorized transactions of his adoptive mother *R*, who possessed only a widow's restricted power of alienation. The plaintiff was adopted by *R* to her husband, who was the last owner of the ancestral property. The plaintiff at once succeeded to that property upon his adoption, and as heir of his adoptive father was entitled to object to any alienation made by *R*, on the principle that the restrictions upon a Hindu widow's power of alienation are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death. *Held* also that the plaintiff was entitled to redeem the property on payment of such amount only as was raised by *R* for the purpose of meeting expenses necessarily incurred by her. *Held*, further, that the onus of proving the necessity for alienation lay upon *B*. The Court found that there was no evidence that any sum beyond R3,629, the amount of *Y*'s mortgage, was really required by *R*, and accordingly directed that the mortgage account should be taken between the plaintiff and *B* on the footing that the principal of the mortgage-debt was R3,629 only, instead of R5,999. LAKSHMAN BHAU KHOPKAR *v.* RADHABAI . . I. L. R., 11 Bom., 609

168. ———— *Power of Hindu widow to alienate—Qualified title to alienate in contracting debt by manager of estate charging it in the hands of heir—Responsibility of lender—Rate of interest, as regards necessity, distinguishable.*—A suit was brought by a creditor who had advanced money for the payment of Government revenue upon an estate under the management of a Hindu widow. The plaintiff's agent had received rents to a certain amount from part of the estate. *Held* that the plaintiff ought to have taken care that this sum was applied in part reduction of the debt to him, and that it must be deducted from the amount chargeable to the estate in the hands of the reversionary heir. *Hunooman Pershad Panday* v. *Munraj Koonweree, 6 Moore's I. A., 393,* followed. The widow was borrowing in a case where it was for the plaintiff to see whether there was actually a ground of necessity for the loan. Though the loan was necessary for her, to borrow at the high rate of interest charged, considering the security which she gave, was not necessary. The rate of interest had therefore been rightly reduced to twelve per cent. HURRO NATH RAI CHOWDHRI *v.* RANDHIR SINGH . . . . I. L. R., 18 Calc., 311
[L. R., 18 I. A., 1

169. ———— *Burden of proving necessity where a Hindu widow attempts to alienate property held by her for her widow's estate.*—In order to sustain an alienation of the property held by a Hindu widow for her widow's estate, it must be shown either that there was legal necessity for the alienation or at least that the grantee was led on reasonable ground to believe that there was. In a suit upon a mortgage of such property executed under the authority of a widow borrowing money, the point whether the loan was necessary was expressed in the issues in the form of a question how far the defendants' objections, grounded on the absence of necessity, were tenable. This was obviously an incorrect mode of trying the suit, because it assumed that it was for the defendants to show absence of necessity, and did not accord with the obligation upon a mortgagee, claiming under a widow, to prove a valid mortgage. It was sufficient to defeat the suit that upon the whole case there had been no proof of the lenders having fulfilled the legal obligation to inquire and satisfy himself that the widow, from whom he was taking a charge upon her husband's inheritance, had a proper justification for so charging it. *Hanooman Persaud* v. *Munraj Koonweree, 6 Moore's I. A., 393,* referred to. AMARNATH SAH *v.* ACHAN KUAR
[I. L. R., 14 All., 420

S. C. LALA AMARNATH SAH *v.* ACHAN KUAR
[L. R., 19 I. A., 196

170. ———— *Power of a Hindu widow to dispose of property for religious and charitable purposes—Suit by reversioners to set aside alienation.*—A Hindu widow inheriting the estate of her deceased husband, *A*, executed a deed of endowment in favour of the pujari of a thakurbari (temple) established by her deceased husband's mother. In a suit brought by the reversionary heirs of her deceased husband after the death of the widow to set aside the alienation,—*Held* that, inasmuch as the idol was established by the mother of the deceased *K* and he had made no provision for its

6 ALIENATION BY WIDOW—*continued.*

183. ———— *Effect of sale against those not consenting.*—The consent of all the heirs living at the time of the execution of a bill of conveyance by a Hindu widow, either directly or by attestation, is requisite to make the sale binding against the reversioners KARTICK KURMOKER *v.* DHUNNO MONEE GOOPTO . W. R., 1864, 268

184. ———— *Right of purchaser for widow's lifetime*—The consent of all the reversioners is necessary to make a sale by a childless Hindu widow valid in law, but the purchaser is entitled to hold the property during the widow's lifetime. Only immediate reversioners are entitled to impeach a sale by a widow. RADHA *v* KUAR [W. R., 1864, 148

CHUNDER MONEE DOSSEE *v* JOYKISSEN SIRCAR [1 W. R., 107

185. ———— *Consent of next reversioner, Effect of, as to others*—A grant by a Hindu widow, with the sanction and concurrence of the next reversioner, is valid, and creates a title which cannot be impeached on the death of the widow by the person who, but for such grant, would be entitled as heir of her husband RAJ BULLUBH SEN *v* OOMESH CHUNDER ROOZ [I. L. R., 5 Calc., 44 : 3 C. L. R., 384

186. ———— *Consent of heirs*

to recover the property on recouping the vendees the expenses incurred on improvements. VARJIVAN RANGJI *v.* GHELJI GOKALDAS [I. L. R., 5 Bom., 563

187. ———— *Alienation made with consent of next reversioner—Remoter reversioners*—A gift by a Hindu widow, who has succeeded

because it has been made with the consent of the next reversioner. *Raj Bullubh Sen* v. *Oomesh Chunder Rooz, I. L. R, 5 Calc, 44,* and *Noferdose Roy* v. *Modhoo Soondari Burmonia, I L R, 5 Calc, 732,* dissented from *Raj Lukhee Dabea* v. *Gokool*

TULA KUAR I. L. R., 6 All., 116

6. ALIENATION BY WIDOW—*continued.*

MADAN MOHAN *v.* PURAN MAL [I. L. R., 6 All., 288

See BHAGWANTA *v* SUKHI [I. L. R., 22 All., 33

188. ———— *Evidence of necessity*—The consent of a former reversioner to a sale by a Hindu widow, though not binding evidence on a subsequent heir, is strong presumption of the existence of necessity at the time of sale, to be rebutted only by proof of fraud and collusion, or of the absence of necessity KALEE MOHUN DEB ROY *v* DHUNUNJOY SHAHA . . 6 W. R., 51

of the purchaser MADHUB CHUNDER HAJRAH *v.* GOBIND CHUNDER BANERJI . 9 W. R., 350

190. ———— *Attestation of conveyance by reversioner—Waste*—The fact of a reversioner
by a Hin
which prec
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for a loan
the reversioner GOPAL CHUNDER MANNA *v.* GOUR MONEE DOSSEE . 6 W. R., 52

191. ———— *Widow's estate*

of his mother, and the witness to the deed of ratification became the next reversionary heir *Held*, in a suit by him after the widow's death for possession, that at the time of the conveyances the son had a mere contingent reversionary interest in expectancy, and that the subsequent ratification by his mother could not operate as a surrender of her estate so as to change the conveyances, and make them enure as absolute
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sent to it on his part. RAM CHUNDER PODDAR *v.* HARI DAS SEN . . I. L. R., 9 Calc., 463

192. ———— *Effect of partition by Hindu widows of their husband's estate*—Two Hindu widows, after a compromise between themselves reciting that each had obtained absolute

6. ALIENATION BY WIDOW—*continued.*

promising to pay interest, additional to that contracted for in the mortgages, had been signed by the husband, which it was held could not affect the right to redeem, being unregistered. TIKA RAM *v.* DEPUTY COMMISSIONER OF BARA BANKI

[I. L. R., 26 Calc., 707
L. R., 26 I. A., 97
3 C. W. N., 573

175. ———— **Gift by Hindu widow after mortgage**—*Equity of redemption, Alienation of.*—Where a Hindu widow mortgaged immoveable property to one person and afterwards gave it in gift to another,—*Held* that the deed of gift did not convey to the donee the widow's equity of redemption. JAGANNATH VITHAL *v.* APAJI VISHNU

[5 Bom., A. C., 217

176. ———— **Alienation by widow as administratrix of husband**—*Presumption of validity.*—Where a sale of landed property was made by a Hindu widow as administratrix to the estate of her deceased husband,—*Held* that she had power to dispose of the land for any purpose for which as administratrix she might properly do so. *Held* also that an improper disposal of the property was not to be presumed against a purchaser from her, but that the sale must be taken to be proper and valid, unless it appeared that to the purchaser's knowledge she was for an unlawful purpose converting the estate. *Held* also that, she having the right to sell as administratrix, it could not be presumed that she sold as a widow. LOGANADA MUDDALI *v.* RAMASVAMI

[1 Mad., 384

177. ———— **Grounds supporting charge on the inheritance by a widow for her debt**—*Obligation of purchaser to show nature of transaction—Necessity.*—In transactions such as the alienation by a widow of her estate of inheritance derived from her husband, any creditor seeking to enforce a charge on such estate is bound at least to show the nature of the transaction, and to show that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the recognized necessities. The principle is that the lender, although he is not bound to see to the application of the money, and does not loose his rights if, upon *bonâ fide* inquiry, he has been deceived as to the existence of the necessity which he had reasonable grounds for supposing to exist, still is under an obligation to do certain things. These are to inquire into the necessity for the loan and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the borrower is acting in the particular instance for the benefit of the estate. This principle laid down in *Hunooman Persaud Panday* v. *Babooee Munraj Koonwerse, 6 Moore's I. A., 392,* in regard to the manager for an infant has been applied also to alienations by a widow of her estate of inheritance and to transactions in which a father, in derogation of the rights of his son, under the Mitakshara law, has made an alienation of ancestral family estate. KAMESWAR PERSHAD *v.* RUN BAHADUR SINGH

[I. L. R., 6 Calc., 843: 8 C. L. R., 361
L. R., 8 I. A., 8

178. ———— **Purchaser, Obligation of**—*Alienation for sum larger than necessity required.*—*Semble*—In purchasing from a Hindu widow the purchaser is not bound to look to the appropriation of the money, nor is he affected by the fact that the alienation was made for a larger sum than the necessity of the case required. KAMIKHAPRASHAD ROY *v.* JAGADAMBA DASI . . . 5 B. L. R., 508

179. ———— **Consent of reversioners**—*Moveable and immoveable property—Alienation for worship of idol.*—A Hindu widow has power, with the constent of the reversionary heirs, to make a valid alienation, for religious purposes, of property, moveable or immoveable, left by her husband. Where a Hindu widow dedicated property by deed to the worship of an idol, and the property was given to trustees in trust, after the death of the widow to permit the male heirs of her late husband to receive the rents,—*Held* that such heirs were entitled to actual possession and to the rents of the estate, provided they devoted it according to the provisions of the deed to the worship of the idol. BRAJANATH BYSAKH *v.* MATILAL BYSAKH . . 3 B. L. R., O. C., 92

180. ———— *Gift of immoveable property inherited from husband.*—A Hindu widow who has inherited immoveable property from her husband, though possessed of a limited power of alienating portions of such property for necessary purposes or spiritual uses, cannot dispose by a gift in dharam or krishnaipau of the whole of such immoveable property without the consent of the heirs of her husband. BHASKAR TRIMBAK ACHARYA *v.* MAHADEB RAMJI . . . 6 Bom., O. C., 1

181. ———— *Necessity—Evidence—Recital in deed of sale.*—A recital in a deed of sale by a Hindu widow of her deceased husband's property, setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity, nor does the attestation of a relative import his concurrence. Such a transaction may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and justified by Hindu law. RAJLAKHI DEBI *v.* GOKUL CHANDRA CHOWDHRY

[3 B. L. R., P. C., 57: 12 W. R., P. C., 47
13 Moore's I. A., 208

182. ———— *Want of consent of remote reversioners.*—*Semble*—An alienation by a widow and next reversioner without the consent of subsequent reversioners is not binding on such reversioners. *Per* PIGOT, J. GOPEENATH MOOKERJEE *v.* KALLY DOSS MULLICK

[I. L. R., 10 Calc., 225

is, to justify a sale by a daughter to the prejudice of the daughter's son RAJ CHUNDRA DEB BISWAS *v* SHEESHOO RAM DEB 7 W. R., 146

204. ——————— *Money borrowed to defray grand daughter's marriage expenses—Liability of reversioner* —A Hindu widow borrowed a sum of money for the purpose of defraying the marriage expenses of a grand daughter, the child of a

[illegible]

205. ——————— *Loan for inves-*

[illegible]

the minor's investiture according to the Hindu religion DOOKHYAR ROY *v* DULSINGAR SINGH [12 W. R., 367

[illegible]

208. ——————— *Debt provided for by lease of ancestral property* —The existence of a debt the liquidation of which is provided for by lease of ancestral property is no justification for alienation of such property by a Hindu widow during her life-tenancy TILUCK ROY *v.* PHOOLMAN ROY [7 W. R., 450

209. ——————— *Existence of debts—Re purchase of family property.*—Where the Court has expressly found the existence of debts, and that the sale of ancestral property was a *bonâ fide*

[illegible]

cient to invalidate the alienation A sale of ancestral property merely for the purpose of procuring

[illegible]

[3 N. W., 4

210. ——————— *Bond executed by wife to pay husband's debts.*—A wife and her husband's brothers jointly executed a bond for the repayment of moneys borrowed to pay a debt due by her husband and his brothers, and to carry on the cultivation of lands held by her husband and his

brothers, and hypothecated the family house as collateral security for the repayment of such money.

[illegible]

ing his property, and the husband and his property were therefore not liable for the bond debt. PURI *v* MAHADEO PRASAD I. L. R., 3 All., 122

211 ——————— *Payment of*

[illegible]

[6 Bom., A. C., 270

[illegible]

widow is competent to alienate her husband's estate for the purpose of paying his debts, even though they may be barred by the law of limitation Her alienations for such a purpose are legal and binding on the reversionary heirs CHIMNAJI GOVIND GODBOLE *v* DINKAR DHONDEV GODBOLE [I. L. R., 11 Bom., 320

213 ——————— *Revival of a barr*

It is

of a

the inheritance for the [illegible]

a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts, though they were barred at the time of its execution KONDAPPA *v* SUBBA [I. L. R., 13 Mad., 189

214 ——————— *Debt of widow's own*

—A

conformity with [illegible]

of the reversioner, may be valid, although the debt creating the necessity for the sale was a debt not of the ancestor's time, but of the widow's own contracting SHOODUNKUREE DOSSEE *v* CHAND MONEE DOSSEE 7 W. R., 335

215

—*Ev*

facie proof [illegible]

[5 N. W., 89

216. ——————— *Debts, Evidence*

[illegible]

217. ——————— *Sales of ancestral property.*—The mere fact that sales of ancestral property took place in execution of decrees against the ancestor does not of itself show that the sales

proprietary right in her share of the husband's estate, mortgaged certain properties forming portion thereof. *Held* that the mortgage did not bind the husband's estate in the absence of proof both of legal necessity and of *bonâ fide* inquiries by the mortgagee. DHARAM CHAND LAL *v.* BHAWANI MISRAIN

[L. R., 24 I. A., 183
I. L. R., 25 Calc., 183

(c) WHAT CONSTITUTES LEGAL NECESSITY.

193. ———— Legal necessity—*Pious purposes.*—Hindu law does not regard "pious purposes" as the only "necessary purposes" which justify alienation of inherited property by Hindu ladies. Self-maintenance, discharge of just debts, protection or preservation of the estate, may be regarded as such "necessary purposes" also. SOORJOO PERSHAD *v.* KRISHAN PERTAB BAHADOOR

[1 N. W., 49: Ed. 1873, 46

194. ———— *Gift for pious and religious purposes.*—An alienation by a Hindu widow of her deceased husband's estate for pious and religious purposes, made for her own spiritual welfare, and not for that of her deceased husband, is not valid. The power of a Hindu widow to alienate her deceased husband's estate for pious and religious purposes defined. *Collector of Masulipatam* v. *Cavali Vencata Narainapah, 8 Moore's I. A., 529,* referred to. PURAN DAI *v.* JAI NARAIN

[I. L. R., 4 All., 482

195. ———— *Endowment of idol by Hindu widow.*—A Hindu widow cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioners. KARTICK CHUNDER CHUCKERBUTTY *v.* GOUR MOHUN ROY . . . . 1 W. R., 48

196. ———— *Pious purposes—Spiritual necessities.*—Although pilgrimages and sacrifices performed by a Hindu widow may be indirectly beneficial to her deceased husband, they are not ceremonies indispensable for his spiritual benefit. A sale by a Hindu widow to raise money for pious acts, not in the nature of spiritual necessities, unless such sale is reasonable in the circumstances of the family and the property sold is but a small portion of the property inherited from her husband, is invalid. RAMA *v.* RANGA . . I. L. R., 8 Mad., 552

197. ———— *Pilgrimage.*—Where a Hindu, by will, directed that his widow should have power to sell his property for the purpose of defraying the expenses of a pilgrimage, a *bonâ fide* purchaser from the widow who, at the time of purchase, believed and had reason to believe that the widow was going on a pilgrimage, and that the property was sold and the money raised for that purpose, is not bound to give back the property at the suit of the reversioner, if there is any evidence that the widow did really go on the pilgrimage. *Per* GARTH, *C.J.*—In such a case the purchase would be good even if there were no evidence that the widow had gone on a pilgrimage. RAM KANT CHUCKERBUTTY *v.* CHUNDER NARAIN DUTT 2 C. L. R., 474

198. ———— *Pilgrimage to Benares.*—A pilgrimage to Benares is not a legal necessity to justify a sale by a Hindu widow. HURROMOHUN AUDHIKAREE *v.* AULUCK MONEE DOSSEE

[1 W. R., 252

199. ———— *Expenses of pilgrimage to Gya.*—Expenses incurred by a Hindu widow for a pilgrimage to Gya and for the performance of sradh are legitimate expenses for which she can alienate her husband's property. Where the amount expended was R1,700 and the property was sold for R4,000,—*Held*, in a suit by the heir against the purchaser to have the sale set aside, that the plaintiff not having offered to repay R1,700 and interest, his suit must be dismissed. MUTTEERAM KOWAR *v.* GOPAUL SAHOO

[11 B. L. R, 416: 20 W. R., 187

CHOWDHRY JUNMEJOY MULLICK *v.* RUSSOMOYE DASSEE . 11 B. L. R., 418 note: 10 W. R., 209

200. ———— *Pilgrimage never carried out—Debt barred by limitation.*—The payment by a Hindu widow of her husband's debts, though barred by limitation, is a pious duty for the performance of which a Hindu widow may alienate her property. *Chimnaji Gobind Godbole* v. *Dinkar Dhondeo Godbole, I. L. R., 11 Bom., 320,* and *Tarini Prasad Chatterjee* v. *Bhola Nath Mookerjee, I. L. R., 21 Calc., 190 note,* followed. In the case of an alienation by a Hindu widow of her husband's property on the ground of legal necessity, the alienee is sufficiently protected if he satisfies himself by *bonâ fide* inquiries of the existence of such necessity, although he may be in fact mistaken. He has not to see to the application of the money. Where, therefore, a widow borrowed money for a pilgrimage to Gya to perform her husband's sradh ceremonies, but the pilgrimage was never made, the debt was *held* to be recoverable out of the estate. UDAI CHUNDER CHUCKERBUTTY *v.* ASHUTOSH DAS MOZUMDAR . . . I. L. R., 21 Calc., 190

201. ———— *Performance of husband's sradh at Gya.*—The performance by a widow of her husband's sradh at Gya is a reasonable necessity for which she may alienate at least a portion of his estate. MAHOMED ASHRUF *v.* BROJESSUREE DOSSEE . 11 B. L. R., 118: 19 W. R., 426

202. ———— *Sradh of husband—Marriage of daughter—Maintenance of grandsons—Payment of husband's debts.*—The sradh of the widow's husband, the marriage of his daughter, the maintenance of his grandsons, and the payment of the husband's debts are admitted by Hindu law as legitimate grounds of necessity for alienations. LALLA GUNPUT LALL *v.* TOORUN KOONWAR. CHUNDER LALA *v.* LALLA GUNPUT LALL . 16 W. R., 52

203. ———— *Sradh of mother.*—According to Hindu law, the sradh of a mother is not a legal necessity as that of the father

HINDU LAW—ALIENATION—*continued.*

6 ALIENATION BY WIDOW—*continued.*

Hindu widow's estate in her deceased husband's immoveable property, her power of alienation generally, and her power of alienation in particular for the purposes of litigation, discussed *Hunoomanpersaud Pandey* v. *Babooee Munraj Koonweree, 6 Moore's I. A., 393, Collector of Masulipatam* v. *Narrainapah, 8 Moore's I. A., 529, Grose* v. *Amirtamayi Dasi, 4 B. L. R., O. C., 1, Phool Koer* v. *Dabee Pershad, 12 W. R., 187, Roy Makhun Lall* v. *Stewart, 18 W. R., 121, Nugenderchunder Ghose* v. *Kaminee Dossee, 11 Moore's I. A., 241,* and *Baijun Doobey* v. *Brij Bhookun Lall Awusti, L. R., 2 I. A., 275,* referred to INDAR KUAR v. LALTA PRASAD SINGH . . I. L. R., 4 All., 532

222. ———— *Litigation, Expenses of—Raising funds to carry on appeal to Privy Council.*—A judgment-debtor, who had been

of

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223. ———— *Legal expenses—Maintenance—Re marriage of widow.*—Legal expenses incurred by a Hindu widow in defending her life-estate in her husband's property constitute such a charge on the property as to make a sale thereof by her binding as against the reversioners Where a Hindu widow is re-married, or is living with another man, it does not necessarily follow that she would not be entitled to sell her deceased husband's estate for her maintenance AMJAD ALI v. MONIRAM KALITA . I. L. R., 12 Calc., 52

224. ———— *Necessity to provide maintenance for herself.*—A Hindu widow cannot alienate for any purpose property entrusted to her solely that from its profits she may maintain herself. SEITH GOBIN DASS v. RANCHORE *alias* RUGHOBEER . 3 N. W., 324

225. ———— *Digging tank.*—The digging of a tank, though a meritorious act and a great convenience to the public, is not a legal necessity for which a widow can alienate property left to her for life only. RUNJEET RAM KOOLAL v. MAHOMED WARIS . . 21 W. R., 49

226. ———— *Consent of husband—Declaration of legal necessity.*—A deed of gift of ancestral property not being valid under Hindu law, without the consent of all the heirs, a wife is not bound by her husband's consent to a deed of gift to their children. The wife and husband being in possession, not beneficially for themselves, but for their children, the wife's acquiescence is not to be presumed by being in possession A mere declaration of necessity is not sufficient to justify a purchase from a Hindu widow. GUNGAGOBIND BOSE v. DHUNNEE 1 W. R., 60

227. ———— *Loan while administering estate of husband.*—Where a plaintiff alleged that *M*, the deceased widow of *S*, a Hindu, while administering the estate of her deceased hus-

M,—*Held* that the plaint was properly rejected as disclosing no cause of action against the defendants. *Gadgeppa Desai* v. *Apaji Jevanrao, I. L. R., 3 Bom., 237,* approved *Ramcoomar Mitter* v. *Ichamoyi Dasi, I. L. R., 6 Calc., 36,* dissented from. RAMASAMI MUDALI v. SELLATTAMMAL [I. L. R., 4 Mad., 375

228. ———— *Loan for supplying necessity.*—Plaintiff sought to recover land sold by the first defendant, the widow of an undivided member of a Hindu family, and part of the consideration was the amount of a mortgage deed executed for the purpose of supplying the necessities of the husband of the first defendant. In special appeal a ... the amount of the mortgage-money

nate matter MADAVA NAIKAN v. APPAVU NAIKAN [2 Mad., 394

the hands of the defendant. GADGEPPA DESAI v. APAJI JIVANRAO . I. L. R., 3 Bom., 237

(*d*) SETTING ASIDE ALIENATIONS, AND WASTE.

230. ———— **Suit to set aside alienation by widow as tenant for life**—*Effect of petition as passing property.*—By a petition filed in 1830, *N*, a Hindu, asked that *certain property specified* in a schedule to the petition which had up to

were for necessary or justifiable purposes. BROJO KISHORE GUGENDAR MOHAPATTUR *v.* HUREE KISHEN DOSS . . . . 10 W. R., 57

218. ——————— *Obligation of widowed daughter-in law in possession of father-in-law's estate to pay his debts—Sale of part of estate by her for that purpose—Suit by reversioner to have sale declared void beyond her lifetime—Widow not availing herself of protection of the Dekkan Agriculturists' Relief Act.*—A childless Hindu widow, having succeeded to the estate of her father-in-law, sold a portion of it in order to pay off his debts. The estate was situate in a district in the Presidency of Bombay subject to the Dekkan Agriculturists' Relief Act (XVII of 1879). The plaintiff as reversioner sued for a declaration that the sale was void beyond the lifetime of the widow. Both the lower Courts made the declaration prayed for by the plaintiff, on the ground that there was no necessity for the sale, as the widow might have availed herself of the provisions of the Dekkan Agriculturists' Relief Act. On appeal by the defendant to the High Court,—*Held*, reversing the lower Courts' decree, *that the sale by the widow should be upheld.* She was not bound to avail herself of the relief afforded by the Dekkan Agriculturists' Relief Act any more than of the provisions of the Limitation Act. The moral obligation which rested upon her to pay the debts of her father-in-law justified the sale. BHAU BABAJI *v.* JOPALA MAHIPATI [I. L. R., 11 Bom., 325

219. ——————— *Decree for arrears of revenue—Right of widow to usufruct for her own purposes.*—Where an estate devolved to a widow almost unincumbered, with an ample income more than sufficient to pay a small debt due by the husband, the Government revenue, and all other expenses including the marriage of daughters, the widow was held not to be justified by any legal necessity in alienating the estate in the absence of any actual pressure, such as an outstanding decree or impending sale for arrears of revenue. LALLA BYJNATH PERSHAD *v.* BISSEN BEHAREE SAHOY SINGH [19 W. R., 80

220. ——————— *Expenses of litigation—Fraudulent assignment—Suit to declare deed binding on reversioners.*—A Hindu, *R C*, died possessed of considerable property, and leaving five sons. One of them died leaving a widow *B*. She brought a suit to recover her husband's share in *R C's* estate, together with the profits thereon. The suit was conducted by *G R*. A large amount became due to him for costs. To secure this, *B* executed a bond and warrant of attorney to confess judgment. The suit failed. In order to obtain the means of bringing another suit, *B*, by deed dated 4th April 1859, assigned her interest in the estate in the right of her husband, and all benefit to be derived from the suit to be instituted, to *G* —one-half absolutely, the other in trust to retain thereout what he might advance to her for maintenance and for the costs of suit with interest at 12 per cent. and to pay her the residue. In November 1859, *G* by deed sub-assigned to *H S*, in consideration that *H S* should undertake the maintenance of *B* and the management of the suit, retaining only five-sixteenths out of the eight-sixteenths assigned to him (*G*) absolutely. On 19th August 1861, *B* obtained a decree in the Supreme Court declaring her entitled to the accumulations on her husband's one-fifth share in the estate of his father *R C*, and to all profits made on such accumulations since her husband's death. In September 1861, *G R* caused judgment to be entered on the bond and execution to be issued, and the sheriff seized and was about to sell *B's* interest in the estate of her husband. Thereupon, *B* being entirely without means, *P S*, brother of *H S*, paid off *G R*, and in consideration thereof took an assignment by deed, dated 18th December 1861, in the name of one *I S*, from *B*, of five-eighths of the half share reserved to her by the deed of 4th April 1859, but subject to the assignment by that deed to *G*. On 20th December 1869, R84,685 were paid into Court as *B's* husband's share of the accumulations on *R C's* property at the date of his death, and R1,55,255 as the profits made thereon since her husband's death. *P S* now sued for a declaration that the deed of 18th December 1861 was binding upon *B* and the reversionary heirs, and for an order that the precise amount due to him be ascertained and paid to him out of the moneys paid into Court. At the trial he abandoned his claim against the R84,685 on the ground that he could not prove legal necessity on the part of *B*. *Held* the deed could be supported only so far as it charged the profits made since *R C's* death with the repayment of the R12,500 advanced, with interest at 12 per cent. *P S* was entitled to have that amount paid out of the R1,55,255 in Court. PANNALAL SEAL *v.* BAMASUNDARI . . . . 6 B. L. R., 732

221. ——————— *Litigation—Reversioner—Mitakshara law.*—*R*, a Hindu widow, who had succeeded to the estate of her deceased husband, mortgaged a portion of it to *L* as security for the repayment of money which she borrowed from him for the purpose of suing for an estate to which her deceased husband had an alleged right of succession, which he had not, however, himself sought to enforce. This suit was dismissed. *R* subsequently transferred her deceased husband's estate to his daughter *I*. *L* sued *R* and *I* to enforce the mortgage made to him by *R* by cancelment of such transfer. *Held* that the mere fact that the mortgaged property had been transferred to *I* did not preclude her from contending, as next reversioner, that the mortgage of such property by *R* was void for want of "legal necessity;" that under the circumstances stated above there was not any "legal necessity," within the meaning of the Hindu law, for such mortgage, and such suit not having been for the benefit of the estate of *R's* deceased husband, consequently such mortgage was not valid so far as the reversionary right of *I* was concerned; that, however, *I's* right to the mortgaged property as transferee from *R* was subject to such mortgage. The nature of a

HINDU LAW—ALIENATION—*continued.*

6 ALIENATION BY WIDOW—*continued.*

more than the amount of the debt did not render the sale invalid LALA CHATRANARAIN v UBA KUNWARI
[1 B I R., A. C., 201

240. ———— Suit for rent by alienee of widow—*Suit for rent—Title—Possession by*

for the Judge to enter into any question of possession by the widow BANEE MADHUB GHOSE v THAKOOR DOSS MUNDUL
[B. L. R., Sup. Vol., 588: 6 W. R., Act X, 71

TILLESSUREE KOER v. ASMEDH KOER
[24 W. R., 101

241. ———— Waste—*Reversioners*—

reversioner may be appointed such manager. MAHARANI v NUNDOLAL MISSER
[1 B. L. R., A. C, 27: 10 W. R., 73

242 ———— *Reversionary heirs*—A conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow's estate and vests the property in the reversionary heirs, and the conveyance is

and is therefore not binding beyond the widow's life; nor will the reversionary heirs be deprived, during the widow's life, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immoveable GOBINDMANI DASI v. SHAMLAL BYSAK KALIKUMAR CHOWDHRY v RAMDAS SHAHA GAURHARI GUI v PEARI DASI MACHOORAM SEN v. GAURHARI GUI
[B L. R., Sup Vol., 48: W. R., F B, 165

LALLA CHUTTUR NARAIN v. WOOMA KOOWAREE
[8 W. R., 273

liable to the penalty of absolute forfeiture of the property for the benefit of reversioners. KOMUL MONEE DOSSEE v. ALHAMMONEE DOSSEE
[1 W. R., 256

244. ———— *Extravagance of widow—Necessity, Proof of*—Mere extravagance on the part of a Hindu widow will not affect the rights of one advancing money to her on the security of her husband's property if it be proved that the loans were advanced for necessary purposes. MATA PERSHAD v. BHAGEERUTHEE 2 N. W., 78

245 ———— *Reversioners—Cause of action*—If reversioners can make out a distinct case of waste by the widow and of positive fraud by her on her husband's estate and on themselves, they may bring a suit to have the estate protected and to have the widow removed from the management. Reversioners can maintain such a suit even if they are not the nearest reversioners, if the nearer reversioner is implicated in the alleged fraud or waste A reversioner cannot, during the widow's lifetime, get a declaration that he as next reversionary heir is entitled to succeed to the property on her death SHAMA SOONDUREE CHOWDHRAIN v JUMOONA CHOWDHRAIN 24 W. R., 86

246. ———— *Widow refusing*

At that time one of the defendants claimed the pro

husband to have the title declared, and to obtain possession of the property,—*Held* that the possession of the defendant was adverse to the widow and reversioners, that the reversionary heirs, therefore, had a right to sue for a declaration of their title at any time within twelve years from the date of the adverse possession, that as the widow refused to have anything

[3 B. L. R., A. C., 362: 24 W R., 86 note

See GUNESH DUTT v LAL MUTTER KOOER
[17 W. R., 11

247. ———— *Suit by reversioner to set aside deeds*—A Hindu widow executed deeds of gift, in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumable reversioner sued to set aside the deeds

possession to the plaintiff. GOLAB SINGH v RAO KURUN SINGH. RAO KURUN SINGH v MAHOMED FYEZ ALI KHAN . . 10 B. L. R., P. C., 1
[14 Moore's I. A., 176, 187

248. ———— *Reversioner or purchaser—Allegation of waste.*—Where moneys deposited in Court had been drawn out by a party on
latter
been
life-
which
represented that property ought to be so tied up as to prevent defendant from wasting it, it was *held*

D sold the shares in mouzah *K*, and invested the proceeds in another mouzah. In a suit by a son of *D*'s daughter against the purchasers to set aside the sale by *D*, the Subordinate Judge held that he was bound, in the first instance, to repay the whole of the purchase-money to the defendants. He further held that the after-acquired property passed by the petition. The High Court upheld the first finding of the Subordinate Judge, but expressed a doubt (if not being necessary to decide the point, as there was no cross-appeal), whether the petition could pass after-acquired property. SHEWAK RAM *v.* BHOWANI BUKSH SINGH . 6 C. L. R., 140

231. **Suit to set aside alienation**—*Validity of alienation.*—Where a Hindu brought up a boy, and, treating him as his son, purchased estates for, and in the name of, such son, but subsequently for some reason got his wife's name recorded in respect of such estates,—*Held* that, if the record of name in favour of the wife was effected during the minority of the son, it was invalid, or if otherwise, then the wife must be considered as having derived her title from the son and not from her husband, and in either case she was competent to transfer it to the son, and under such circumstances the transfer made by her was not illegal under the Hindu law. NOWBUT RAI *v.* BHAGMANEE . . . 2 Agra, 5

232. ——— **Alienation in contemplation of adoption.**—The power of a Hindu widow, with authority from her husband to adopt, to make *bonâ fide* alienations which would be binding on the reversioners if no adoption took place, is not affected or curtailed by the fact that it is exercised in contemplation of adoption and in defeasance of the right of the son who is about to be adopted. LAKSHMANA RAU *v.* LAKSHMIAMMAL . I. L. R., 4 Mad., 160

233. ——— **Alienation by conditional sale**—*Right to question validity of sale.*—A conditional sale is an alienation, the validity of which a reversioner to a Hindu widow is by Hindu law entitled to question. ODIT NARAIN SINGH *v.* DHURM MAHTOON . . . . . W. R., 1864, 263

234. ——— **Sale without legal necessity**—*Reversioners.*—*R*, a Hindu, had two daughters by his wife *K*. One daughter married *S* and died in *K*'s lifetime, leaving two sons, the defendants. The other daughter was alive at the date of suit. On the death of her husband, *K* succeeded to his estate and sold some land to *S* without adequate necessity. *S* mortgaged this land to *T*. *Held*, in a suit by *T* after the death of *S* and *K* against the defendants to enforce the terms of the mortgage, that the defendants were entitled to object to the validity of the sale to their father by *K*, in their own right, in answer to *T*'s claim. The restrictions on the father's power to alienate ancestral property are incidents of co-parcenary, whereas the right to sell possessed by a widow is but a qualified power given for certain specified purposes over the reversion created by law in favour of the ultimate male heirs. KARUPPA THEVAN *v.* ALAGU PILLAI . . . I. L. R., 4 Mad., 152

235. ——— **Form of alienation**—*Sale or mortgage—Necessity.*—There is no rule of Hindu law which compels a widow alienating a portion of her late husband's property to have recourse to a mortgage instead of to a sale to raise funds for her maintenance. The question whether she has exceeded her powers or not depends upon the necessities of the case. NABAKUMAR HALDAR *v.* BHABASUNDARI DEBI [3 B. L. R., A. C., 175

236. ——— **Suit by reversioners to set aside deed of sale**—*Necessity—Selling larger part of estate than necessity justifies—Sale where mortgage could suffice.*—In a suit by reversioners to set aside a deed of sale by a Hindu widow of part of her husband's estate, on the ground that the money which it was necessary to raise could have been raised by other means, it was held that, if the widow sold a larger portion of the estate than was necessary to raise the amount which the law authorized her to raise, the sale would not be absolutely void as against the reversioners, who could only set it aside by paying the amount which the widow was entitled to raise with interest. *Held* also that, if a widow elects to sell when it would be more beneficial to mortgage, the sale cannot be set aside, as against the purchaser, if the widow and the purchaser are both acting honestly. PHOOL CHUND LALL *v.* RUGHOOBUNS SUHAYE [9 W. R., 107

237. ——— **Re-payment of purchase-money to set aside sale.**—A sale by a Hindu widow of her husband's estate, under legal necessity, cannot be set aside upon payment of the amount which it was necessary for the widow to raise, or in the proportion which that sum bears to the amount for which the estate was sold. SUGEERAM BEGUM *v.* JUDDOBUNS SUHAYE . . 9 W. R., 284

238. ——— **Re-payment of sum spent for legal necessity**—*Suit to set aside mortgage—Alienation by daughter—Legal necessity.*—The daughter of a Hindu, while in possession of the paternal estate, borrowed a large sum of money under a mortgage of a portion of the estate. Part only of the money borrowed was devoted by her to the relief of legal necessity. After her death, the next heir sued the mortgagee to recover the property mortgaged, and to set aside the mortgage-deed. The Courts below gave a decree for possession to the plaintiff upon repayment of the amount actually spent in the relief of legal necessity. Such decree upheld on appeal. LALIT PANDAY *v.* SRIDHAR DEO NARAIN [5 B. L. R., 176: 13 W. R., 457

239. ——— **Suit to set aside sale**—*Sale for more than amount of necessity—Ancestral debt—Necessity.*—*A* died leaving *B*, a grandson by a son deceased, *C*, the widow of another son deceased, and *D* and *E*, sons, him surviving. All four held separate possession of their respective shares in the estate. *C* sold her share for R995 to pay off a debt of *A*'s of R670. *D* and *E* having waived their rights, *B* sued as reversioner to set aside the sale made by *C*. *Held* that *C* did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for

HINDU LAW—CONTRACT—*continued.*

2 BILLS OF EXCHANGE.

3. ———— Notice of dishonour—*Suits between endorser and endorsee* —*Semble*—Notice of

RIMULL *v* BHAIRO DAS JOHURRY 7 B. L. R., 431
GOPAL DAS *v.* ALI 3 B. L. R., A. C., 198

S. C. after remand. ALI *v.* GOPAL DAS [13 W. R., 420

See ANUNT RAM AGURWALLA *v.* NUTHALL [21 W. R., 62

4. ———— *Evidence of custom* —*Quære*—Whether notice of dishonour of a bill of exchange is necessary as between Hindus *Semble*—It is a point to be determined by evidence of custom SUMBOONAUTH GHOSE *v.* JUDDOONAUTH CHATTERJEE . . . . Cor, 88

See PIGUE *v* GOLAB RAM . . 1 W. R., 75

5 ———— *Omission to give* by the

, 214

to enable the drawer or endorser to protect himself against the claims of subsequent endorsers TULSHI SAHU *v* NURSINGRAM . 12 C. L. R., 333

3 BREACH OF CONTRACT.

of con- of 1840 did By Hindu for breach le the earnest money, but also damages for the non-delivery ALVAR CHETTI *v* VAIDILANGA CHETTI 1 Mad., 9

4. GRANT OF LAND.

and as there was possession under the grant by the grantees, the grant was valid. DOE D. SEEB KRISTO *v.* EAST INDIA COMPANY . 6 Moore's I. A., 267

See HURRISH CHUNDER CHOWDHRY *v* RAJENDER KISHORE ROY CHOWDHRY . 18 W. R., 293

and ANONYMOUS . 1 Ind. Jur., O. S., 135

HINDU LAW—CONTRACT—*continued*

5 HUSBAND AND WIFE.

9. ———— Liability of wife for debt contracted during coverture—*Widow*—*Re-*

a money bond, but has subsequently re married, is personally liable for the debt Her liability is not restricted merely to her stridhan NAHALCHAND *v* BAI SHIVA . I. L. R., 6 Bom., 470

stridhan *only, and not personally.* NAROTAM *v* NANKA I. L. R., 6 Bom., 473

11. ———— Liability of wife for necessaries—*Presumption of agency for husband* —In case of husband and wife living together, the presumption is that the wife is the husband's agent for contracting debts for the necessities of the family. *Per* BITTLESTON, *J* —But by Hindu law perhaps this presumption is not so strong as it is by English. VERASVAMI CHETTI *v* APPASVAMI CHETTI [1 Mad., 375

HER RAIJI . . I. L. R., 1 Bom., 121

and separately for herself must, in the absence of special circumstances, be considered as entered into with reference to her stridhan, which is analogous to a woman's separate property in England GOVINDJI KHIMJI *v.* LAKHMIDAS NATHUBHOY [I. L. R., 4 Bom., 318

circumstances of such pressing necessity that his authority may be implied. PURI *v.* MAHADEO PRASAD . . . . I. L. R., 3 All., 122

15. ———— Coverture, Effect of—*English law* —The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu law RAMASAMI PADEIYATCHI *v.* VIRASAMI PADEIYATCHI [3 Mad., 272

16. ———— Hindu wife—*Transaction in her own name*—*Wife's right to sue without joining husband*—*Presumption as to separate property*—

HINDU LAW—ALIENATION—*continued.*

6. ALIENATION BY WIDOW—*continued.*

(following a decision of the Privy Council in *Hurry-doss Dutt* v. *Uppoornah Dossee, 6 Moore's I. A.,* *433*) that it was not sufficient to allege that defendant was committing waste; the suit would not lie, unless some act of waste threatening the corpus of the property were proved. BUDHUN v. FUZLOOR RUHMAN . . . . **9 W. R., 362**

249. ———————— *Reversioners —Payment of money out of Court to Hindu widow.*— A decree was made in favour of *K*, a Hindu widow, in a suit brought by her against *B C*, which declared that she was entitled to one-fifth share of the accumulations of the estate of the father of her husband from his death to the death of her husband, to be held by her as a Hindu widow, and to one-fifth of the subsequent accumulations absolutely. Execution of the decree was taken out, and the sum to which *K* was declared entitled was paid into Court by *B C* in March 1869. MACPHERSON, *J.*, in delivering judgment, expressed a doubt whether the suit was brought for the benefit of the plaintiff, and stated that he would consider any application to protect any rights the reversionary heirs might have in the amount received by the plaintiff. No steps, however, were taken by *B C*, by suit or otherwise, to protect the interests of the reversionary heirs in the sum paid into Court, but on *K*'s applying in March 1871 to have the money paid to her out of Court, *B C*, on behalf of himself as reversionary heir, filed an affidavit in opposition to *K*'s application, charging her on information and belief with leading an immoral life, and of having assigned half the amount in Court to *H S*, and expressing his apprehension of waste, and that, if the money were allowed to be taken out of Court, it would be lost to the reversioners. *Held* that *K* was entitled to have the money paid out of Court to her. BISWANATH CHANDRA *v.* KHANTOMANI DASI **[6 B. L. R., 747**

250. ———————— *Suit by reversioners to set aside alienation—Necessity.*—A Hindu died in 1808, leaving five sons, and possessed of considerable property. In 1813, the four younger sons obtained a decree for partition against their elder brother, but themselves continued to live together as a joint Hindu family, and so did their widows after their death. After the death of the widow of one of the brothers, *J D*, the widow of another brother, brought a suit for partition; but subsequently, by the consent of all parties, the matters in dispute were referred to arbitration, and an award was made as follows: "Selling their (the widows') respective raiyati land, bati, or house, they will pay the costs of their respective vakeels; in that way the land, bati, or house that shall remain, with the proceeds belonging to their respective shares, the raiment and food of *C D* (the widow of another brother) and *J D* will be supplied during their lives; they will be unable to make a gift, sale, etc.; should the proceeds of the land, bati, or house not be sufficient for their food and raiment and for the purity of their respective husbands in a suitable manner, the jetta dharma, then showing good reason, regulation, conformably to the dharma shastra what is expedient as necessary according to usage, informing the other shareholders, they shall be able to sell the raiyati land, bati, or house of their respective shares." This award, which directed a partition according to the terms of a chinitnamah, or written description of the land, which was executed by all the parties, was made a rule of Court on 26th July 1858. *J D* took possession of her husband's share of the estate, some portion of which she alienated. In a suit brought by the reversionary heirs against *J D* and the purchasers of what she had sold, it was alleged that the alienations were without necessity and contrary to the award, and it was prayed that they might be declared void as against the reversionary heirs, and that *J D* might be restrained from further alienations. *Held* that the suit could be maintained in the lifetime of *J D*. As there was no waste proved, the prayer for an injunction to restrain further alienation was refused. KAMIKHAPRASAD ROY *v.* JAGADAMBA DASI **[5 B. L. R., 508**

HINDU LAW—CONTRACT.

See VENDOR AND PURCHASER—CAVEAT EMPTOR **2 Bom., 430 : 2nd Ed., 406**

1. ASSIGNMENT OF CONTRACT.

1. ———————— **Right of assignee to sue.**—By Hindu law, the assignee of a debt can sue the debtor in his own name. KADARBACHA SAHIB *v.* RANGASVAMI NAYAK . . . . **1 Mad., 150**

2. ———————— *Small Cause Court, Mādras.*—According to Hindu law, not only is the beneficial interest in the subject-matter of the contract, but the contract itself, is assignable. The assignee, therefore, may sue in his or her own name. This doctrine is applicable to suits brought in the Madras Small Cause Courts. VEMBAKUM SOMAYAGEE JANAKEE AMMAL *v.* MOONESWAMY CHETTY **[4 Mad., 176**

HINDU LAW—CONTRACT—*concluded*

13 SALE

CHAND *v* BIRJ BOOKUN LAL AWASTI
[10 C L R., 61 6 C L R, 528

14 TRANSFER OF PROPERTY

dence it regards and inculcates a writing as of additional force and value. MANTENA RAYAPARAJ *v* CHEKURI VENKATARAJ 1 Mad, 100

CHINIVA SAMMAL *v* VIJAYAMMAL 2 Mad, 37

PALANIYAPPA CHETTI *v* ARUMGAM CHETTI [2 Mad., 26

KRISHNA *v* RAYAPPA SHANBHAGA 4 Mad, 98

ROOKHO *v* MADHO DOSS [1 N W, Ed. 1873, 59

29 —— **Mode of transfer**—*Verbal transfer of property*—No special mode of transfer is required by the Hindu law even a verbal transfer is sufficient HURPURSHAD *v* SHEO DYAL RAM SAHOY *v* SHEO DYAL BALMOKAND *v* SHEO DYAL RAM SAHOY *v* BALMOKAND
[L R, 3 I A, 259 26 W R, 55

15 VERBAL CONTRACTS

30 ———— **Verbal contract, Validity of**—*Registration Act*—There is nothing in the Registration Act which renders a verbal contract between Hindus invalid or inoperative HURRISH CHUNDER CHOWDHRY *v* RAJENDER KISHORE ROY CHOWDHRY . 18 W R, 293

DOE D SEEBKRISTO *v* EAST INDIA COMPANY [6 Moore's I. A, 267

HINDU LAW—CUSTOM.

HINDU LAW—CUSTOM—*continued*

See ALSO UNDER THE PARTICULAR HEAD OF HINDU LAW AS TO WHICH THE CUSTOM IS REQUIRED

See CASES UNDER MALABAR LAW—CUSTOM

1 GENERALLY

1.———— **Nature of custom**—*Requisites*

tain and reasonable and being in derogation of the general rules of law must be construed strictly HURPURSHAD *v* SHEO DYAL. RAM SAHOY *v* SHEO DYAL. BALMOKUND *v* SHEO DYAL RAM SAHOY *v* BALMOKUND
[L R., 3 I A, 259 26 W R., 55

2. ———— **Origin and force of customary law**—The question of the origin and binding force of customary law discussed and the authorities upon the subject cited and commented upon TARA CHAND *v* REEB RAM 3 Mad., 50

3 ———— **Operation of custom**—*Custom not judicially recognized Authority of* A custom which has never been judicially recognized cannot prevail against distinct authority NARASAMAL *v* BALARAMA CHARLU 1 Mad., 420

4 ———— **Effect of custom when proved to exist.**—Where a custom is proved to exist it supersedes the general law which however still regulates all beyond the custom SARTAJ KUARI *v* DEORAJ KUARI I L R, 10 All., 272
[L R., 15 I. A., 51

5 ———— **Usage different from normal law and custom**—*Onus of proving usage*—When amongst Hindus (and Jains are Hindu dissenters) some custom different from the normal Hindu

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garded is evidence shows that the right claimed by custom was more or less contested and the co

lowed to the ex lasses of persons who, if

HINDU LAW—CONTRACT—*continued.*

5. HUSBAND AND WIFE—*concluded.*

Onus of proof—Benami transaction.—A Hindu wife living with her husband brought a suit on a deed of mortgage executed in her favour. *Held* that to enforce her rights under the deed she need not join her husband. That it is not necessary for her to show by evidence that she has separate property or separate business. That in Hindu law there is no presumption that transactions which stand in the name of the wife are the husband's transactions. MANADA SUNDARI DABI *v.* MAHANANDA SARNAKAR [2 C. W. N., 367

17. ——— **Deed of separation**—*Agreement without consideration—Contract Act (IV of 1872), s. 25 (i).*—By a registered deed executed by the defendant in favour of the plaintiff, his wife, after reciting certain quarrels and disagreements, none of which indicated such a condition of affairs as would warrant the wife, under the Hindu Law, in claiming a separate residence and maintenance from her husband, he promised to pay her for a separate residence and maintenance. On a suit by the wife for arrears of maintenance due,—*Held* that there was no consideration moving from the wife, for the promise by the husband; it was a voluntary arrangement on the part of the husband, and the present suit could not be maintained. That s. 25 of the Contract Act did not apply, the consideration of natural love and affection being directly opposed to the recitals in the document. RAJLUKHY DABEE *v.* BHOOTNATH MOOKERJEE . . . 4 C. W. N., 488

6. LIEN.

18. ——— **Deposit of title-deeds of land in Island of Bombay**—*Creation of lien.*—A lien created by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI [7 Bom., O. C., 45

7. MONEY LENT.

19. ——— **Demand, Money payable on**—*Limitation—Cause of action.*—Where a sum was lent at interest, the principal to be payable on demand,—*Held per* NORMAN, *J.*, that by Hindu law a demand will be necessary, and limitation would run from the date of the demand. BRAMMAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY [7 B. L. R., 489: 16 W. R., 164

Contra, PARBATI CHARAN MOOKHERJI *v.* RAMNARAYAN MATILAL [5 B. L. R., 396: 16 W. R., 164 note

8. MORTGAGE.

20. ——— **Mortgage of future crops**—*Validity of mortgage.—Quære*—As to the validity in Hindu law of a mortgage of future crops. KEDARI BIN RANU *v.* ATMARAMBHAT . 3 Bom., A. C., 11

21. ——— **Mortgage without possession**—*Validity of mortgage.*—A mortgage without possession is not by Hindu law absolutely invalid, but is binding between the mortgagor and mortgagee. CHINTAMAN BHASKAR *v.* SHIVRAM HARI [9 Bom., 304

See KRISHNAJI NARAYAN *v.* GOVIND BHASKAR [9 Bom., 275

22. ——— *Law in Guzerat—Priority—Registration—Notice.*—The rule of Hindu law that a mortgage with possession takes precedence of a mortgage of a prior date, but unaccompanied by possession, does not apply to Guzerat. Where in Guzerat the defendant, a puisne mortgagee, in possession had notice of plantiff's prior mortgage, the defendant was held not entitled to claim the benefit of the above rule of Hindu law. Registration could not of itself alter this rule of Hindu law except so far as effect may be given to it by statute, and registration secures the same object which the Hindu law intended to secure by requiring possession, *viz.*, notice to subsequent incumbrancers of the existence of a prior incumbrancer. ITCHARAM DAYARAM *v.* RAIJI JAGA . . . . 11 Bom., 41

9. NECESSARIES.

23. ——— **Power of widow entitled to maintenance to bind heir for necessaries.**—There is no rule of Hindu law which recognizes any authority in a widow entitled only to maintenance to make contracts for necessary supplies binding upon the heir in possession of the family property and liable to maintain her. RAMASAMY AIYAN *v.* MINAKSHI AMMAL . . . 2 Mad., 409

10. PLEDGE.

24. ——— **Accidental destruction of property pledged.**—By the Hindu as well as by the English law, a creditor in whose hands a pledge has accidentally perished is notwithstanding entitled to recover his debt in the absence of an agreement to the contrary. VITHORA VALAD UKBA *v.* CHOTA LAL TUKARAM . 7 Bom., A. C., 116

11. PRINCIPAL AND SURETY.

25. ——— **Suit against surety**—*Principal not sued.*—A suit may be maintained against a surety, according to Hindu law, although the principal debtor has not been sued. TOTAKOT SHANGUNNI MENON *v.* KURUSINGAL KAKU VARID [4 Mad., 190

12. PROMISSORY NOTE.

26. ——— **Consideration**—*Document not importing consideration.*—In a suit under the Bills of Exchange Act to recover R1,200 on a promissory note,—*Held* by PEACOCK, *C.J.*, that the suit, being between two Hindus, must be decided by Hindu law. By Hindu law a promissory note does not import consideration, and therefore, where it was proved that the defendant actually received only R700, that sum was all the plaintiff was allowed to recover. RAMLAL MOOKERJEE *v.* HARAN CHANDRA DHAR [3 B. L. R., O. C., 130

HINDU LAW—CUSTOM—*continued.*

2. ADOPTION—*continued*

. minor. . . . on the . . . is made . . . RAMA . . . d., 127

12. ——— Adoption for illegal purpose—*Devadasi*—The plaintiff sued as the adopted daughter of a deceased dancing woman to recover a share of the property left by her It appeared that the adoption of the plaintiff, which took place in 1871, when she was six years old, was made with the intention of bringing her up to practise prostitution even during her minority *Held* that the adoption was invalid SANJIVI *v* JALAJAKSHI

[I. L. R., 21 Mad., 229

13. ——— Adoption among Saraogi

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in his property is set up, it must be shown by the clearest and invariable evidence that that particular custom applied to the particular place where the parties resided *Held* in this case that no such custom had been proved to be prevalent amongst the *Jain Agarwallas of the province of Bengal* *Unless* a custom be proved to the contrary, Jains are governed by the Hindu law of inheritance, and ordinarily the Mitakshara school of law would be applicable to them. *Bhagvandas Tejmal* v. *Rajmal* alias *Hira Lal Luchmidas, 10 Bom H C. R., 241* *Mahabeer Pershad* v *Kundan Koer, 8 W R, 116* followed *Sheo Singh Rai* v *Dakho, 6 N W P, 382,* distinguished MANDIT KOER *v.* PHOOL CHAND LAL

[3 C. W. N., 154

14. ——— Adoption by widow of Oswal Jain sect without authority of husband—*Customs regulating personal rights and status of family—Effect of conversion from one sect of Hinduism to another*—The adoption of the tenets of another sect of Hinduism will not neces-

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vism. *Padmakumari Debi Chowdhrani* v *Court of Wards, I. L R., 8 Calc, 502* *L. R, 8 I A, 229,* distinguished. *Bhoobun Moyee Debia* v. *Ramkishore Acharjee, 3 W R, P C, 15* *10 Moore's I A., 279.* and *Puddo Kumaree Debee* v *Juggut Kishore Acharjee, I L R, 5 Calc, 615,* referred to MANIK CHAND GOLECHA *v.* JAGAT SETTANI PRAN KUMARI BIBI . I. L. R., 17 Calc., 518

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HINDU LAW—CUSTOM—*continued.*

2. ADOPTION—*concluded.*

the Court can give judicial effect to it, ought to be established by very clear proof that the conscience of the members of the caste had come to regard it as forbidden A caste custom having been set up in the Kadwa Kunbi caste at Ahmedabad prohibiting widows from adopting, a large number of witnesses were examined with respect to the custom Their evidence showed that it had not been the practice in the caste for widows to adopt, but it also showed that there

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number of patels in the caste *Held* that the evidence as a whole, led to the conclusion that "a uni-

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of one place are very relevant as evidence of the existence of the same custom amongst the Jains of another place, unless it is shown that the customs are different, and oral evidence of the same kind is

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and that there was nothing to differentiate the Jains at Arrah from the Jains elsewhere. *Held* also that the terms Jain and Saraogi are synonymous. HARNABH PERSHAD *v* MANDIL DASS

[I. L. R., 27 Calc, 379

3. AFFILIATION OF SON (ILLATAM).

17. Status of affiliated son—*Illatam or affiliation of a son—Districts of Bellary and Kurnool.*—The custom of illatam (affiliation of a son in law) obtains among the Mototi Kapu or Reddi caste in the districts of Bellary and Kurnool. He who has at the time no son, although he may have more than one daughter, and whether or not he is hopeless of having male issue, may exercise the right of taking an illatam son-in law For the purposes of succession, the illatam son-in law stands in the place of a son, and in competition with natural-born sons takes an equal share *Quare*—(1) Whether a father with a son living is entitled to exercise the right. (2) If the father is dead, whether the power may be exercised by a surviving paternal grandfather; and (3) whether the affiliation is effected by the introduction in the family or requires

been for the custom, would presumably have enforced their right under the general law. RAMA NAND *v.* SURGIANI . . . I. L. R., 16 All., 221

7. ——— **Evidence of custom**—*Judicial decision.*—*Held* that amongst Agârwala Banias of the Saraogi sect of the Jain religion, a widow has full power of alienation in respect of the non-ancestral property of her deceased husband; but that she has no such power in respect of the property which is ancestral. *Held* also that, where a custom alleged to be followed by any particular class of people is in dispute, judicial decisions in which such custom has been recognized as the custom of the class in question are good evidence of the existence of such custom. *Sheo Singh Rai* v. *Dakho, 6 N. W. 382: I. L. R., 1 All., 688,* referred to. *Chotay Lall* v. *Chunnoo Lall, I. L. R., 4 Calc., 744,* explained. *Hoolas Rae* v. *Bhowani,* unreported, referred to in *6 N. W., 396,* and *Behari Lal* v. *Sookbasi Lal,* unreported, referred in *6 N. W., 398,* commented upon. SHIMBHU NATH *v.* GAYAN CHAND . . I. L. R., 16 All., 379

2. ADOPTION.

8. ——— **Custom not allowing adoption, governing a family not subject to Hindu law**—*Construction of gift—Burden of proof—Inheritance.*—A family in Bengal, affecting to be Hindu, but not Hindu by descent and origin, may be governed by customs at variance with Hindu law. A family took its origin in a tribe not Hindu, and its customs differed from Hindu customs. The question having arisen whether succession in virtue of adoption was consistent with, or was contrary to, the customs of the family, *Held* first that, with regard to the origin and history of the family, the point for inquiry was not whether the general Hindu law was in this case modified by a family custom forbidding adoption, but was whether, with respect to inheritance, the family was governed by Hindu law or by customs not allowing an adopted son to inherit; secondly, upon the evdence that this family had retained, and was governed by, customs at variance with Hindu law, and that, whatever Hindu customs might have been introduced into it, the custom of succession upon adoption had not. Whether, if the family had been shown to be Hindu out and out, save only special customs, the evidence would have been sufficient to prove a special custom was not the question. *Held* also in reference to the burden of proof that, in a suit brought to maintain the plaintiff's title as heir against a defendant, who relied upon an adoption as defeating the title of the plaintiff, the burden of proving the adoption to be permitted by the family custom was upon those who alleged it to be so; whereas, if the family had been generally governed by Hindu law, the onus would have been on those who alleged the exclusion of the right to adopt. *Rajah Bishnath Singh* v. *Ram Churn Majmoadar, S. D. A., 1850, p. 20,* referred to, as showing that even in a Hindu family there might be a custom

which barred inheritance by adoption. FANINDRA DEB RAIKAT *v.* RAJESWAR DAS

[I. L. R., 11 Calc., 463
L. R., 12 I. A., 72

9. ——— **Adoption by untonsured widow**—*Evidence of custom—Custom of caste—Opinion of caste expressed at meeting—Validity of adoption.*—For the purpose of proving that by the custom and in the opinion of the Daivadnya caste an adoption by an untonsured widow was invalid, evidence was tendered to the following effect:—(1) that there had been many instances of adoption in the caste, and in every such case the adopting mother had undergone tonsure, and that there had been no instance the other way; (2) that the caste was divided in opinion as to the validity of the adoption, but that at a meeting of the caste it was declared by a large majority that the adoption was invalid. The Court refused to allow such evidence to be called, holding that it would merely prove what the Court, in the absence of evidence to the contrary, would assume to be the case, *viz.,* that the widows of the caste usually or invariably followed the dictates of the Hindu ceremonial or religious law, which ordains that widows shall shave their heads, and that it would prove nothing more; and with regard to the opinion of the caste, that such opinion, even if expressed by a majority at a caste meeting, as it would not of course be binding upon the Court, ought not to affect its judgment. RAVJI VINAYAKRAV JAGANNATH SHANKERSETT *v.* LAKSHMIBAI . I. L. R., 11 Bom., 381

10. ——— **Plurality of adoptions**—*Dancing girl caste—Immoral or illegal purpose of adoption.*—As a matter of private law, the class of dancing women being recognized by Hindu law as a separate class having a legal status, the usage of that class in the absence of positive legislation to the contrary regulates rights of status and of inheritance, adoption, and survivorship. A dancing woman adopted two daughters, of whom the latter was adopted in the year 1854. It was found that the custom obtaining among dancing women in Southern India permits plurality of adoptions. *Held,* on second appeal, that the daughter subsequently adopted succeeded to the adoptive mother in preference to the son of the daughter previously adopted. MUTTUKANNU *v.* PARAMASAMI

[I. L. R., 12 Mad., 214

11. ——— **Adoption by temple dancing woman**—*Right of adopted daughter—Right of suit—Adoption made with intention of prostituting minor—Penal Code, s. 373.*—Suit by the adopted daughter of a temple dancing woman, deceased, to compel the trustees of the temple to permit the performance of a certain ceremony, in view to her entering on the duties and emoluments attached to the office of her adoptive mother. On second appeal, the High Court directed the return of a finding on the issue whether the plaintiff's adoption was valid—Fresh evidence was taken, and the finding was tha the adoption was made with the intention that th

8 ENDOWMENTS—*concluded*

where the plaintiff sued as the adopted daughter of a

nominate her successor, the Courts of law could not refuse to recognize it, such custom being recognized in the country TARA NAIKIN *v.* NANA LAKSHMAN [I. L. R., 14 Bom., 90

9 FAMILY, MANAGEMENT OF

27 ——— Right to manage family—

of—*Aliya-*

on whether,

obtaining in

or female, or

only the senior female, is the *de jure* yajaman (manager) of the family, is not concluded by authority and cannot be determined without evidence of

senior female, assuming that she was *de jure* yajaman, could not arbitrarily revoke this arrangement DEVU *v.* DEYI I. L. R., 8 Mad., 353

28. —— ——— Aliyasantana law—*Yajaman—The rights of the senior member of the family being a female*—The senior member of an Aliyasantana family, if a female, is *primâ facie* entitled to the yajamanship, and, in the absence of a special family custom or a binding family arrangement to the contrary, the management of the family affairs by another member is to be presumed to be by the sufferance of the yajaman for the time being MAHALINGA *v.* MARIYAMMAH [I. L. R., 12 Mad., 462

10 IMMORAL CUSTOMS

29. ——— Usages among dancing girls (naikins)—*Usage as a source of law—Functions of Courts of law and of the Legislature in giving effect to usage—Judicial decisions giving effect to usage*—Although the Courts in India are bound by charter to recognize the "usages of the Gentus," they are not limited to the sole sense of the word "usage" which shuts out all amelioration. The practices of an abandoned class are, no doubt, a usage in the sense of a tolerably uniform series of acts, but they do not therefore spring from a consciousness of compulsion, but rather from mere habit, imitation, and ignorance. Such usage is not a law, for over it

10 IMMORAL CUSTOMS—*continued*

presides the higher usage of the community at large from whose approval it must have derived any conceivable original validity, and in opposition to which it cannot subsist, and as the community comes to recognize certain principles as essential to the common welfare, it will no longer lend its sanction to sectional practices at variance with the principles thus recognized. It is only according to the standards of the Hindu law that a usage has coercive force amongst Hindus, and what the Hindu law is, must, for the purposes of secular justice, depend on the general sense of the Hindu community. Although at one time in India the existence of companies of temple

to a life of infamy The whole constitution of the class of courtesans would, it is certain, be now regarded by the great mass of the Hindu community as

become a customary law. A custom, in order not to constitute it such, but to give it coercive effect in particular instances, needs the sanction of the sovereign power waiting on the judgment of a Court. It is the function of a Judge, as a witness and as an expositor, to give a clear definition of the custom, usage, or rule as to which the opinion of the community has arrived at the requisite degree of maturity It is the function of the State to enforce it when it is ascertained and pronounced upon by the Courts of law Judicial decisions by which customs

usage, as such, to which the Courts are commanded to give effect. A custom, however, may be adopted and abandoned and its recognition at a particular stage, by the Courts, as a usage cannot prevent this action of the class or community *If the usage is variable at the will of the community*, it must be enforced in its slowly changing phases, or else the behest of the sovereign will eventually be defeated. As the mind of the community becomes enlightened, its legal convictions will change, and this will constitute a change in its common law, as that law must from time to time be recognized and recorded in the Courts. MATHURA NAIKIN *v.* ESU NAIKIN [I. L. R., 4 Bom., 545

HINDU LAW—CUSTOM—*continued.*

3. AFFILIATION OF SON (ILLATAM)—*concluded.*

for its completion marriage with a daughter. (4) Whether the affiliation is analogous to Hindu adoption, except in so far that the illatam is regarded as member of the family into which he is admitted. (5) Whether the illatam can demand partition. HANUMANTAMMA *v.* RAMI REDDI [I. L. R., 4 Mad., 272

18. ———— ———— *Rights of succession in his natural family.*—Under the custom of illatam (affiliation of a son-in-law) which obtains amongst the Reddis or Pedda Kapu caste of Vellore, the illatam son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. BALARAMI REDDI *v.* PERA REDDI [I. L. R., 6 Mad., 267

19. ———— **Illatam adoption**—*Inheritance.*—There is no evidence that the custom of illatam adoption exists among the Kondarazu caste of the Vizagapatam district. NARASIMHA RAZU *v.* VEERABHADRA RAZU . I. L. R., 17 Mad., 287

4. APPOINTMENT OF DAUGHTER.

20. ———— **Power to appoint daughter**—*Onus of proof—Delegation of power.*—The custom of Hindu law, under which a father, in default of male issue, might appoint a daughter to be as a son, or appoint her to raise a son for him, if not obsolete, as appears to be the opinion of the text-writers, is one which in modern times does not seem to have been brought under the consideration of the Courts of justice in India. Assuming the custom to exist, inasmuch as it breaks in upon the general rules of succession, whoever claims by virtue of it to succeed as heir must bring himself clearly within it. There seems to be no sufficient authority for holding that a father may delegate the power to appoint. JIBNATH SINGH *v.* COURT OF WARDS . 15 B. L. R., 190 [23 W. R., 409: L. R., 2 I. A., 163

Affirming case in High Court. [5 B. L. R., 442: 14 W. R., 117

5. ASSAM, LAW IN.

21. ———— **Similarity to Bengal law**—*Absence of proof of custom.*—In the absence of any proof or custom to the contrary, the Hindu law in Assam is similar to that prevalent in Bengal. DEEPO DABEA *v.* GOBINDO DEB . 11 B. L. R., 131 note [16 W. R., 42

6. CASTE.

22. ———— **Expulsion of member of caste under mistake of fact and without notice.**—In a suit relating to the management of the common property of the members of a Hindu caste, the plaintiff's right to sue was denied on the ground that, having violated the rules of the caste, he had been expelled from it. *Held* (1) that it was open to the Court to determine whether or not the alleged

HINDU LAW—CUSTOM—*continued.*

6. CASTE—*concluded.*

expulsion from caste was valid; (2) that if the plaintiff had not in fact violated the rules of the caste, but was expelled under the *bonâ-fide* but mistaken belief that he had committed a caste offence, the expulsion was illegal and could not affect his rights. *Per* KERNAN, *J.*—A custom or usage of a caste to expel a member in his absence without notice given or opportunity of explanation offered is not a valid custom. KRISHNASAMI CHETTI *v.* VIRASAMI CHETTI . . . I. L. R., 10 Mad., 133

23. ———— **Powers of the head of a caste in respect of caste customs**—*Jurisdiction of Civil Court.*—In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A guru as head of a caste has jurisdiction to deal with all matters relating to the autonomy of caste according to recognized caste customs. *The Queen* v. *Sankara, I. L. R., 6 Mad., 381,* and *Murari* v. *Suba, I. L. R., 6 Bom., 725,* cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI . . . I. L. R., 17 Mad., 222

7. DISHERISON.

24. ———— **Disherison in favour of son-in-law**—*Reddi caste—Illegal custom.*—The custom of the Reddi caste, according to which a father-in-law may disinherit his heir in favour of a son-in-law, is bad. TAYUMANA REDDI *v.* PERUMAL CHETTI [1 Mad., 51

8. ENDOWMENTS.

25. ———— **Principle to be observed in dealing with Hindu endowments**—*Evidence of custom.*—The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The custom and practice in such matters is to be proved by testimony. A zamindar claiming a customary right to grant confirmation of the election of a mohunt must prove the custom; an acknowledgment, taken in troubled times from the guardian of an infant mohunt, of a zamindar's customary right to control and remove the mohunt, is entitled to little, if any, weight as evidence of the custom. MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI . . L. R., 1 I. A., 209

26. ———— **Dancing girls attached to a temple inheritance**—*Temple endowment—Succession to the office of a dancing girl connected with such temple—Public policy—Right of suit.*—The existence in India of dancing-girls in connection with Hindu temples is according to the ancient established usage, and the Court would not be justified in refusing to recognize existing endowments in connection with such an institution. Accordingly,

HINDU LAW—CUSTOM—*continued.*

11 *IMPARTIBILITY—continued.*

his own life, and had no power of alienation In his written statement it was alleged that the descent of the estate was governed by Mitakshara law, modified by the usage and custom of the family by which the estate was impartible and descendible, according to the law of primogeniture, on the male heirs of the original grantee, and that, by the Mitakshara law so modified the plaintiff became on his birth co-owner

for maintenance, and to the heirs male of the original grantee, would not render it so *Held* on the case made in the written statement that the Mitakshara law did not apply to the case, that law by which each son has by birth a property in the paternal or ancestral estate is inconsistent with the custom that the estate was impartible and descended to the eldest son KAPILNAUTH SAHAI DEO *v* GOVERNMENT . 13 B. L R., 445: 22 W. R., 17

38. — *partibility by desai* a deshgat a joint H the desai, —

lity of estates of this kind as to shift the burden of proof which was upon the desai to show that the vatan had, contrary to the general Hindu law, been inherited by him alone It was for the desai to show by evidence of the nature of the tenure of the vatan that it was impartible, or to show by evidence of family custom or of district, *i.e.*, local custom, that impartibility attached to it, such evidence being strong enough to rebut the presumption of the prevalence of the general Hindu law Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai and the vatan was properly ap- ... m was ... with ... ncome ... duties to which he might be entitled under any law in force. ADRISHAPPA *v* GURUSHIDAPPA

[I. L. R., 4 Bom., 494
L. R., 7 I. A., 162

39. ———— *Alienation not for necessity.—Held* on the evidence in the case that a custom entitling the holder of an impartible raj to make an alienation of a portion of the estate in favour of his wife "in token of love for her" was not established. BHAWANI GHULAM *v* DEO RAJ KUARI . . . I. L. R., 5 All., 542

40. ———— *Law of succession, Usage modifying.*—A special usage modifying the ordinary law of succession must be ancient and invariable, and must be established to be so by clear and unambiguous evidence RAMA LAKSHMI AMMAL *v* SIVANANANTHA PERUMAL SETHURAYAR

[13 B L R., 396
17 W R., 553
14 Moore's I. A., 570

SERUMA UMAH *v* PALATHAN VITIL MARYA COOTHY UMAH 15 W. R., P C., 47

LUCHMAN LALL *v* MOHUN LALL BHAYA GAYAL [16 W. R., 179

41. ———— *Customary law of inheritance of certain zamindaris in and about Madura—Impartible raj* —The principal issue on this appeal was whether the defendant was entitled *by a custom prevailing in the Saptur zamindari and* in other zamindaris held by zamindars of the same caste connection in Madura and neighbouring districts, to inherit the impartible raj estate of that, the Saptur, zamindari in preference to the plaintiff

elder In virtue of his seniority the elder brother claimed The younger defended the suit on the title that his mother's marriage with the raja had preceded the marriage of the plaintiff's mother, alleging the custom to prevail in the zamindari as above stated The Courts below, having considered the evidence, found that the custom was proved in concurrent judgment. *Held* that no error having been shown, and the Courts having decided with reference to what was laid down in *Ramalakshmi Ammal v Sivanantha Perumal Sethurayar, 14 Moore's I A 570* as to the requisites for the proof of such a custom, the findings below were conclusive as to its existence SUNDARALINGASAMI KAMAYA NAIK *v* RAMASAMI KAMAYA NAIK

[I. L. R., 22 Mad., 515
L. R., 26 I. A., 55

42. — — *Right of pos-*

birth. The son's right at birth, under the Mitak-

proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom. In regard to a raj estate in Gorakpur, by custom impartible and descending by primogeniture, the family being in other respects governed by the Mitakshara law, the present raja's alienation of part of that estate was alleged by his son to be invalid as against him. *Held* that, if there had been no custom of impartibility, the raja's power over the estate would have been restricted by the law declared in Mitakshara, Chap. I, s. 1, v. 27, and the gift would have

30. ——— ——— *Immoral custom, Suit to declare existence of—Public policy, Custom contrary to.*—In a suit by the dancing girls of a temple claiming to have by custom a veto upon the introduction of any new dancing girls into the service of that temple, and praying for an inquiry as to whether the dharmakarta of the temple was a fit and proper person to hold that office,—*Held*, dismissing the appeal, that, assuming that plaintiffs established that by the custom of the pagoda they had the rights they claimed, and that the custom in some respects fulfilled the requisites of a valid custom, the Court could not shut its eyes to the fact that by making the declaration prayed for it would be recognizing an immoral custom, *viz.*, for an association of women to enjoy a monopoly of the gains of prostitution,—a right which no Court could countenance. CHINNA UMMAYI *v.* TEGARAI CHETTI

[I. L. R., 1 Mad., 168

31. ——— *Immoral custom, Suit to declare existence of—Hereditary office with endowments or emoluments attached, Suit to establish right to.*—The suit was brought by a dancing girl to establish her right to the mirasi of dancing girls in a certain pagoda and to be put in possession of the said mirasi with the honours and perquisites attached thereto as set forth in schedules to the plaint annexed. The defendants denied the claim. The District Munsif, finding that the claim had been established, decreed for plaintiff, but, on appeal by the first defendant, the District Judge dismissed the suit on the authority of *Chinna Ummayi* v. *Tegarai Chetti, I. L. R., 1 Mad., 168.* On second appeal,—*Held* that the present case was distinguishable from that of *Chinna Ummayi* v. *Tegarai Chetti*, in that there was no allegation in that case of any endowments attached to the office. That in this case the question of the existence of a hereditary office with endowments or emoluments attached to it ought to be inquired into, as that would materially affect the question of whether plaintiff had sustained injury by the interference of the first defendant. KAMALAM *v.* SADAGOPA SAMI . . I. L. R., 1 Mad., 356

32. ——— Marriage by permission of caste without divorce—*Natra marriage—Immoral custom.*—A custom which authorizes a woman to contract a natra marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognized. UJI *v.* HATHI LALA

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34. ——— Custom recognizing heirship in illegitimate son—*Son by adulterous intercourse.*—A custom recognizing a right of heirship in an illegitimate son by an adulterous intercourse would be bad. NARAYAN BHARTHI *v.* LAVING BHARTHI . . . I. L. R., 2 Bom., 140

11. IMPARTIBILITY.

35. ——— Impartible estate—*Partition, Right to.*—A custom of impartibility must be strictly proved in order to control the operation of the ordinary Hindu law of succession. The fact that an estate has not been partitioned for six or seven generations does not deprive the members of the family to which it jointly belongs of their right to partition. DURRYAO SINGH *v.* DARI SINGH

[13 B. L. R., 165: 16 W. R., 142
L. R., 1 I. A., 1

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[I. L. R., 1 Calc., 153: 24 W. R., 255
L. R., 2 I. A., 263

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HINDU LAW—CUSTOM—*continued.*

11 IMPARTIBILITY—*continued.*

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HINDU LAW—CUSTOM—*continued*

11 IMPARTIBILITY—*continued*

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HINDU LAW—CUSTOM—*continued.*

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HINDU LAW—CUSTOM—*continued.*

11. IMPARTIBILITY—*concluded*

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I. L. R., 23 I. A., 147

48. ———— *Iluvans of Pal-*

selves as separate from the latter and that partition was enforced as a matter of right amongst the Iluvans, *the Courts were entitled to find the custom relating to* partibility among the Iluvans proved. VELU *v.* CHAMU . I. L. R., 22 Mad., 297

12 INHERITANCE AND SUCCESSION

49. ———— Inheritance—*Property descending in other than ordinary way—Onus pro-*

[19 W. R., P. C., 211

50. ———— *Onus probandi —Customs varying ordinary course of descent* —An action was brought by the members of a junior branch of the family of the Maharaja of Chota Nagpore to recover possession of a fourth share of certain moveable and immoveable properties which originally formed part of an estate granted to one *A S*, a junior member of the family, for his maintenance by a former Maharaja. On *A S*'s death,

scendants of the common ancestor, defendant's answer being that, " *according to the long established* custom of the family of *B S*, he (the defendant) as the representative of the eldest branch thereof was entitled solely and exclusively to the properties in

HINDU LAW—CUSTOM—*continued.*

12 INHERITANCE AND SUCCESSION —*continued.*

dispute " *Held* that the burden of proving the affirmative lay upon the plaintiffs, whose claim was not *based upon the ordinary Hindu law of inheritance,*

family the property left by a childless member devolved on the eldest or the guddee thakoor, and as the defendant's position in *B S*'s branch of the family was similar, *i e*, that of a thakoor he had every right to contend that the same custom must be presumed to obtain in b th until the contrary was proved. JEETNATH SAHEE DEO *v.* LOKENATH SAHEE DEO . 19 W. R., 239

tion of a member of a family governed by the Alyasantana law devolves upon his death not upon the family, but upon his immediate representatives. ANTAMMA *v* KAVERI I. L. R., 7 Mad, 575

52. ———— *Custom contrary*

DHAR . . 7 Bom, A. C., 153

53. ———— *Custom of bogam*

sum. The parties belonged to the bogam caste, residing in the Godavari district. The defendant pleaded that the property had been acquired by her

custom of the caste, that the decree was right. By the custom of the bogam caste in the Godavari district property left by a mother is divisible between sons and daughters. CHANDRAREKA *v* SECRETARY OF STATE FOR INDIA . I. L. R., 14 Mad., 163

54. ———— *Right of females to inherit—Village—Wajib-ul-urz* —The paternal grandmother of a deceased village sharcholder claiming to inherit in preference to his male collateral

a question of ...

included the village wajib-ul urz, the customary

been void. But, there being the above custom, the question was how far the general law was superseded, and whether the right of the son to control the father's act in this respect was beyond the custom. *Held* that in regard to impartible estate the son's right at birth did not exist where there was no right on his part to partition; also that inalienability depended on custom or on the nature of the tenure. In this case, the evidence did not establish that by custom the estate was inalienable. SARTAJ KUARI *v.* DEORAJ KUARI . . . **I. L. R., 10 All., 272** **[L. R., 15 I. A., 51**

43. ——— **Impartible raj**—*Custom of inalienability, Evidence of—Right of possessor of impartible estate to alienate—Dayadi pattam.*—The holder of the impartible palayam of Ammayanayakanur transferred his estate to his wife by a deed of gift. The transferor had besides a son numerous dayadis, and some of the latter now sued for a declaration that the gift was not binding on them. The law of succession admittedly applicable to this palayam was the rule of dayadi pattam, according to which the person entitled to succeed on the death of a palayagar is the senior in age of his dayadis, descended from one of three brothers who originally formed a joint family together and were the founders of three lines in the family. The person entitled under this rule to inherit on the death of the transferor was one of the plaintiffs in the suit. It was contended that the palayagar had no proprietary right in the estate, but held the office of manager merely; but this contention was overruled. It was further contended that the estate admittedly impartible was by custom inalienable also. *Held* on the oral and other evidence adduced in the case, and with reference to admissions made by the transferor and to his conduct, and on its appearing that eight out of the nine predecessors of the transferor had left either sons or widows, but nevertheless that for three centuries there had been no sale or gift, that the custom of inalienability was established, and that the gift in question was accordingly invalid as against the plaintiffs. *Sartaj Kuari* v. *Deoraj Kuari, I. L. R., 10 All., 272,* discussed and explained. SIVASUBRAMANIA NAICKER *v.* KRISHNAMMAL **[I. L. R., 18 Mad., 287**

44. ——— *Impartible raj not necessarily inalienable—Mitakshara law.*—If amongst Hindus governed by the law of the Mitakshara a raj happens to be impartible and governed by the rule of primogeniture, it does not therefore follow that it is inalienable. The condition of inalienability depends upon special custom, or, in some cases, upon the special tenure of the raj, and must be clearly proved. *Sartaj Kuari* v. *Deoraj Kuari, I. L. R., 10 All., 272: L. R., 15 I. A., 51,* referred to. RUP SINGH *v.* PIRBHU NARAIN SINGH **[I. L. R., 20 All., 537**

45. ——— **Impartible zamindari**—*Alienation by the owner by his will.*—A zamindari in Madras, by custom descending to a single heir by primogeniture, and impartible, is not inalienable in virtue only of its impartibility, in the absence of proof of a custom having the force of law, or of some tenure attaching to the zamindari, rendering it inalienable. *Sartaj Kuari* v. *Deoraj Kuari, L. R., 15 I. A., 51: I. L. R., 10 All., 272,* a case which is applicable in Madras, decides that where there is an impartible estate descending by primogeniture, and in other respects the Mitakshara governs the rights of the parties, the eldest son does not become a co-sharer with his father, and decides that the inalienability of the estate would depend upon custom which must be proved, or in some cases upon the nature of the tenure attaching to the zamindari. *Held* that there was no proof in this case of a custom which the Courts could recognize as having the force of law, not resting on the Mitakshara, but argued to have been established by a long course of decision in the Madras Courts, against the validity of absolute alienation of an impartible zamindari. *Held* also that this was not a case to which should be applied the doctrine that where there is a long course of decision, that course should be supported, and the law not altered. And *held* that, inasmuch as here there was no co-parcenary subsisting between the zamindar and any member of his family in the estate, the zamindar had power to alienate it, and that he might exercise that power by will. VENKATA SURYA MAHIPATI RAMA KRISHNA RAO *v.* COURT OF WARDS **I. L. R., 22 Mad., 383** **[L. R., 26 I. A., 83** **3 C. W. N., 415**

46. ——— **Impartible estate**—*Power of sons to question the acts of their father when holder.*—Where an estate is impartible, the sons of the present holder have, since the decision in *Sartaj Kuari* v. *Deoraj Kuari, L. R., 15 I. A., 51: I. L. R., 10 All., 272,* recently affirmed as to this Presidency in *Venkata Surya Mahipati Rama Krishna Rao* v. *Court of Wards, L. R., 26 I. A., 83: I. L. R., 22 Mad., 383,* no *locus standi* to question the acts of their father. VENKATA NARASIMHA NAIDU *v.* BHASHYAKARLU NAIDU . **I. L. R., 22 Mad., 538**

47. ——— *Family customs—Rajputs—Primogeniture—Evidence of converging probabilities.*—In a Rajput family, of a clan named Jadon Thakur, long settled near Agra, holding an ancestral talukh of zamindari villages, and having their principal dwelling-place in one of such villages, the question arose whether, by a family custom, their ancestral property descended as an impartible estate, to be possessed by the eldest son of the last inheritor, or descended as an ordinary estate, under the Hindu law, to be held jointly by the sons, each having the right to claim partition. The second of a joint family of three sons now sued the elder, the youngest being a co-defendant, but not taking either side. The evidence established a family custom that the ancestral property should descend as an impartible estate, and should be possessed by a single heir at a time, who should be the eldest son. All the lines of evidence, of differing degrees of value, converged towards the same result, the existence of this custom of impartibility, and of primogeniture. Perhaps no one of these lines, taken alone, would have been conclusive in

HINDU LAW—CUSTOM—*continued*

12 INHERITANCE AND SUCCESSION
—*continued*

case in which a departure from the ordinary law of succession and inheritance is relied on, a particular custom must be proved COURT OF WARDS *v* RAJKUMAR DEO NANDAN SING 9 B. L. R, 310 note

62. —— —————— *Proof of indivisible nature of raj* —Where a party alleges a raj to be indivisible, and that he is as heir entitled to succeed to the whole, the onus of proof is on him GIRDHAREE SINGH *v.* KOOLAHUL SINGH
[6 W. R., P C., 1. 2 Moore's I A., 344

63. —— — — ——— — *Raj of Keonghur* —According to the family custom, the sons of a Rajah of Keonghur, by wives of a lower caste than the raja, rank after the sons by wives of the same caste as the raja BISTOOPERA PATMOHADEA *v* BASOODEB DUL BEWARTEE PATNAIK
[2 W. R., 232

64. ——————— *Appointment of jubraj—Qualifications for rajahship* —Where, in a question as to the right of inheritance to a raj, it was admitted that there was a custom that the reigning raja should name a jubraj and a burra thakur, of whom the first succeeds to the throne, and the latter

an alleged promise or intention on the part of the

tom which established the right of free choice Where family custom required the union of two things to constitute the legal heir, *viz*, seniority in age and nearness of kin, and the claimant has but one of these qualifications in himself, *viz*, seniority, he does not entitle himself to succeed Where a custom is proved to exist it supersedes the general law, which, however, still regulates all beyond the custom. NILKRISTO DEB BARMONO *v* BIR CHANDRA THAKUR
[3 B. L R, P C, 13; 12 W. R, P. C, 21
12 Moore's I. A., 523

Affirming the decision of the High Court in BEER CHUNDER JOODRAJ *v* NEELKISSEN THAKOOR
[1 W. R., 177

65 ——————— *Succession to Hossipore raj—Confiscation of estate by Government* —On the accession of the British Government to the Dewanny, Rajah Futtah Sahie in 1767, having refused to acknowledge allegiance to, and having openly rebelled against, the Government, was expelled from his estate of Hossipore. The Government retained the estate in its own possession until 1790, when, setting aside the sons of Futtah Sahie, it conferred the estate upon Chutterdharee, at that time the eldest surviving member of the younger branch of the family Two of the grandsons of Chutterdharee having sued to establish their right to a moiety of his property,—*Held* that the Hossipore property was a raj and that by the rule of the family it was to descend entire to a single heir, that the Government by setting aside a particular branch of the family, did not, in intent or in fact, confiscate the property, and thereby extinguish the rights of every member of the family that the family custom and the custom of the raj were not destroyed by the infringement of the custom by virtue of which Chutterdharee acquired the estate, and that he having acquired the estate subject to a particular custom and having himself done nothing destructive of that custom, his heirs were bound by the same custom, to the exclusion of the ordinary law of Hindu inheritance. TELUCKDHAREE SAHIE *v* RAJENDER PROTAUB SAHIE. RAM GOPAUL SINGH *v* TELUCKDHAREE SAHIE
[W R, F. B, 97

66. Succession, Family usage regulating—*Discontinuance of family custom—Beng Regs XI of 1793 and X of 1800* —In a suit to recover possession of an estate by virtue of an alleged family custom, under which the estate was descendible to the eldest son to the exclusion of the other sons, and was impartible and inalienable it was uncertain what the nature or origin of the tenure of the estate was, but there had been admittedly a settlement of it by Government at the time of the perpetual settlement *Held*, assuming the custom to have existed that although by such settlement any incidents of the old tenure of the estate were impliedly at an end, yet the settlement did not of itself operate to destroy the family usage, even though the origin of it could not be shown. *Quære*—Whether Regulation XI of 1793 or Regulation X of 1800 would govern a case where the claim rested only on a continuing

family custom, but as one of the incidents or conditions of tenure, and that since the settlement by Government the family had considered all these incidents at an end, and had treated the estate as an ordinary estate held under the Government, and subject to the ordinary laws of succession. Assuming the custom to have existed, it was of a nature which could, without any violation of law, be put an end to. There appears to be no principle or authority for holding that a manner of descent of an ordinary estate, depending

in which it prevails. RAJKISSEN SINGH *v.* RAMJOY SURMA MOZOOMDAR . I. L. R., 1 Calc., 186
[19 W. R., 8

Affirming decision of the High Court in RAMJOY SURMA *v.* PRANKISHEN SINGH 2 W. R., 80

HINDU LAW—CUSTOM—*continued.*

12. INHERITANCE AND SUCCESSION —*continued.*

exclusion of females was not proved. BURJORE v. BHAGANA . . I. L. R., 10 Calc., 557 [L. R., 11 I. A., 7

55. ———— *Utpat families of Pandharpur—Proof of family custom.*—Among the members of the Utpat families of Pandharpur in the Sholapur district, daughters are excluded from succession by a long and uniform family usage. Under Hindu law, a family usage or custom, when clearly proved, outweighs the written text of the law. But the greatest care must be exercised in accepting the alleged usage or custom as proved. When it is a family custom, the evidence must clearly show that it has been submitted to as legally binding, and not as a mere arrangement by mutual consent for peace or convenience. Any pecial rule of inheritance proved to exist in a Hindu family, and which is ancient, uniform, and reasonable, and not repugnant to the fundamental principles of Hindu law, should not be refused recognition. Origin and growth of the rights of inheritance of the widow and daughter by general Hindu law considered. BHAU NANAJI UTPAT v. SUNDRABAI . . 11 Bom., 249

56. ———— *Custom excluding women from succession, Proof of—Gohel Girasias—Variance between pleading and proof—Limitation.*—*H*, a Gohel Girasia, died in or about 1866, leaving a widow *M* and a daughter *B*, and possessed of certain lands. *M* died in 1887. In 1890, the plaintiffs, who were divided collaterals of *H*, sued to recover the lands, alleging that they succeeded thereto on the death of *H*, widows and daughters being excluded from inheritance according to the custom among the Gohel Girasias. The lower Courts found that the lands were never in plaintiff's possession; that *M* held them till December 1882, since which time defendants 1–3 had them in their enjoyment as purchasers from her; that the custom proved excluded daughters, but not widows, from inheritance; and that the claim was within time, having been made within twelve years of the death of *M*. On second appeal to the High Court,—*held* (1) that the alleged custom excluding daughters was not proved; (2) that the plaintiffs should not have been allowed to shift the basis of their claim from an alleged custom which excluded both widows and daughters to one which only excluded daughters; (3) that since limitation must be applied to the plaintiff's claim as they made it, and tried to prove it, *M*'s possession was adverse to them, and, being for more than twelve years, barred the suit. *Basava* v. *Lingangauda, I. L. R., 19 Bom., 428; Bhagvandas* v. *Rajmal, 10 Bom., 241; Shidhojirav* v. *Naikajirav, 10 Bom., 228;* and *Neelkisto* v. *Beerchunder, 12 Moore's I. A., 523,* referred to. DESAI RANCHODDAS VITHALDAS v. RAWAL NATHUBAI KESABHAI [I. L. R., 21 Bom., 110

57. ———— *Jain law—Proof of custom of inheritance.*—When a question regarding inheritance arises between parties of the Jain sect, the Courts should enquire into the customs of the sect and be guided by the result of the enquiry. If the party alleging the custom succeeds in establishing the same to the satisfaction of the Court, then, whether the custom be at variance or in accordance with Hindu law, the Court is bound to give effect to the custom. SHEO SINGH RAI v. DAKHO . . . . . 6 N. W., 382

S. C. Affirmed by Privy Council.

[I. L. R., 1 All., 688 L. R., 5 I. A., 87

58. ———— *Law applicable to Khoja Mahomedans, Bombay.*—It must be considered as the settled rule in Bombay that in the absence of sufficient evidence of usages to the contrary the Hindu law is applicable in matters relating to property, inheritance, and succession among Khoja Mahomedans, and this rule was held to apply in a case of Khojas at Thana, no evidence having been given in that case to show its inapplicability to the Khojas of that place. SHIVJI HASAM v. DATU MAVJI KHOJA . . . . 12 Bom., 281

59. ———— *Khoja Mahomedans—Succession—Letters of administration.*—In the absence of satisfactory proof of a custom, differing from the Hindu law, the Courts of this Presidency apply to Khojas the Hindu law of inheritance and succession. If a custom opposed to Hindu law be alleged to exist amongst Khojas, the burden of proof rests upon the person setting up that custom. The Khojas, having been originally Hindus and converted from the Hindu religion by a dai, or missionary of the Imam of the Ismailis, to the Mahomedan religion of the Shia division and Imami Ismaili sub-division, and being partly regulated by Mahomedan law, partly by Hindu law, and partly by custom, occupy a position so peculiar that the Courts do not apply to them, when seeking to prove a custom of inheritance or succession, differing from the Hindu law, the stringent rule that the custom must be proved to be ancient, invariable, and submitted to as legally binding, but will act upon satisfactory evidence that it has been the general custom and accepted as such by the great majority of the Khoja community. A Khoja, having died intestate and without leaving issue, was survived by his mother (a widow), his wife, and a married sister. *Held* that, according to the custom of the Khojas, his mother was entitled to the management of his estate and therefore to letters of administration in preference to his wife or his sister. HIRABAI v. GARBAI . . . . . 12 Bom., 294

60. ———— *Khoja Mahomedans.*—In order to prove a custom of inheritance among Khoja Mahomedans at variance with the rules of Hindu law, evidence merely of the opinion of the leading members of the caste is not enough. Instances must be proved in which the alleged custom has been observed and followed. RAHIMATBAI v. HIRBAI . . . I. L. R., 3 Bom., 34

61. ———— Succession to raj—*Impartible estate.*—A raj is not necessarily impartible. In every

76. ——————— *Proof of custom*— Custom of primogeniture not proved AMRIT NATH CHOWDHRY *v.* GAURI NATH CHOWDHRY

[6 B. L. R., 232 : 15 W R, P. C, 10 13 Moore's I. A., 542

GHUNSIAM SINGH . 5 Moore's I. A., 169

legal and valid custom RAMRAO TRIMBAK DESHPANDE *v.* YESHVANTRAO MADHASAVRAO DESHPANDE . I. L. R, 10 Bom., 327

79. ——————— *Deshmukhi vatan, Impartibility of—Partition, Suit for, of such vatan*—In the middle of the seventeenth century one Veduji, the ancestor and founder of the family of the parties to the suit, then called the Mhaske family, acquired a deshmukhi vatan originally consisting of eight chavurs of inam land, which was afterwards equally divided between the

mer was the elder In the latter part of the seventeenth or early part of the eighteenth century the elder branch further acquired six chavurs of land The parties to the suit were brothers and belonged to the elder

century

branch an

tive of th

branch should keep the inam lands they had, and

Trimbakrav in succession The subsequently acquired six chavurs of land, two of which were situated at Pimparne and the remaining four at Ambhora, described as sadhnukh, had been always spoken of and dealt with as connected with the vatan and the original eight chavurs, and had been enjoyed for a hundred or hundred and fifty years by Trimbakrav and his ancestors free from any right of the bhaubands, and this mode of enjoyment was recognized and affirmed by the authorities in the sanads, and also, subsequently, by the British Government The plaintiff, who was one of the three sons of Gopalrav, now deceased, sued his eldest brother, Trimbakrav *alias* Bajirav, and his second brother, Balvantrav, for

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on the

ground that by the custom of the family he as the eldest son took the vatan and the property appertaining to it, subject only to allotments for mainte-

perty The plaintiff appealed to the High Court, and contended (*inter alia*) that the Peishwa's decree related to the original eight chavurs only and not to the subsequently acquired six chavurs, and that the younger members of the Pimparne branch were not bound by that decree *Held* that the plaintiff's claim to partition of the deshmukhi vatan, including the six chavurs, should be disallowed, the existence

assessment and other dues, as well as all the allotments, had been always paid by the eldest member of the Mhaske family was a strong circumstance in corroboration of the first defendant's allegation The circumstances that services incidental to the vatan had been abolished could not affect the title of eldership of the first defendant as established by custom *Held* also that plaintiff's claim to the miras land and the patilki vatan should be allowed, there being no evidence of a custom of primogeniture as regards them, nor were they connected with the deshmukhi vatan Decree varied by directing the partition of the miras land and patilki vatan GOPALRAV *v.* TRIMBAKRAV . . I. L. R., 10 Bom, 598

80. ——————— *Evidence and proof of custom of primogeniture—Enjoyment of property consistent with alleged custom.*—*Held* on the evidence, reversing the judgment of the High Court, that the appellants had satisfied the serious burden of proving a special family custom of descent by primogeniture The evidence showed that for a period of nearly eighty years from the time of the British occupation of the district in which lay the estate in suit, the enjoyment had been consistent with the alleged custom, and for the earlier and greater part of that term had been inconsistent with any other legal basis. Also that in two other families in the same district, derived from the same

HINDU LAW—CUSTOM—*continued.*

13. MAHOMEDANS.

67. ——— Mahomedan family adopting Hindu customs—*Discretion of Judge.*—A Mahomedan family may adopt the customs of Hindus, subject to any modification of those customs which the members may consider desirable. A Judge is not bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindu family. It rests with him to decide in any particular case how far he should apply those rules and presumptions. SUDDURTONNESSA *v.* MAJADA KHATOON . . I. L. R., 3 Calc., 694 [2 C. L. R., 308

14. MARRIAGE.

68. ——— Marriage, Suit to declare validity of—*Proof of custom—Necessity to raise express issue as to custom.*—Where a suit to have it declared that defendant was plaintiff's wife, and was bound to live with him, was dismissed on the ground that custom required that in order to constitute such a right there should have been a second marriage,—*Held* that an issue should have been framed as to whether or no such a custom existed. BOOL CHAND KALTA *v.* JANOKEE . . . . . 24 W. R., 228

69. ——— Grandharp form of marriage—*Legitimacy of children—Entry in village wajib-ul-urz.*—*D* died in 1860 leaving him surviving his first wife *G*, his second wife *B*, his mother *R*, and *M*, his son, by a woman to whom he had been married by the "grandharp" form of marriage. In 1873 *R* died, and on her death *M* procured the registration of his name in respect of her one-third share, it having been previously decided in proceedings by the settlement officer that the name of each claimant should be registered in respect of a one-third share. In 1879 *B* sued *M* for possession of the one-third share held by him claiming as heir of her deceased husband *D*, and alleging that *M* was not the legitimate son of *D*, and therefore not entitled to succeed to such rights. *M* set up as a defence that he was the legitimate son of *D*, and therefore entitled to succeed; and that, assuming he was not legitimate, he was entitled to succeed by the custom of the village. In support of such custom, *M* relied on the following entry in the village wajib-ul-urz:—"In this village a mistress treated as a wife and the child of such a mistress shall also have a right to transfer property and to obtain and receive property." *Held M* was illegitimate. *Held* also, with reference to the entry in the wajib-ul-urz, that it did not necessarily place illegitimate children on an equality with legitimate as heirs; and if that was its intention, it was ineffectual, as parties could not by agreement alter the law of succession; and if the entry was regarded as evidence of custom, it was not conclusive. BHAONI *v.* MAHARAJ SINGH . I. L. R., 3 All., 738

70. ——— Dissolution of marriage at will—*Illegal custom.*—A custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has first been married, and to contract a second marriage (natra) with another man in the lifetime of her first husband and without his

HINDU LAW—CUSTOM—*continued.*

14. MARRIAGE—*concluded.*

consent, was invalid, as being entirely opposed to the spirit of the Hindu law. REG. *v.* KARSAN GOJA. REG. *v.* BAI RUPA . 2 Bom., 124: 2nd Ed., 117

71. ——— Marriage of female member of family of Rajah of Tipperah—*Family custom.*—A female member of the family of the Raja of Tipperah by custom does not cease to be a member of the family by marrying into another. ROOP MUNJOOREE KOOERES *v.* BEER CHUNDER JOOBRAJ [9 W. R., 308

72. ——— Sudra marriage—*Ceremony of pariyam or betrothal—Illegitimate son of a Sudra—Inheritance.*—The widows of a shrotriemdar, who was a Sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as shrotriemdar in lieu of his deceased father, and to whom certain of the raiyats had attorned. The defendant claimed to be legitimate according to the customary law governing the family, although his parents might not have been married at the time of his birth, by reason of his parents having performed the ceremony of pariyam before his birth. *Held* that the performance of such ceremony did not make a legal marriage, that the defendant was illegitimate, and that the plaintiffs were accordingly entitled to one-half of the lands in question, and the defendant was entitled to the other half. Observations on the allegation and proof of a custom in derogation of the general Hindu law of inheritance. CHINNAMMAL *v.* VARADARAJULU [I. L. R., 15 Mad., 307

15. MIGRATING FAMILIES.

73. ——— Presumption as to migrating family.—Hindu law is in the nature of a personal usage or custom, and probably migratory families or tribes would retain their own usages. The presumption is in favour of the continuance of the ancient family custom. SURENDRA NATH ROY *v.* HIRAMANI BURMONI [1 B. L. R., P. C., 26: 10 W. R., P. C., 35 12 Moore's I. A., 81

16. PRIMOGENITURE.

74. ——— Primogeniture—*Descent of ancestral estate—Thakurs of Bombay Presidency.*—A custom in the case of a petty Hindu family that the family estate shall descend to the eldest son, the second and other sons being entitled to maintenance only, cannot be supported. *Semble*—A different rule would apply to such a custom prevailing among thakurs and chiefs of the Bombay Presidency. BASVANTRAV KIDINGAPPA *v.* MANTAPPA KIDINGAPPA [1 Bom., Ap., 42

75. ——— *Custom superseding general law.*—A custom of primogeniture in the family of a Desoli in the Southern Mahratta country supersedes if clearly proved the general Hindu law of descent. SHIDOJIRAV *v.* NAIKOJIRAV [10 Bom., 228

HINDU LAW—DEBTS—*continued*

for his debts DHERAJ MAHATAB CHAND v. HURRO MOHUN ACHARJEE W. R., 1864, Mis., 1
JUMMAL ALI v. TIRBHEE LALL DOSS [12 W. R., 41

extent of the property which they have inherited RAJ ROOP SINGH v. BULDEO SINGH 2 W. R., 258
MOOKTOKESHEE DEBIA v. WOOMA CHURN BHUTTACHARJEE 12 W. R., 233

8 ———— *Liability of heirs*

[W. R., 1864, Mis., 33

9. ———— *Liability of son for father's debts—Representative of deceased Hindu—Civil Procedure Code 1877 s 234—*

hands and has not been duly disposed of SANGILI VIRAPANDIA CHINNATHAMBIAR v. ALWAR AYYANGAR. ZAMINDAR OF SIVAGIRI v. ALWAR AYYANGAR I. L. R., 3 Mad., 42

10 ———— *Liability of grandson for debts*—The grandson of a Hindu is bound to pay the debts of his grandfather independent of assets but without interest, according to the doctrines of the Maharastra school NARASIMHARAV KRISHNARAV v. ANTAJI VIRUPAKSH [2 Bom., 64: 2nd Ed., 61

But see Bombay Act VII of 1866, the Hindu Heirs Relief Act, which alters the law in this respect That Act however, does not apply to any case in which judgment had been pronounced before its enactment SAKHARAM RAMCHANDRA DIKSHIT v. GOVIND VAMAN DIKSHIT . 10 Bom., 361

11. ———— *Joint Hindu family—Liability of grandsons to pay interest on their grandfather's debts—Execution of decree on mortgage*—The mortgagee from a Hindu of the joint ancestral property of the latter can enforce his mortgage against the grandson of the mortgagor for the realization of the interest secured by the mortgage in addition to the principal amount of the

[I. L. R., 19 All., 26
PRANKRISHNA TEWARY v. JADUNATH TRIVEDY [3 C. W. N., 603

HINDU LAW—DEBTS—*continued*

12 ———— *Liability of joint estate for separate debts—Assets in hands of heir*—The divided share of a Hindu in property which previously belonged to the united family is after his decease and while yet in the hands of his heir assets for payment of the debts of the deceased The whole of the family undivided estate would generally when in the hands of the sons or grandsons be liable for the debts of the father or grandfather and previously to the passing of Bombay Act VII of 1866 the sons and grandsons were personally liable for the debts of the father and grandfather

grandson independently of the receipt of assets unless he promise payment The proposition of Hindu law that debts follow the assets into whosesoever hands they come must generally speaking be confined to separate estate and the liability of undivided ancestral estate in the hands of sons and grandsons to the debts of the father or grandfather is exceptional UDARAM SITARAM v. RANU PANDAJI 11 Bom., 76

13 ———— *Inheritance—Minor—Liability of son for father's debts—Bom Act VII of 1866*—In the Presidency of Bombay, under the provisions of Bombay Act VII of 1866 where a Hindu dies intestate leaving property his son is liable to his (the father's) creditors to the extent of the value of the property although the property may not have come into the son's possession, but remains in the hands of third persons The father having left property the son may recover it if it has been taken against his assent and he ought to do so to enable him to discharge the first duty of a Hindu to his deceased father So long as he takes no steps it is to be presumed that the property is held with his assent He may reclaim it if he will and thus it is held to his use within the meaning of s 2 of Bombay Act VII of 1866. KEVAL BHAGVAN v. GANPATI NARAIN I. L. R., 8 Bom., 220

14 ———— *Son's estate liable for debt of deceased father contracted as surety—Contract Act s 131*—In a suit brought to recover money from the estate of a deceased Hindu

Contract Act SITARAMAYYA v. VENKATRAMANNA [I. L. R., 11 Mad., 373

15. ———— *Suit against sons of Hindu debtor on a bond executed by father not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father*—In a suit upon a bond executed by a Hindu the plaintiff made the debtor's sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt *Held* by the Divisional Bench that the decree against the sons was bad NARASIMHALU SUBBA [I. L. R., 12 Mad., 139

HINDU LAW—CUSTOM—*continued.*

16. PRIMOGENITURE—*concluded.*

ancestor as the parties to the suit, the alleged custom prevailed. GARURUDHWAJA PARSHAD SINGH *v.* SAPARAUDHWAJA PARSHAD SINGH

[L. R., 27 I. A., 238
I. L. R., 23 All., 37

Reversing judgment of High Court in SUPARAUDHWAJA PRASAD *v.* GURURADDHWAJA PRASAD

[I. L. R., 15 All., 147

81. ———— *Raj zamindari of Tirhoot.*—A family usage for fourteen generations, by which the succession to the raj zamindari of Tirhoot had uniformly descended entire to a single male heir to the exclusion of the other members of the family, upheld. A custom for the raja in possession in his lifetime to abdicate and assign by deed the raj, title, and domain to his eldest son or next immediate male heir, held good, and a deed so assigning the raj to an eldest son (provision being made for allowances for the younger sons) sustained. GUNESH DUTT SINGH *v.* MOHESHUR SINGH

[6 Moore's I. A., 164

82. ———— *Mitakshara law—Joint and separate property—Impartibility.*—Although an estate be not what is technically known in the north of India as a raj, or what is known in the south of India as a polliam, the succession thereto may, under a kulachar or family custom, be governed by the rule of primogeniture. Where the family to which ancestral property held in this peculiar manner belongs is subject to the Mitakshara law, and the property is not separate, the succession in the event of a holder dying without male issue is given to the next collateral male heir in preference to the widow or daughters of the deceased holder. CHINTAMUN SINGH *v.* NOWLUKHO KONWARI

[I. L. R., 1 Calc., 153 : L. R., 2 I. A., 263
24 W. R., 253

Reversing the decision of the High Court in NATUKEE KOERI *v.* CHOWDHRY CHINTAMUN SINGH . . . . . 20 W. R., 247

17. TRUSTEE, SUCCESSION TO.

83. ———— **Inheritance to deceased trustee.**—By usage of Hindu law in Tinnevelly district, the eldest male heir of a deceased trustee succeeds as trustee to him from whom he inherits. PURAPPAVANALINGAM CHETTI *v.* NULLASIVAN CHETTI . . . . . . 1 Mad., 415

18. UNCERTAIN CUSTOM.

84. ———— **Uncertain and unintelligible custom**—*Custom as to certain property descending to females—Sale in execution of decree.*—*Held* that a custom in a family that whatever property, as a garden, was planted by females passed to the possession of females to the exclusion of all male heirs, was a custom uncertain and unintelligible, and not one which would be upheld by the Court. Such property was not therefore exempt from sale in execution of a decree against the husband of one of the ladies who claimed it. BHAGAWAN DAS *v.* BALGOBIND SINGH . . 1 B. L. R., S. N., 9

HINDU LAW—DEBTS.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

1. ———— **Liability for debts**—*Liability of property for debts of ancestor.*—According to Hindu law, a man's property is liable for his debts, and the debts of an ancestor must be satisfied before the heir has any interest in ancestral property. GUNGA NARAIN PAUL *v.* UMESH CHUNDER BOSE

[W. R., 1864, 277

2. ———— *Liability of property for debts of ancestor.*—The property of a Hindu which has descended to his sons and grandsons is, while in their hands, liable for his debts. SAKHARAM RAMCHANDRA DIKSHIT *v.* GOVIND VAMAN DIKSHIT . . . . 10 Bom., 360

3. ———— *Liability of son for father's debts.*—The freedom of a son from obligation to pay a deceased father's debts has respect to the nature of the debt and not to the nature of the property inherited by son from father; and where the debt is not of an immoral kind, a judgment-creditor of a deceased father can proceed against the inherited property in execution of decree, and follow any assets which can be traced to the son's hands. OMUTHOONNISSA *v.* PURESMUN NARAIN SINGH

[25 W. R., 202

See GRIDHAREE LALL *v.* KANTOO LALL

[14 B. L. R., 187 : 22 W. R., 56
L. R., 1 I. A., 321

4. ———— *Brahmans—Nambudris—Mussads—Hindu law, How far applicable—Liability of sons for father's debt.*—The principle of Hindu law, which imposes a duty on a son to pay his father's debt, contracted for purposes neither illegal nor immoral, is not applicable to the Malabar Brahmans called Nambudris and Mussads. NILAKANDAN *v.* MADHAVAN . I. L. R., 10 Mad., 9

5. ———— *Debts of testator—Charge on specific property.*—Though the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of the property. NILKANT CHATTERJEE *v.* PEARY MOHAN DAS . 3 B. L. R., O. C., 7 : 11 W. R., O. C., 21

See GOPAL NARAIN MOZOOMDAR *v.* MUDDOMUTTY GUPTEE . . . . . . 14 B. L. R., 21

6. ———— *Liability of son not inheriting.*—According to Hindu law, a son who has not inherited his father's estate is not liable

HINDU LAW—ENDOWMENT—*continued.*

1. CREATION OF ENDOWMENT—*continued.*

testator be allowed to live in the house for their lives and perform the worship of the idol, with limitation over to others on the decease of the survivors of them, and a sum of R16 allowed to the survivor of the first legatee for the purposes of the idol, and after her death that the same sum be applied to the expenses of the idol. When the legatee has for a time at her own expense kept up the service, she is not entitled to have the money refunded. ROYMONEY DOSSEE *v.* ROGHUNATH SEN . . . **1 Ind. Jur., N. S., 14**

5. ——— *Public charity—Trust—Public charitable or religious trust—Offerings made to an idol—Liability of persons in possession of an idol's property—Account.*—A trust for a Hindu idol and temple is to be regarded in India as one created "for public charitable purposes" within the meaning of s. 539 of the Code of Civil Procedure (Act X of 1877). The Hindu law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations. A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it, and the ruler will give effect to the bounty, or at least protect it. A trust is not required for this purpose as it is by English law. Those who take charge of gifts made to a religious or charitable institution—whether such gifts consist of cash, jewels, or land—incur thereby a responsibility for their due application to the purposes of the institution. They are answerable as trustees would be, even though they have not consciously accepted a trust; and a remedy may be sought against them for maladministration by a suit open to any one interested as under the Roman system in a like case by means of a *popularis actio.* MANOHAR GANESH TAMBEKAR *v.* LAKHMIRAM GOVINDRAM

[I. L. R., 12 Bom., 247

6. ——— *Gift to Hindu temple—Trust.*—The defendants made a gift of land to a Hindu temple for the purpose of defraying the expenses appertaining to the idol. The temple was built and the gift made in 1870. The defendants obtained from the revenue authorities mutation of names in the idol's favour and an acknowledgment of the person whom they nominated as agent or manager. *Held* by the Full Bench that the gift made by the defendants constituted a trust for the purpose of the temple. *Per* EDGE, *C.J.*, and TYRRELL, *J.*—That the defendants before the Court did not constitute themselves trustees in any sense. RAGHUBAR DIAL *v.* KESHO RAMANUJ DAS

[I. L. R., 10 All., 18

7. ——— *Dedication to idol—Mode of dedication.*—Under Hindu law, an idol as symbolical of religious purposes is capable of being endowed with property, but no express words of gift to such idol in the shape of a trust or otherwise are required to create a valid dedication. *Manohar Ganesh Tambekar* v. *Lakhmiram Govindram, I. L. R., 12 Bom., 247,* approved. *Sonatun Bysack* v. *Juggutsoondree Dossee, 8 Moore's I. A., 66,* and *Ashutosh Dutt* v. *Doorga Churn Chatterjee, I. L. R., 5 Calc., 438: L. R., 6 I. A., 182,* distinguished. BHUGGOBUTTY PROSUNNO SEN *v.* GOOROO PROSONNO SEN . . . . **I. L. R., 25 Calc., 112**

8. ——— *Gift of idol and debutter land—Private endowment—Benefit of idol—Shebaits—Debutter property.*—A gift of an idol and of the lands with which it is endowed (being a private endowment) made with the concurrence of the whole family to another family for the purpose of carrying on the regular worship of the idol, if made for the benefit of the idol, is not invalid, and is one binding on succeeding shebaits. KHETTER CHUNDER GHOSE *v.* HARI DAS BUNDOPADHYA

[I. L. R., 17 Calc., 557

9. ——— *Invalid endowment—Deeds made without intention that they should be acted upon—Donor not divesting himself of dedicated property.*—Case in which a good title was made, by her transfer of her inheritance, through the daughter and heiress of a deceased member of a joint family of brothers, under the Dayabhaga, although her father had executed deeds dedicating his share of the family property to trustees, for the worship of the family deity; this dedication having been inoperative, because it was neither his nor his brother's intention that the deeds should be acted upon, and he had never divested himself of his share. WATSON & Co. *v.* RAMCHUND DUTT . **I. L. R., 18 Calc., 10**

[L. R., 17 I. A., 110

10. ——— **Mode of dedication**—*Debutter* [illegible] *Partition subject to trust for ido*[illegible] [illegible]ssession by partition, the plaint stated that the common ancestor of the plaintiff and the defendant and his five sons acquired certain properties; that on the death of the ancestor, his five sons separated among themselves, and each took a certain share of land for his own expenses, and the remaining portion of the lands they held in ijmalee among themselves; that one of them became the manager of this portion of the lands, made the collections of the rents, and from the profits thereof paid the expenses of the rásh, dole, etc., festivals, and the worship of the debta, all of which were alleged to be patrimonial, and divided the balance. The defence substantially was that the whole of the ijmalee land was the property of the idol. It was found in the lower Court that a certain portion of the land was debutter and not partible, and a decree was made for partition of the remainder. *Held* on appeal that, as it was not shown that this latter portion of the property had been transferred from the family and dedicated to the idol, a partition of it should be made, but subject to a trust in favour of the idol. RAM COOMAR PAUL *v.* JOGENDER NATH PAUL

[I. L. R., 4 Calc., 56
2 C. L. R., 310

11. ——— **Indirect dedication**—*Custom and usage—Moral obligation.*—When there has been no direct endowment to support the worship of the family idol, Hindu usage and custom, although it

HINDU LAW—DEBTS—*concluded.*

been paid off. At the time of her death there remained outstanding a large sum due as rent, which ... her lifetime. ... ust the heir of ... f her father's estate (into whose hands the estate had passed), he asked for a decree—(1) against the estate in the hands of the reversioners; and (2) sought for payment out of the rents uncollected in the lady's lifetime, or in the alternative that the lady's personal estate might be held liable. On a reference being made to a Full Bench as to whether the plaintiff could enforce his claim against the estate in the hand ...

McDowell, and Prinsep, JJ. (Garth, C.J., and Wilson, J., dissenting) that the plaintiff was certainly entitled to be paid out of the arrears of rent since collected, but that he also was entitled to enforce his claim against the heirs of the last full owner of the estate generally. Hurry Mohun Rai *v.* Gonesh Chunder Doss **I. L. R., 10 Calc., 823**

HINDU LAW—ENDOWMENT.

See Hindu Law—Inheritance—Religious Persons—Mohunts. [I. L. R., 9 All., 1 L. R., *13 I. A., 100*

See Hindu Law—Partition—Agreements not to Partition and Restraint on Partition . 8 B. L. R., 60 I. L. R., 6 Calc., 106 I. L. R., 12 Mad., 287

See Hindu Law—Will—Construction of Wills—Bequest to Idol. [2 B. L. R., A. C., 137 note

See Cases under Hindu Law—Will—Construction of Wills—Bequests for Charitable Purposes.

See Limitation Act, art. 144—Adverse Possession . . Marsh., 485 [I. L. R., 9 Bom., 169 I. L. R., 13 Mad., 402 I. L. R., 12 Bom., 322 I. L. R., 23 Calc., 536 I. L. R., 19 Mad., 243 I. L. R., 23 Mad., 271, 439

See Malabar Law—Endowment.

HINDU LAW—ENDOWMENT—*continued.*

1. CREATION OF ENDOWMENT.

1. ——— **Creation by deed of gift**—*Object of endowment—Sheba—Presumption.*—The ...

Collector of Moorshedabad *v.* Shibessuree Dabea . . . . **11 B. L. R., P. C., 86** [**18 W. R., 226**

2. ——— **Creation of religious endowment**—*Charity—Family idols—Sale of trust property in execution—Suit by trustee to recover the property—Limitation.*—The Hindu law, unlike the English law with respect to charities makes ...

... twelve years was applicable. Rupa Jagshet *v.* Krishnaji Govind . **I. L. R., 9 Bom., 169**

3. ——— **Form of creation**—*Perpetuity—Trust—Void and inoperative devise.*—A Hindu ...

... worship of the idols. The testator appointed the trustees executors of his will, and by a codicil bequeathed ... various members of his family ...

4. ——— *Devise for worship of idol—Right to refund of money expended.*—Devise upon trust for the use of a thakoor, with direction that the wife, daughter, and daughter-in-law of

HINDU LAW—ENDOWMENT—*continued.*

2. PROOF OF ENDOWMENT—*concluded.*

plaintiff had no right to recover. SESHAIYA *v.* GAUR-AMMA . . . . . . 4 Mad., 336

3. NON-PERFORMANCE OF SERVICES.

22. ———— **Non-performance of conditions of trust**—*Effect of, on trust.*—If a trust or endowment be created *bonâ fide*, the mere fact that the parties in possession of the trust or endowed property do not carry out the conditions of the trust does not invalidate the transactions. KASHESHUREE DASSEE *v.* KRISHNAKAMINEE DASSEE 2 Hay, 557

23. ———— **Failure to perform services of idol**—*Result of refusal to perform—Suit for khas possession.*—A party holding land assigned for the support of an idol subject to the performance of the ceremonies of worship of the idol, who fails to perform the required service, may be compelled to do so, and on refusal may be removed; but such refusal would not enable a party claiming the land under a fresh assignment from a descendant of the original grantor to recover possession by a suit. MOHESH CHUNDRA CHUCKERBUTTY *v.* KOYLASH CHUNDRA CHUCKERBUTTY . . . 11 W. R., 443

24. ———— *Suit for khas possession.*—Where land has been given as debutter land and the requisite services are not performed, all that the donor can do is to take steps to have the services performed; he cannot recover it in a suit for khas possession. GOPEENATH CHOWDHRY *v.* GOOROO DOSS SURMA . . . . 18 W. R., 472

See RAM NARAIN SING *v.* RAMOON PAUREY [23 W. R., 79

4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

25. ———— **Principles to be observed in dealing with endowments**—*Mad. Reg. VII of 1817.*—The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government, and Madras Regulation VII of 1817 merely defined the manner in which that power was to be thenceforth exercised. MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI . . . . L. R., 1 I. A., 209

26. ———— **Mode of holding office and management, Proof of**—*Gift of an idol—Evidence of conditions of gift.*—The mode in which the offices of priest and manager have been held for many generations is material evidence of the conditions on which the original gift of an idol was made. NIMAYE CHURN POOJAREE *v.* MOOROOLEE CHOWDHRY [1 W. R., 108

HINDU LAW—ENDOWMENT—*continued.*

4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*continued.*

27. ———— **Power of control of odhikaree by general body of bhukuts**—*Power of odhikaree to remove bhukuts.*—In a suit by the bhukuts of the Komolabari Shaster in Assam for confirmation of their rights in that endowment and restoration of possession thereof, it was held that the plaintiffs had failed to make out their title; that by the original grant of Rajah Luckee Singh, inscribed on a copper plate, the management of the debutter property was entrusted to the odhikaree, over whom the shormoho or general body of bhukuts have no control, either in respect to his duties as the religious head of the Komolabari Shaster or in the management of its revenues. *Held* that the odhikaree could not turn the bhukuts out of the shaster without just cause. DOOTEERAM SURMA DOOREE *v.* LUCKEE KANT GOSSAMEE . . . 12 W. R., 425

28. ———— **Proprietorship of endowed property**—*Religious communities at Benares and Tirpuntal, Status of.*—The mohunt of the muth at Tirpuntal, zillah Tanjore, in the Madras Presidency, sued the mohunt of the muth at Benares in the Civil Court of Zillah Benares for the right to manage as proprietor the muth and chutter affairs at Benares and the temple of Sri Kedareshur, and to recover property belonging thereto, and to have an account of receipts and disbursements relative to the same; such relief being claimed by virtue of his proprietary right as mohunt and guddeenashin of the head-quarters muth at Tirpuntal under whose jurisdiction and power the chutter institution at Benares had continued from time immemorial. The defendant denied the plaintiff's claim to the immoveable property and endowment which he represented as acquired by his ancestors, the mohunt guddeenashins at Benares and himself. He denied that he was an agent, and claimed to be the real proprietor in possession and occupation by right of succession to his ancestors. The first Court decreed the plaintiff's claim. The High Court modified the decree, giving the plaintiff possession of certain chutters and gardens built or purchased out of funds remitted from Madras, and declaring him entitled to an account of a sum admitted to have been remitted from Tirpuntal, but holding that he had failed to make out possession of the muth, temple, or other property. *Held* that the original foundation having been admittedly at Benares, which is the holy place, and the object having been to afford to persons, either resident in the south of India or making pilgrimage to Benares, facilities for worship and religious duties there, raised a presumption that the establishment at Tirpuntal was subordinate to that at Benares. And that it was not shown that any change had been effected in the original constitution of the community. *Held* that the nature of the relation between the muths at Tirpuntal and Benares was that the former fed the establishment at the latter, the object of which was to afford facilities to pilgrims and others wishing to pay their devotions at Benares. The result was that the establishment at Tirpuntal collected alms and remitted them to Benares, producing complicated exchange transactions between the

HINDU LAW—ENDOWMENT—*continued*

1 CREATION OF ENDOWMENT—*concluded*

would create a moral obligation, such obligation will not be held as having any legal operation SHAM LOLL SEIN *v* HUROSOONDRY GOOPTEA

[1 Ind. Jur, N S., 36, 5 W. R., 29

2 PROOF OF ENDOWMENT

12 ———— Gift by person at point of death—*Proof of gift to idols*—Clear proof is necessary to support a gift made orally by a person at the point of death of all the donor's property to idols BIPPRO PERSHAD MYTEE *v* KENAE DAYEE

[3 W. R, 165: 5 W R, 82

13 ———— Debutter property, Proof of ancient and hereditary character—Land granted to an idol cannot be held to be debutter, unless it is found to be ancient hereditary debutter, publicly assigned as such prior to the donor's incumbency SOSHIKISHORE BUNDOPADHYA *v* CHOORA MONEE PUTTO MOHADABEE W R, 1864, 107

14 ———— Treatment of, by founder and his descendants—One test of an endowment as to whether it is *bonâ fide* or nominal is to see how the founder himself treated the property, and how the descendants have since treated it GANGA NARAIN SIRCAR *v* BRINDABUN CHUNDER KUR CHOWDHRY

[3 W. R., 142

15 ———— Proof of actual assignment

proved NARAIN PERSAD MYTEE *v* ROODUR NARAIN MUNGLE . 2 Hay, 490

The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose; but where there is apparently good evidence, ... that the going ... land ... from ... would ...

KOMUL BIBEE . 8 W R, 43

and cannot impose on such party the liability attaching to the office of a shebait RAM PERSHAD DASS *v* SREEHUREE DASS 18 W R., 399

HINDU LAW—ENDOWMENT—*continued*

2 PROOF OF ENDOWMENT—*continued*

of an idol does not impose on it the character of a ...

[21 W. R., 305

19 ———— Purchase in name of idol—*Alienation*—The plaintiff sued as the shebait of a certain idol to recover possession of a zamindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter ...

priests to perform regularly any religious service for the public benefit of Hindus and that the property had been dealt with all along as his own private property *Held* that this was a mere nominal endowment, and consequently the alienation thereof was not invalid. *Held* also that a property purchased by a man in the name of his own idol, which no one except himself has the power or right to worship is not the property of the idol, but the property of the person who purchased it BROJOSOONDERY DEBIA *v* LUCHMEE KONWAREE

[15 B L. R., P C, 176 note· 20 W R., 95

Affirming the decision of the High Court

[2 B L. R, A C, 155: 11 W. R, 13

20 ———— Land dedicated to idol—

21 ———— Land enjoyed as private property, though attached to karnam—*Suit to recover after ejectment*—Plaintiff brought a suit ...

may have been for some time enjoyed as private property; that the property being annexed to the office, was indivisible and as the Collector in ejecting the plaintiff appropriated the land to the office by putting it in the possession of the karnam whom he appointed in place of the plaintiff's husband, the

HINDU LAW—ENDOWMENT—*continued.*

2. PROOF OF ENDOWMENT—*concluded.*

plaintiff had no right to recover. SESHAIYA *v.* GAURAMMA . . . . . . 4 Mad., 336

3. NON-PERFORMANCE OF SERVICES.

22. ———— **Non-performance of conditions of trust**—*Effect of, on trust.*—If a trust or endowment be created *bonâ fide,* the mere fact that the parties in possession of the trust or endowed property do not carry out the conditions of the trust does not invalidate the transactions. KASHESHUREE DASSEE *v.* KRISHNAKAMINEE DASSEE **2 Hay, 557**

23. ———— **Failure to perform services of idol**—*Result of refusal to perform—Suit for khas possession.*—A party holding land assigned for the support of an idol subject to the performance of the ceremonies of worship of the idol, who fails to perform the required service, may be compelled to do so, and on refusal may be removed; but such refusal would not enable a party claiming the land under a fresh assignment from a descendant of the original grantor to recover possession by a suit. MOHESH CHUNDRA CHUCKERBUTTY *v.* KOYLASH CHUNDRA CHUCKERBUTTY . . . . **11 W. R., 443**

24. ———— *Suit for khas possession.*—Where land has been given as debutter land and the requisite services are not performed, all that the donor can do is to take steps to have the services performed; he cannot recover it in a suit for khas possession. GOPEENATH CHOWDHRY *v.* GOOROO DOSS SURMA . . . . . **18 W. R., 472**

See RAM NARAIN SING *v.* RAMOON PAUREY [**23 W. R., 79**

4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

25. ———— **Principles to be observed in dealing with endowments**—*Mad. Reg. VII of 1817.*—The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government, and Madras Regulation VII of 1817 merely defined the manner in which that power was to be thenceforth exercised. MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI . . . . . **L. R., 1 I. A., 209**

26. ———— **Mode of holding office and management, Proof of**—*Gift of an idol—Evidence of conditions of gift.*—The mode in which the offices of priest and manager have been held for many generations is material evidence of the conditions on which the original gift of an idol was made. NIMAYE CHURN POOJAREE *v.* MOOROOLEE CHOWDHRY [**1 W. R., 108**

HINDU LAW—ENDOWMENT—*continued.*

4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*continued.*

27. ———— **Power of control of odhikaree by general body of bhukuts**—*Power of odhikaree to remove bhukuts.*—In a suit by the bhukuts of the Komolabari Shaster in Assam for confirmation of their rights in that endowment and restoration of possession thereof, it was held that the plaintiffs had failed to make out their title; that by the original grant of Rajah Luckee Singh, inscribed on a copper plate, the management of the debutter property was entrusted to the odhikaree, over whom the shormoho or general body of bhukuts have no control, either in respect to his duties as the religious head of the Komolabari Shaster or in the management of its revenues. *Held* that the odhikaree could not turn the bhukuts out of the shaster without just cause. DOOTEERAM SURMA DOOREE *v.* LUCKEE KANT GOSSAMEE . . . **12 W. R., 425**

28. ———— **Proprietorship of endowed property**—*Religious communities at Benares and Tirpuntal, Status of.*—The mohunt of the muth at Tirpuntal, zillah Tanjore, in the Madras Presidency, sued the mohunt of the muth at Benares in the Civil Court of Zillah Benares for the right to manage as proprietor the muth and chutter affairs at Benares and the temple of Sri Kedareshur, and to recover property belonging thereto, and to have an account of receipts and disbursements relative to the same; such relief being claimed by virtue of his proprietary right as mohunt and guddeenashin of the head-quarters muth at Tirpuntal under whose jurisdiction and power the chutter institution at Benares had continued from time immemorial. The defendant denied the plaintiff's claim to the immoveable property and endowment which he represented as acquired by his ancestors, the mohunt guddeenashins at Benares and himself. He denied that he was an agent, and claimed to be the real proprietor in possession and occupation by right of succession to his ancestors. The first Court decreed the plaintiff's claim. The High Court modified the decree, giving the plaintiff possession of certain chutters and gardens built or purchased out of funds remitted from Madras, and declaring him entitled to an account of a sum admitted to have been remitted from Tirpuntal, but holding that he had failed to make out possession of the muth, temple, or other property. *Held* that the original foundation having been admittedly at Benares, which is the holy place, and the object having been to afford to persons, either resident in the south of India or making pilgrimage to Benares, facilities for worship and religious duties there, raised a presumption that the establishment at Tirpuntal was subordinate to that at Benares. And that it was not shown that any change had been effected in the original constitution of the community. *Held* that the nature of the relation between the muths at Tirpuntal and Benares was that the former fed the establishment at the latter, the object of which was to afford facilities to pilgrims and others wishing to pay their devotions at Benares. The result was that the establishment at Tirpuntal collected alms and remitted them to Benares, producing complicated exchange transactions between the

HINDU LAW—ENDOWMENT—*continued*

4 DEALING WITH AND MANAGEMENT OF, ENDOWMENT—*concluded*

two establishments *Held* that the plaintiff had failed to establish either that he was the proprietor of the property at Benares or that the defendant was his mere agent, and that the High Court was right in limiting the relief to what was included in the decree KASHI BASHI RAMLING SWAMEE *v* CHILUMBEENATH KOOMAR SWAMEE 20 W. R., P. C, 217

29 ——— Mode of enjoyment of endowed property—*Decree or agreement made to bind successive owners* —A Court has no power to bind in perpetuity all the successive owners of an endowment as to the mode in which their property should be managed, and the shebaits of a debutter endow-

30 ——— *Repairs of temple —Katlais or distinct endowments—Liability for repairs—Proof of custom in absence of endowment deeds* —The panchayatdars or managers of a temple, being directed by a Magistrate to repair the gateway of a store house within the temple precincts and under their immediate control, spent R10 8 in so doing from the funds of a katlai or endowment of which they were managers They then sued the trustees of two other katlais for recovery of the said sum on the ground that, by the usage of the temple, the cost of repairs was payable from the defendant's income, and asked for a declaration that the duty of executing repairs fell upon the defendants' katlais *Held* that in the absence of any endowment or trust-deed regarding the katlais, the decision must be found in the usage of the temple upon proof of which judgment

5 SUCCESSION IN MANAGEMENT.

having done so for a long period creates no right in his favour INDURJEET KOOER *v* CHUNDEEMUN MISSER . . 16 W. R., 99

32. ——— Succession to managership—*Devolution of property of idol on death of mohunt* —The general principle regulating the devolution of property belonging to a muth, on the death of the mohunt, is that a virtuous pupil takes the property In some instances the mohuntship descends to a personal heir, and in others to a successor appointed by the existing mohunt; but the ordinary rule is that muths of the same sect in a district, or

HINDU LAW—ENDOWMENT—*continued*

5 SUCCESSION IN MANAGEMENT—*continued*

having a common origin, are associated together, and on the occasion of the death of one mohunt, the others assemble to elect a successor either out of the disciples of the deceased or from those of another mohunt GOSSAIN DOWLUT GEER *v* BISSESSUR GEER [19 W. R., 215

34. ——— *Trustee with power of appointment—Failure to appoint* —*A*, a Hindu, by a deed of wukfnama (deed of endowment), after reciting that he had "erected and prepared a thakurbari (temple) and the image of thakur

(trustee) to succeed her in the management of the trust In a suit by the heir of *B* to obtain possession of the property covered by the deed against the heirs of *A*,—*Held* that the managership, on failure of appointment of a trustee, reverted to the heirs of the person who endowed the property JAI BANSI KUNWAR *v* CHATTER DHARI SINGH [5 B. L. R., 181

35. ——— *Custom or practice of sect* —When the property is of the nature of an endowment, a claim to succeed under the ordinary Hindu law of inheritance was not maintainable Plaintiff might have sued to get the management of the property in preference to the defendant, a widow, by the custom or practice of the sect. GOOSAEEN SREE CHOUNDAWALEE BAHOOJEE *v* GIRDHAREEJEE . . 3 Agra, 226

Affirmed by Privy Council in GOPEE LALL *v* CHUNDRAOOLEE BAHOOJEE . II B. L. R., 391

36 ——— *Succession to hereditary office* —*J* held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor, and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J* *J*, having died in 1824 was succeeded by his son *T* without any opposition from the two other branches. *T* was temporarily displaced from the office by *G*, who represented the two other branches but recovered it in 1850 In an action brought by the plaintiff as

representative of *G* in 1873 to establish his claim to the office held by *T*'s sons, it was contended on behalf of plaintiff, in answer to defendant's plea of limitation, that in the absence of evidence of the circumstances under which *T* succeeded to the patilship, *T* must be presumed to have been nominated to that office by all the members of the watandar family jointly, or with their assent sought and granted, and was consequently the representative of all of them. *Held* that the succession of a son to his father in an hereditary office is primarily to be referred to a right based on the relation subsisting between them just as would be the son's succession to his father's property. GIRIAPA *v.* JAKANA

[12 Bom., 172

37. ———————— *Temple—Hereditary trustee—Title—Proof—Mad. Reg. VII of 1817.*—The mere succession of a son to a father in a trusteeship of a temple does not create an hereditary right. *Quære*—Whether, as long as Regulation VII of 1817 was in force, it was competent to Government absolutely to divest itself of the obligations imposed on it by that Regulation. *Venkatesa Nayudu* v. *Shri Shatagopaswami, 7 Mad., 77,* observed on. APPASAMI *v.* NAGAPPA

[I. L. R., 7 Mad., 499

38. ———————— *Succession to office and property of deceased mohunt—Custom of institution.*—In determining the right of succession to the property left by the deceased head of a religious institution, the only law to be observed is to be found in custom and practice, which must be proved by evidence. On the death of a mohunt, the right to succeed to his landed and other property was contested between two goshains. *Held* that the claimant, in order to succeed, must prove the custom of the math entitling him to recover the office and the property appertaining to it. The evidence showed the custom to be that the title to succeed to the office and property was dependent on the successor's having been the chela approved and nominated as such by the late mohunt, and also after the death of the latter installed or confirmed as mohunt by the other goshains of the sect. *Held* that a claimant who failed to prove his installation or confirmation was not entitled to a decree for the office and property against a person alleging himself to have been a chela who, whether with or without title, was in possession. GENDA PURI *v.* CHATAR PURI . . . I. L. R., 9 All., 1

[L. R., 13 I. A., 100

39. ———————— *Religious institution—Succession in religious houses and among ascetics.*—This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not duly appointed, and his nomination by his predecessor was invalid; and for delivery of possession of the moveable and immoveable properties of the muth to a nominee of the plaintiff. The claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be "slaves" of the head of the adhinam, but for over 60 years the head of the adhinam had exercised no management over the endowments belonging to the muth; and in a suit (compromised) of the year 1874 the present pretensions of the head of the adhinam had been denied *in toto*. The defendant had succeeded in 1874 to the management of the muth under the will of his predecessor, dated the same year, and was not a disciple of the adhinam. *Held* (1) that the muth was affiliated to the adhinam, but the head of the adhinam is not entitled to appoint to the office of head of the math and was not entitled to an order for delivery of the property of the math to himself or to his appointee; (2) that on the evidence as to the usage in the establishments in question, the head of the math was entitled to appoint his successor, but his election was limited to members of the adhinam; and the head of the adhinam was entitled to enforce this rule, though he was bound to invest a disciple properly nominated by the head of the math; (3) that the defendant not being a disciple of the adhinam, his appointment was invalid, and the head of the adhinam was entitled to see that a competent member of the adhinam was appointed in his stead. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN

[I. L. R., 10 Mad., 375

40. ———————— *Construction of will—Right of shebaitship of a family deb-sheba under a will.*—A testator, who died leaving widows and a daughter and also three surviving brothers, bequeathed all the residue, after certain legacies, of his acquired estate to maintain the worship of a family deity, appointing his three brothers and his eldest widow to be shebaits, and providing that "the family of us five brothers shall be supported from the prosad (offerings to the deity)." The widow and the brothers then for some years managed the estate as shebait, and the survivor of them was succeeded by his son, one of the defendants in the present suit, which was brought by the testator's only daughter as heiress to his estate, claiming that the Court should determine "those provisions which were valid and lawful, and those which were invalid and illegal." She claimed possession and an account, and also to be the shebait. *Held* that the plaintiff's claim to a preferential title to this office depended on a sentence in the will constituting, as construed by the Courts below, to be shebait the senior in age of the heirs of the original shebaits, the defendant now holding the office coming within this provision according to the jugments of both Courts. As to this, no reason had been shown in appeal for a different conclusion. KAMINI DEBI *v.* ASUTOSH MUKERJI. ASUTOSH MUKERJI *v.* KAMINI DEBI

[I. L. R., 16 Calc., 103
L. R., 16 I. A., 159

41. ———————— *Hereditary right to be shebait and to have possession of property dedicated to religious purposes—Primogeniture.*—According to Hindu law, when the worship of a thakur has been founded, the office of a shebait is held

HINDU LAW—ENDOWMENT—*continued.*

4 DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*concluded.*

two establishments *Held* that the plaintiff had failed to establish either that he was the proprietor of the property at Benares or that the defendant was his

29. ———— Mode of enjoyment of en-

CHUTTORAJ . . . 21 W. R., 41

30 ———— *Repairs of temple —Katlais or distinct endowments—Liability for repairs—Proof of custom in absence of endowment-deeds* —The panchayatdars or managers of a temple, being directed by a Magistrate to repair the gateway of a store-house within the temple precincts and under their immediate control, spent R10 8 in so doing from the funds of a katlai or endowment of which they were managers They then sued the trustees of two other katlais for recovery of the said sum on the ground that, by the usage of the temple, the cost of repairs was payable from the defendant's income, and asked for a declaration that the duty of executing repairs fell upon the defendants' katlais *Held* that, in the absence of any endowment or trust-deed regarding the katlais, the decision must be found in the usage of the temple, upon proof of which judgment was given for the plaintiffs, and a declaration added to the effect that the defendants were liable for repairs to the temple so far as the surplus funds of their katlais should permit VYTHILINGA PANDARA SANNADHI *v.* SOMASUNDARA MUDALIAR

[I. L. R., 17 Mad., 199

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31.———— Appointment of shebait—*Power of owner to appoint* —The owner of an idol is entitled to appoint anybody he likes to perform its poojah; the mere fact of a party and his ancestors having done so for a long period creates no right in his favour. INDURJEET KOOER *v.* CHUNDEEMUN MISSER . . . . 16 W. R., 99

32.———— Succession to managership—*Devolution of property of idol on death of mohunt* —The general principle regulating the devolution of property belonging to a muth, on the death of the mohunt, is that a virtuous pupil takes the property. In some instances the mohuntship descends to a personal heir, and in others to a successor appointed by the existing mohunt; but the ordinary rule is that muths of the same sect in a district, or having a common origin, are associated together, and on the occasion of the death of one mohunt, the others assemble to elect a successor either out of the disciples of the deceased or from those of another mohunt. GOSSAIN DOWLUT GEER *v.* BISSESSUR GEER

[19 W. R., 215

34. ———— *Trustee with power of appointment—Failure to appoint* —*A*, a Hindu, by a deed of wukfnama (deed of endowment)

of the pujah, etc As for the future, she (*B*) should

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[5 B. L. R., 181

35. ———— *Custom or practice of sect.*—When the property is of the nature of an endowment, a claim to succeed under the ordinary Hindu law of inheritance was not maintainable Plaintiff might have sued to get the management of the property in preference to the defendant, a widow, by the custom or practice of the sect. GOOSAEEN SREE CHOUNDAWALEE BAHOOJEE *v.* GIRDHAREEJEE . . . 3 Agra, 226

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36 ———— *Succession to hereditary office* —*J* held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor, and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J*. *J*, having died in 1824, was succeeded by his son *T* without any opposition from the two other branches *T* was temporarily displaced from the office by *G*, who represented the two other branches, but recovered it in 1850. In an action brought by the plaintiff as

HINDU LAW—ENDOWMENT—*continued.*

5. SUCCESSION IN MANAGEMENT—*continued.*

had vested, and that the members of the plaintiff's family were the only persons interested in the appointment. *Held* that the proper decree was (1) to declare the plaintiff's right to appoint a qualified person with the concurrence of the rest of his family; (2) to direct him to do so within a given time, failing which the suit should stand dismissed with costs. If such appointment was made, notice should be given to the other members of the plaintiff's family before it was confirmed; if such appointment were confirmed, the property should be directed to be delivered to the person appointed to be administered in accordance with the trusts and usage of the muth. *Semble*—That the paradesi or head of the muth might be a married man, provided he had been duly initiated. SATHAPPAYAR *v.* PERIASAMI

[I. L. R., 14 Mad., 1

45. ———————— *Succession to the office of dharmakarta—Act XX of 1863, s. 14—Religious endowments—Custom and usage.*—On a question of the right of succession to the office of dharmakarta of a devasthanam or temple at Rameswaram in Madura (and in such cases the only law applicable is the custom and practice, which are to be proved by evidence), both the Courts below found that, according to the established usage, the succession was provided for by each successive dharmakarta initiating a pandaram, and, whilst in office, appointing him as his successor. It followed that the appointment of a dharmakarta by one who had already ceased to hold the office (having been removed under Act XX of 1863, s. 14) was not in accordance with usage, and was therefore invalid. The person whom the displaced dharmakarta had attempted to appoint was head of the muth from which preceding dharmakartas, as it appeared, had been taken. Besides the above cause of invalidity in the appointment in question, the evidence supported the finding that the displaced dharmakarta made his attempt to appoint the head of the muth to succeed him in office in furtherance of his own interests, and did not *bonâ fide* exercise his powers, if any. This finding invalidated the whole appointment and applied to the headship of the muth as well as to the office of dharmakarta. RAMALINGAM PILLAI *v.* VYTHILINGAM PILLAI . I. L. R., 16 Mad., 490

[L. R., 20 I. A., 150

46. ———————— *Succession to mohant—Succession to the "gaddi" of a temple—Nature of evidence required to prove title to succeed—Explanation of terms "nihang" and "grihast."*—*Per* EDGE, *C.J.*, and MAHMOOD, *J.*—The question who is entitled to succeed to the office of a deceased mohant must be decided in each case upon the evidence as to the customs relating to succession observed by the particular sect to which the deceased mohant belonged. It is necessary for the person claiming a right to succeed as mohant to establish that right by satisfactory evidence; he cannot derive any advantage from the weakness of his opponent's title. *Per* MAHMOOD, *J.*—It was necessary for the plaintiff in this case to prove that he was "nihang," as distinguished from "grihast," which he failed to do. Meaning of the terms "nihang" and "grihast" explained. *Genda Puri* v. *Chhatar Puri, I. L. R., 9 All., 1 : L. R., 13 I. A., 100,* referred to. BASDEO *v.* GHARIB DAS . . I. L. R., 13 All., 256

47. ———————— *Succession as mohant of a muth at Puri—Custom—Right of a chela—Alleged disqualification of mohant to take a chela by reason of being a leper.*—Two rival claimants contested the right to succeed to the office of mohant of a mourasi muth under a customary rule of succession. Both the Courts below found that the mohant for the time being had power to appoint his successor from among his chelas; that, in the absence of appointment, a chela, or, if there should be more than one, the eldest chela, would succeed; and that, should there be no chela, then a gurubhai or chela of the same guru with the deceased mohant would succeed. The plaintiff's case was that he had been duly taken as a chela and appointed by the last mohant, whose title was not disputed. The defendant, who was in possession, denied that the plaintiff had ever been such a chela, alleging that, even if the last mohant had attempted to take him as a chela, this act would have been invalid by reason of that mohant having been a leper. The defendant's title was that he had been taken as a chela by the mohant who had preceded the last, and had been in a position to dispute the right of succession, but had yielded it when the last mohant had taken office. He put forward an alleged will of the latter, which stated that he was to succeed, and relied on his possession approved by other mohants. *Held* that only a leprosy of virulent form could have disqualified the last mohant. As to it, there was no medical evidence; but on the facts the conclusion was that there had been no such disqualification. The statements in the alleged will were not true, and it was ineffectual to alter the title, whether the last mohant had executed it or not, having no testamentary effect; also what had been done after the death of the last mohant could not deprive the plaintiff or entitle the defendant, there being no custom to authorize the choice of a mohant in that way. BHAGABAN RAMANUJ DAS *v.* RAM PRAPARNA RAMANUJ DAS

[I. L. R., 22 Calc., 843
L. R., 22 I. A., 94

48. ———————— *Fort pagodas at Tanjore—Right of management on death of the senior widow of the late Maharaja of Tanjore.*—After the death in 1855 of the late Raja of Tanjore without male issue, Government assumed charge of the fort pagodas, of which he was the hereditary trustee. Subsequently, his senior widow, Her Highness Kamakshi Bayi Saheba, applied that they should be handed over to her as the head of the family for the time being; the Government in 1863 made an order saying, "it is desirable that the connection of Government with the pagodas should cease; they will accordingly be handed over to Her Highness Kamakshi Bayi Saheba." The pagodas and their endowments were handed over in pursuance of that order, and were held by the senior widow till her death in 1892. On her death, Government ordered that they should be placed under the Devasthanam Committees of the

HINDU LAW—ENDOWMENT—*continued*

5 SUCCESSION IN MANAGEMENT—*continued*

to be vested in the heir or heirs of the founder in default of evidence that he has disposed of it other wise, provided that there has not been some usage course of dealing or circumstance, showing a different mode of devolution *Peet Koonwar* v *Chutter* [illegible]

[illegible]

worship, there being no proof of any usage at variance with this presumption, but the custom appearing to be in accordance with it *Held* that the plaintiff, as such representative of the founder was entitled in preference to a collaterally descended member of the founder's family, to claim the shebaitship Also that the plaintiff was entitled, in that character, to the possession of a portrait which had been by the same founder dedicated to this worship But that he had no right to a temple in which the portrait was kept, this temple having been given by one of the worshippers (for the location of the Sri Sri Iswar Jios') with the condition annexed that the defendant should be shebait The plaintiff accordingly could not claim possession of this temple, as it could only have been accepted as a gift upon the donor's terms, and this condition prevailed notwithstanding that the temple had been in part paid for by subscription among the worshippers, there being no evidence that the latter did not know of it or had paid their money with any reference to the question who was to be shebait GOSSAMI SRI GRIDHARIJI v ROMANLALJI GOSSAMI . I. L. R., 17 Calc. 3 [L. R., 16 I. A., 137

42 ——————— *Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor*—The [illegible]

[illegible]

Court had come to a determination as to the fitness of his nominee His successor in office was brought on to the record and revoked his nomination and made a fresh nomination The subordinate Court treated the fresh nomination as a nullity and made an order confirming the first. The pandaram appealed against this order *Held* that the nomination first made was revocable for good cause, and that the fitness of the person nominated by the appellant should be investigated by the Subordinate Judge GNANASAMBANDA v VISVALINGA [I. L. R., 13 Mad., 338

43 ——————— *Succession to a jheer of a muth—Nomination requiring assumption of the character of a sannyasi—Time fixed by decree for assumption of that character—Enlargement on appeal of that time—Evidence of custom*—The plaintiff sued for a declaration of his right as jheer of a muth and for possession of the property of the muth. The plaintiff alleged that the immemorial custom with reference to the succession to the office of jheer was that the jheer for the time being nominated

HINDU LAW—ENDOWMENT—*continued*

5 SUCCESSION IN MANAGEMENT—*continued*

his successor, and that, failing such nomination, the disciples assembled at the place where he died elected his successor, and that the person so nominated became jheer by virtue of such nomination alone The plaintiff's case was that he was nominated by the late jheer, although the nomination was not concurred in by the disciples, and that the late jheer had initiated him and directed him to become a sannyasi a day or two after his initiation, and that he was accordingly entitled to the rights and privileges of jheer The plaintiff obtained a decree, which was, however, made contingent upon his assuming the character of a sannyasi within the period of four months The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a sannyasi pending the disposal of the appeal preferred by the defendant On the plaintiff's appeal,—*Held* the Court had power to extend the time as prayed On the defendant's appeal,—*Held* (1) on its appearing that the plaintiff did not repeat the presha mantram that his upadesam was insufficient; (2) that the plaintiff's right, if any, to the status of jheer ceased on his omission to become a sannyasi soon after the initiation alleged, (3) on the evidence that no similar case of succession had taken place in the history of the institution, that the plaintiff had established merely an imperfect nomination which could not be upheld on the principles deducible from the known cases of succession RANGACHARIAR v YEGNA DIKSHATUR [I. L. R., 13 Mad., 524

44. ——————— *Succession to management of muth—Want of asceticism of paradesi—Removal of paradesi—Form of decree*—The plaintiff the zamindar of Sivagunga, sued in a subordinate Court to remove the defendant from the office of head of a muth. The defendant was a married man living with his wives and children, whom he maintained with the produce of the property of the muth and it appeared that he had failed to perform the ceremonies of the institution The muth in question came into existence under a deed of endowment or "charity grant," whereby the first zamindar of Sivagunga granted land to his guru for the erection and maintenance of a muth and the [illegible]
petu[illegible]
shoul[illegible]
gran[illegible]
petuate In 1867 a predecessor in title of the plaintiff had sued unsuccessfully to recover certain property of the muth from the defendant, alleging another cause of action than his status as a married man and his misappropriation of the muth property; and in that suit it was established that the head of the muth for the time being had the right to appoint his successor, and that such appointment was not subject to confirmation by the zamindar It appeared that the trusts of the muth had been violated and the income misapplied, and that there was no qualified disciples in whom the right of succession

HINDU LAW—ENDOWMENT—*continued.*

5. SUCCESSION IN MANAGEMENT—*continued.*

therefore, a mohunt who once nominates his successor has no right to give directions to his successor, when his turn to nominate comes, as to whom he should nominate. Fourthly, that the testator having no power to give any directions as to the person who should be *L*'s successor, *L* was entitled, after he had succeeded to the guddi, to appoint as his successor a person other than *G*. Fifthly, that even if by custom a power to appoint two mohunts in succession had been established, still under the words of the will a discretion would have been left to *L* in the choice of his successor, and he would not have been bound to appoint *G*. It seems that in a suit for the recovery of an elective mohuntship to which the plaintiff claims to be mohunt, but does not show that he was elected, but merely that the defendant was not elected or was irregularly elected, the Court ought to dismiss the suit, and has no jurisdiction to direct a new election. *Held* by the Privy Council on appeal that the will did not give *G* an absolute, positive, unqualified right at any time to the mohuntship, even on the incapacity of *L* to perform the duties of mohunt; that until *L* became incapable, no trust or duty was created; that even when he became incapable, it was no more than a gift in the nature of a precatory trust. *Held* also on the evidence that *G* had failed to establish his own title to be mohunt, and that the suit was so framed that in it he could not recover the mohuntship on the mere infirmity of defendant's title. The only law as to mohunts and their offices is to be found in custom and practice which is to be proved by evidence. There cannot be two existing mohunts, and the office cannot be held jointly. GREEDHAREE DOSS *v.* NUNDOKISHORE DOSS **Marsh., 573 : 2 Hay, 633**

And on appeal to Privy Council

[8 W. R., P. C., 25 : 11 Moore's I. A., 405

56. ———————— *Ascetic—Alteration of succession.*—An ascetic, a mere life-tenant, cannot alter the succession to an endowment belonging to ascetics, by an act of his own in connection with the status under which he originally acquired the trust. RUMUN DOSS *v.* ASHBUL DOSS

[1 W. R., 160

57. ———————— *Succession to maurasi mohunt—Appointment of mohunt—Ceremonies—Revocation of nomination of chela—Disqualification of mohunt.*—In the cases of a maurasi muth, the investiture by the leading neighbouring mohunts, at the Bandhara ceremony of one who cannot prove that he was actually appointed by the last mohunt, is not sufficient, in the absence of proof that he has a right to be so appointed as being senior chela of the last mohunt, to entitle him to succeed to the guddi. The succession to muths or religious endowments must be regulated in each case by the nature of the endowment and the rule of succession prescribed by the founder of the institution, and if this rule cannot be discovered from the original deed of gift or other documentary evidence, it must be proved in each case by showing what the usage has been on the occasion of each succession. A mohunt of a maurasi muth, by a deed of gift in 1849, made over all the property of the muth to his senior chela and invested him with the chudder of mohunti; but subsequently a dispute having arisen on account of the immoral life led by the appointee, a compromise was effected, by which the former mohunt was permitted to take back the muth and the property belonging to it, the other being allowed merely to retain possession of a subordinate muth. In 1873 the mohunt died, leaving a will, dated 6th May 1873, by which he appointed the defendant his successor. The original appointee thereupon obtained his own confirmation as mohunt at a Bandhara ceremony by the neighbouring mohunt, and brought a suit against the defendant, who was in possession for recovery of possession of the muth and the properties belonging thereto, relying on the deed of gift of 1849. *Held* that, the muth being maurasi, the plaintiff was not entitled to possession, there being no reason why the deed of gift should not be considered to have been cancelled by the compromise or by the will. Questions as to whether a claimant to a muth is a Sunjogi, or whether from his conduct and mode of life he is disqualified for the office, may be determined by a Civil Court. SITAPERSHAD DASS *v.* THAKURDAS

[5 C. L. R., 73

6. DISMISSAL OF MANAGER OF ENDOWMENT.

58. ———— **Dismissal of servant of pagodas by dharmakarta**—*Ground of dismissal.*—The question whether there was a sufficient ground for the dismissal of a pagoda hereditary servant by a dharmakarta is one of degree and not of principle, and must therefore depend upon the circumstances of each case. KRISTNASAMY TATACHARRY *v.* GOMATUM RANGACHARRY **4 Mad., 63**

59. ———————— *Trustee of property dedicated to idol—Primogeniture—Tekait Maharaj, Office of—Deposition from office by Sovereign Prince—Effect of order of deposition.*—By the custom of primogeniture obtaining in his family, the plaintiff succeeded to the office of Tekait Maharaj, and came into possession of all the property dedicated to the family idol of Shri Nathji. He resided at Nathdwar within the territories of the Rana of Udepur in Mewar. Part of the dedicated property was at Poona. The first four defendants managed this portion of the property for the plaintiff. They collected the rents and transmitted them to him from time to time. In 1876 the Rana deposed the plaintiff for alleged misconduct, deported him from his territories, and proclaimed the plaintiff's son (defendant No. 5) as Tekait Maharaj. The defendant having refused to pay over the rents and to deliver the Poona property to the plaintiff, the plaintiff brought the present suit to recover possession. The plaintiff's son was made a co-defendant on his own application. The defendants denied the plaintiff's right to the property on the ground that he had been deposed and banished by the Rana, and the fifth defendant (the plaintiff's son) claimed to be

HINDU LAW—ENDOWMENT—*continued.*

5 SUCCESSION IN MANAGEMENT—*continued*

circles in which they were situated The senior surviving widow now claimed to be entitled to possession and the right of management by succession, and sued accordingly *Held* that Government intended to make an absolute transfer in 1863 without any reservation of a reversionary right to make a new appointment, and that, whether Her Highness Kamakshi Bayi Saheba took the trust property for a widow's estate or as stridhanam, the plaintiff was entitled to succeed KALIANA SUNDARAM AYYAR *v* UMAMBA BAYI SAHEB . I. L. R., 20 Mad., 421

49 ——— *Right of females to succeed to polliam—Custom* —Females are not precluded by any rule of descent, custom, or usage of the Cumbala Tottier caste from succeeding to a polliam COLLECTOR OF MADURA *v* VEERACAMMOO UMMAL 9 Moore's I. A., 446

50 ——— *Right of female*

whole stipend, and where it was found by the Court below that by the usage of the family the duties of the office had been performed in rotation, and the stipend distributed amongst the descendants of the grantee in certain fixed portions —*Held* that it was

has been granted KESHAVBHAT *v* BHAGIRATHIBAI [3 Bom., A. C., 75

51. ——— *Liability of*

of an hereditary priestly office will be upheld where the purchasers are the next in succession from the vendor to such office *Semble*—That a hereditary priestly office descends in default of males through females SITARAMBHAT *v* SITARAM GUNESH [6 Bom., A. C., 250

52 ——— *Right of female to succeed to priestly office —Quære*—Whether, according to Hindu law, a woman can succeed to a priestly office? JOY DEB SURMAH *v* HUROPUTTY SURMAH . . 16 W. R., 283

53. ——— *Right of female to be adhikaree—Vyavasthas* —A woman who has given muntros which have been accepted, and was nominated by her deceased husband to be adhikaree, is not prevented by the Hindu law from being so Vyavasthas need not be called for, nor local testimony relied on, to prove the doctrines of Hindu law POORUN NARAIN DUTT *v* KASHEESSUREE DOSSEE . . 3 W. R., 180

54 ——— *Succession of Hindu widow as shebait—Custom* —In a suit by a Hindu widow to recover possession of certain property dedicated to idols as heir to her deceased husband, the last shebait, it appeared that the plaintiff's husband was an adopted son of his predecessors in office, and that he was the eldest son of the first defendant who was the nearest male cognate of the adoptive father On behalf of the defendant it was contended that the right of succession to a shebaitship was not governed by the ordinary rules of inheritance, and that the plaintiff had no title thereto. *Held* that a Hindu widow could not succeed to a shebaitship as heir to her husband without proof of special custom In this case there was no sufficient proof of such custom JANOKEE DABEA *v* GOPAUL ACHARJEA I. L. R., 2 Calc., 365

Held, on appeal to the Privy Council, that where, owing to the absence of documentary or other direct evidence it does not appear what rule of succession has been laid down by the endower, it must be proved by evidence what is the usage In the present instance the usage did not support the claim, and, upon the evidence, the claimant, who was out of possession, failed to make a title JANOKI DEBI *v* GOPAL ACHARJIA GOSWAMI

[I. L. R., 9 Calc., 766 13 C. L. R., 30

55 ——— *Mohunt—Appointment of successors—Conditional appointment invalid* —A mohunt by his will appointed *L*, his

...ent, but of younger age than befits a mohunt Should he receive instruction and learn the duties of mohunt under your guidance, he might probably be competent Wherefore I direct that you will keep *G* with you, and initiate him well in the duties of a mohunt, and when you feel yourself incapable of conducting the business as above, you can appoint *G* as mohunt in your place, and not otherwise" *Held* by the High Court first that a mohunt may appoint a spiritual brother, and *L* being a spiritual brother the appointment was valid, and he was entitled to succeed upon the testator's death Secondly, that the direction for appointing *G* did not of itself vest the mohuntship in *G*, but that the intention of the testator was that *L* should not appoint him if he should turn out to be in his

power of appointing to the successor has no right to annex to it conditions which the person who gave him the power of appointment never gave the power to annex. In the absence of such power,

HINDU LAW—ENDOWMENT—*continued.*

6. DISMISSAL OF MANAGER OF ENDOWMENT—*concluded.*

and as such was manager of the property of the shrine. This shrine is held in great veneration by the Vaishnava sect of Hindus, and large bequests and offerings of money, land, etc., are made to it by members of that sect. To facilitate the collection of such offerings and the employment of the funds belonging to the shrine, firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of *N P*, and the house in which it was carried on was built with moneys belonging to the shrine. On the 8th May 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the gadi as high priest. In 1878 the plaintiff brought this suit praying for a declaration that as high priest of the shrine he was entitled to the property in Bombay belonging thereto, and for delivery of the same to him, and for an injunction against the defendant, and for a receiver, etc. He obtained a rule *nisi* calling on the defendant to show cause why he should not be restrained from receiving or dealing with the moneys of the said firm of *N P* and from tampering with the books, etc. *Held*, discharging the rule, that the plaintiff had shown no title to the property in question. The defendant was in possession, and had been for many years in possession, of the property. His deposition by a foreign power and the election of the plaintiff to the gadi in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State, it could not be made the basis of an action, and it could not be regarded as a foreign judgment. GOSWAMI SHRI GOVARDHANLALJI GIRDHARLALJI *v.* GOSWAMI SHRI GIRDHARLALJI GOVINDRAIJI

[I. L. R., 17 Bom., 620 note

7. TRANSFER OF RIGHT OF WORSHIP.

64. ———— **Right of priest performing sradh.**—The Hindu law does not declare that the priest who performs the sradh, however temporary his incumbency may be, is entitled to the land endowed in consideration of the continous performance of the recurring ceremonies of sradh and other rites for the spiritual benefit of the donor. RAM CHUNDER CHUCKERBUTTY *v.* GOOROO CHURN CUCKERBUTTY . . . . . 6 W. R., 305

65. ———— **Transfer of right of worship to stranger**—*Duration of assignment.*—The right of worship of an idol, being the joint property of the members of the family of the endower, cannot be transferred to a third party, a stranger to the family, so as to endure beyond the life of the assignor. UKOOR DASS *v.* CHUNDER SEKHUR DASS

[3 W. R., 152

66. ———— **Position of trustee of endowment as to transferring his trust**—*Suit for removal or appointment of trustee—Act XX of 1863.*—The trustee of an endowment has not as such the power of transferring his trust to any other person. And where a trustee is empowered to appoint another trustee to act for him, he cannot transfer the right of exercising that power to another or others. The mode in which a suit for the removal or appointment of a manager to an endowment not coming within Act XX of 1863 should be brought stated. *Kali Churun Giri* v. *Golabi, 2 C. L. R., 129,* followed. RUP NARAIN SINGH *v.* JUNKO BYE

[3 C. L. R., 112

67. ———— **Right to perform service of idol**—*Sale in execution of decree.*—A judgment-debtor's right as shebait to perform the service of an idol cannot be sold in execution of a decree, nor can his right to the surplus profits of the sheba be sold so long as that right is unascertained and uncertain. JUGGUR NATH ROY CHOWDHRY *v.* KISHEN PERSHAD SURMA *alias* RAJA BABOO

[7 W. R., 266

68. ———— **Right of shebait**—*Transferability of rights of worship in execution of decree.*—The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration is not transferable, and cannot be sold in satisfaction of a decree against the shebait. DUBO MISSER *v.* SRINIBAS MISSER . . 5 B. L. R., 617

S. C. DROBO MISSER *v.* SREENEBASH MISSER

[14 W. R., 409

69. ———— *Transferability of rights of worship in execution of decree.*—Rights of worship of a Hindu idol cannot be sold in execution of a decree for the personal debt of a shebait. KALICHARAN GIR GOSSAIN *v.* BANGSHI MOHAN DAS

[6 B. L. R., 727: 15 W. R., 339

70. ———— **Alienation of right to officiate in temple**—*Sale in execution of decree.*—The right of managing a temple which is a religious endowment, of officiating at the worship conducted in it, and of receiving the offerings at the shrine, cannot, in default of proof to the contrary, pass outside the family of the trustee, until absolute failure of succession in his family, and such rights are therefore not saleable in execution of decree. The principle laid down by the Privy Council in *Rajah Vurmah Vali* v. *Ravi Vurmah Valia Muttia, L. R., 4 I. A., 76,* followed. DURGA BIBI *v.* CHANCHAL RAM

[I. L. R., 4 All., 81

71. ———— **Alienation of religious office**—*Right to worship idol.*—There is no reason why the alienation of a religious office to a person standing in the line of succession, and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld. The alienation, therefore, by a divided member of a Hindu family to his sister's son, of the right of worshipping a goddess and receiving a share of the offerings was upheld. MANCHARAM *v.* PRANSHANKAR . . I. L. R., 6 Bom., 298

HINDU LAW—ENDOWMENT—*continued*

6 DISMISSAL OF MANAGER OF ENDOWMENT—*continued*

Tekait Maharaj, and as such to be entitled to all the

Rana could not be regarded as a foreign judgment between the parties That order, whatever its effect might be within the territories of the Rana, could not affect the property situated in Poona beyond his jurisdiction It had descended to the plaintiff on the death of his father in virtue of the custom of primogeniture obtaining in his family Whether he took it as owner or as trustee for the idol and shrine was immaterial, for in either case he had a right to possession If he took it as owner, he had not in law lost his right as such in consequence of the Rana's act If he held merely as a trustee, he had not yet been removed from his office by any competent tribunal NANABHAI *v* SHRIMAN GOSWAMI GIRDHARIJI . . . I. L. R., 12 Bom., 331

60 ——— *Management of temple—Dismissal of dharmakarta, Grounds for* ... *nce retained in* ... dharmakarta, ... of misconduct ... h, may, in the absence of any proved and deliberate dishonesty on the defendant's part, be dismissed on conditions to be complied with by him SIVASANKARA *v* VADAGIRI [I L. R, 13 Mad., 6

61. ——— *Relation between the founder's representative and the mohunt—Agreement by the mohunt on his appointment—Grounds of dismissal.*—In the absence of a deed of endowment, the obligations of the head of a muth to the representative of the founder can only be deduced

tative of the founder to sanction the nomination and

entitled to remove the defendant from office on the ground of his refusal to furnish accounts GAJAPATI *v* BHAGAVAN DOSS I. L. R., 15 Mad., 44

62 ——— *Property bequeathed to an idol—Act of Foreign State—Deposition of manager from his position by an act of State of foreign power—Effect of deposition on right to property in Bombay—Trustee—Will—Power of appointment* —Under a power given to her by the will of her husband, *C* had the right to bequeath a certain house situate in Bombay She died in 1873, and by her will she bequeathed the house in question to trustees, their heirs, etc, in trust to pay and apply the rents thereof to the shrine or gadi of Shri Nathji for ever, and she gave the

HINDU LAW—ENDOWMENT—*continued.*

6 DISMISSAL OF MANAGER OF ENDOWMENT—*continued.*

Oodeypore It is held in great veneration by the Vaishnava sect of Hindus, and is extremely wealthy. The plaintiff held the position of Maharaja of Nathdwara (Tikait Maharaja) up to the year 1876, and as such sat on the gadi and managed the property of the said shrine In that year, however, he was deposed from his position by the principal authorities of Oodeypore and deported from Nathdwara, and his son, the second defendant, was raised to the gadi in his place Since that time the plaintiff had never been permitted to go back, nor had he had anything to do with the shrine The second defendant (his son) had since his elevation performed the worship and managed the property belonging to the shrine The plaintiff, however, claimed in this suit to be still the legal owner and representative of the shrine, and as such entitled to the house in question and to the rents and profits thereof since the death of *C* The first defendant was one of the trustees named in the will of *C*, to whom the house was bequeathed in trust The plaintiff in his plaint also contended that the clause in *C*'s will, giving the said trustees a right to reside in the house free of rent, was *ultra vires* of the power of appointment given to her by the will of her husband The defendants denied that since his deposition the plaintiff was the legal owner and representative of the shrine of Shri Nathji They contended that, having been deposed and deported from Nathdwara, he could no longer apply the rents to the support of the shrine, and that, if the house were given to him, the trusts of *C*'s will would be defeated They contended that the second defendant,

de jure in possession of the shrine and of its property. His deposition from the gadi was an act of a foreign State, and did not affect his right to property in Bombay If he was regarded as owner of that property, he had not lost his right as such to the said property in consequence of his deposition, and if he was merely a trustee, he had not been removed from his office by any competent tribunal. *Held* also that under the will of *C* the first defendant was entitled to reside rent free in the first storey of the house in question during his lifetime GOSWAMI SHRI GIRDHARJI *v* MADHOWDAS PREMJI [I. L. R., 17 Bom., 600

63 ——— *Deposition of manager by act of State of foreign power—Effect of such act on title to property outside jurisdiction—Property of idol—Appointment of new manager—Suit by latter for property of shrine.*—For thirty years prior to 1876 the defendant had been the high priest of the shrine of Shri Nathji at Nathdwara in the territory of the Maharaja of Oodeypore,

HINDU LAW—ENDOWMENT—*continued.*

6. DISMISSAL OF MANAGER OF ENDOWMENT—*concluded.*

and as such was manager of the property of the shrine. This shrine is held in great veneration by the Vaishnava sect of Hindus, and large bequests and offerings of money, land, etc., are made to it by members of that sect. To facilitate the collection of such offerings and the employment of the funds belonging to the shrine, firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of *N P*, and the house in which it was carried on was built with moneys belonging to the shrine. On the 8th May 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the gadi as high priest. In 1878 the plaintiff brought this suit praying for a declaration that as high priest of the shrine he was entitled to the property in Bombay belonging thereto, and for delivery of the same to him, and for an injunction against the defendant, and for a receiver, etc. He obtained a rule *nisi* calling on the defendant to show cause why he should not be restrained from receiving or dealing with the moneys of the said firm of *N P* and from tampering with the books, etc. *Held,* discharging the rule, that the plaintiff had shown no title to the property in question. The defendant was in possession, and had been for many years in possession, of the property. His deposition by a foreign power and the election of the plaintiff to the gadi in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State, it could not be made the basis of an action, and it could not be regarded as a foreign judgment. GOSWAMI SHRI GOVARDHANLALJI GIRDHARLALJI *v.* GOSWAMI SHRI GIRDHARLALJI GOVINDRAIJI

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HINDU LAW—ENDOWMENT—*continued.*

7. TRANSFER OF RIGHT OF WORSHIP—*continued.*

the power of transferring his trust to any other person. And where a trustee is empowered to appoint another trustee to act for him, he cannot transfer the right of exercising that power to another or others. The mode in which a suit for the removal or appointment of a manager to an endowment not coming within Act XX of 1863 should be brought stated. *Kali Churun Giri* v. *Golabi, 2 C. L. R., 129,* followed. RUP NARAIN SINGH *v.* JUNKO BYE

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HINDU LAW—ENDOWMENT—*continued*

7 TRANSFER OF RIGHT OF WORSHIP
—*continued*

72. ——— *Illegal transfer to proper person of same caste and sect* —The sale of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the duties of the office, is illegal *Mancharam* v *Pranshankar, I L R, 6 Bom, 298* discussed KUPPA GURUKAL v DARASAMI GURUKAL [I L R., 6 Mad., 76

73. ——— Sale of office and emoluments of attending to idol —An archaka cannot sell the office and emoluments of paricharaka, inasmuch as they are *extra commercium* NARASIMMA THATHA ACHARYA v ANANTHA BHATTA [I. L. R., 4 Mad, 391

74. ——— Transfer of religious office —*Transferee not solely entitled in succession to transferor* —In a suit against the mooktessers or

that the office of pujari was hereditary in the plain-

feror,

Held t

father

NARAY

75. ——— *Right of suit—Suit to set aside sale in execution of decree of lands belonging to temple* —A hereditary dharmakarta of

76. ——— *Res extra commercium — Custom as to assignability* — The plaintiff sued for a declaration of his title as purchaser of a mirasi office in a temple to which were attached certain duties to be performed as part of a religious ceremony, and for a sum of money representing the emoluments of the office The first defendant was the plaintiff's vendor, the second defendant claimed title to the office by purchase,

ground that the office was *res extra commercium* *Per* PARKER, *J* —Had the trustees of the temple appeared in the Court of first appeal and raised the question of the inalienability of the office, it would have been necessary for the Court to have

HINDU LAW—ENDOWMENT—*continued*

7 TRANSFER OF RIGHT OF WORSHIP
—*concluded*

determined the question whether by the custom of the particular institution such alienations were valid RANGASAMI v RANGA I. L. R., 16 Mad., 146

77. ——— *Gift of vritti (or religious office)—Validity of such gift—Compulsory alienation of vritti—Sale in execution—Private alienation* —A vritti cannot be sold in execution of a decree Such a compulsory alienation is not only opposed to the Hindu law and public

rules of succession depend upon each particular foundation or office, and in respect of it custom and practice must govern and prevail over the text law which prohibits both partition and alienation. RAJARAM v GANESH . I. L. R., 23 Bom., 131

78 ——— *Inalienability of priestly office and turn of worship of idol—Right of sebait—Estoppel* —A priestly office with emoluments attached to it is inalienable, and it would be contrary to public policy to allow offices like this to be transferred either by private sale or by sale in execution of a decree *Mancharam* v *Pranshankar, I L R, 6 Bom, 298, Vurmah Valia* v *Ravi Kunhi Kutty, I. L R, 1 Mad, 235, Juggernath Roy Chowdhry* v *Kishen Pershad Surmah, 7 W R, 266, Drobo Misser* v *Srinibas Misser, 5 B L R, 617 14 W R, 409, Kali Charan Gir Gossain* v *Bangshee Mohan Das, 6 B L R, 727 15 W R,*

emoluments are inalienable, because he mortgaged the same *Juggut Mohinee Dossee* v *Sookeemonee Dossee, 10 B. L R, 19 17 W R, 41,* referred to. MALLIKA DASI v RATAN MANI CHAKERVARTY [1 C W. N, 493

8 ALIENATION OF ENDOWED PROPERTY.

indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns, and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE v LAKSHMAN RAMKRISHNA RANADE . . I. L. R, 20 Bom, 495

80 ——— Power of alienation—*Sale for benefit of property—Duty of purchasers* —The case of a person alienating property which he holds as shebait of an idol is analogous to that of a Hindu widow alienating ancestral property, and the question as regards the power of a shebait to grant a patni of a debutter land is whether, looking to all the circumstances of the case the alienation was a prudent and wise act in respect of the purposes for which he was shebait, and in estimating the validity of a

purchase of the patni rights, it ought to be considered whether the purchasers satisfied themselves as far as they could that there was a fair and sufficient ground of necessity for the alienation. JUGGESHUR BUTTOBYAL *v.* RODRO NARAIN ROY . 12 W. R., 299

81. ———— *Power of mohunt to alienate—Right of successor against purchaser from mohunt.*—A mohunt in charge of an endowment with only a life-interest in the property cannot create an interest superior to his own, or, except under the most extraordinary pressure and for the distinct benefit of the endowment, bind his successors in office. If a purchaser from such mohunt retained possession after the mohunt's death, the successor to the guddi would have a cause of action against him from the date of the election; and no length of possession during the vendor's lifetime would give the purchaser a valid title as against the present mohunt. BURM SUROOP DASS *v.* KHASHEE JHA [20 W. R., 471

82. ———— *Position of shebait.*—A shebait is in the position of trustee for the founder, and cannot create permanent encumbrances to the injury of the endowed property. No prescription derived from the trustee can in such cases run against the heirs and representatives of the founder. PROSUNNO MOYEE DOSSEE *v.* KOONJO BEHAREE CHOWDHRY . . . . W. R., 1864, 157

83. ———— *Powers of shebait.*—Where the father of the plaintiffs, who was a shebait of certain debutter property, granted a mourasi mokurari lease of a portion of that property to his co-shebait, the grandfather of the defendants, such lease being granted without any legal necessity,—*Held* that such lease was wholly void. PROSUNNO KUMAR ADHIKARI *v.* SARODA PROSUNNO ADHIKARI . . . I. L. R., 22 Calc., 989

84. ———— *Effect of alienation as against successor in shebaitship.*—An alienation of the debutter property by one shebait was held to be void as against a successor in the shebaitship. GOLUCK CHUNDER BOSE *v.* RUGHOONATH SREE CHUNDER ROY [11 B. L. R., 337 note: 17 W. R., 444

RUMONEE DEBEA *v.* BALUCK DOSS MOHUNT [11 B. L. R., 336 note: 14 W. R., 101

85. ———— *Effect of alienation—Necessity for alienation.*—Under the Hindu law, a permanent alienation by a shebait of endowed property, such as the creation of a patni, is not absolutely null and void. A permanent alienation by a shebait of endowed property under special circumstances of necessity is valid. Want of funds for repairing the temple and restoring the image of the idol is a necessity sufficient under the Hindu law to warrant such an alienation. TAYUBUNISSA BIBI *v.* SHAM KISHORE ROY [7 B. L. R., 621: 15 W. R., 228

86. ———— *Effect of alienation—Decree obtained against shebait—Res judicata.*—As a general rule of Hindu law, property given for the maintenance of religious worship and of charities connected with it is inalienable. It is competent, however, for the shebait in charge of property dedicated to the worship of an idol, in his capacity of shebait and as manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power to incur such debts is to be measured by the existing necessity for incurring them, the authority of the shebait being in this respect analogous to that of a manager for an infant heir. It being competent for a shebait to borrow money for necessary purposes, it follows that judgments obtained against a former shebait in respect of debts so incurred are binding upon succeeding shebaits, who form a continuing representation of the debutter property. But before applying the principle of *res judicata* to such judgments, the Court should be satisfied that the judgments relied upon are untainted by fraud or collusion, and that the necessary and proper issues have been raised, tried, and decided in the suits which led to them. Execution of such judgments should be decreed only against the rents and profits of the debutter property. PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO . . 14 B. L. R., 450 [23 W. R., 253: L. R., 2 I. A., 145

Affirming the decision of the High Court in GOLAB CHAND BABOO *v.* PROSUNNO KUMARI DEBYA in which it was held that a decree obtained *boná fide* against the shebait of an idol is binding on his successor . . 11 B. L. R., 332: 20 W. R., 86

87. ———— *Purchaser of endowed property, Notice to—Evidence of necessity for alienation.*—A plaintiff who seeks to set aside an alienation of lands on the ground that they are debutter, *i.e.*, dedicated in perpetuity to support the worship of an idol, must give strong and clear evidence of the endowment. The mere fact that the rents of a particular mehal have been applied for a considerable period to the worship of an idol is not sufficient proof that the mehal is debutter. The shebait or manager of a debutter estate has authority, where the purposes of the endowment require it, to raise money by alienating a part of the estate, his position being analogous to that of a manager of an infant heir under the Hindu law. The written conveyance of certain lands stated them to be debutter, and to be alienated to raise money to repair the temple of the idol. In a suit to set aside the alienation, it appeared that at the time of the transaction the temple required repairs, but that the vendor had not applied the whole of the purchase-money to that purpose. There being no evidence of any collusion on the part of the purchaser, or that he was aware at the time of the purchase that the money was to be applied otherwise than the conveyance expressed,—*Held* that the sale was valid.

HINDU LAW—ENDOWMENT—*continued*

7 TRANSFER OF RIGHT OF WORSHIP —*continued*

72. ———————— *Illegal transfer to proper person of same caste and sect* —The sale

shankar, I L R, 6 Bom 298 discussed KUPPA GURUKAL *v* DARASAMI GURUKAL [I L. R., 6 Mad., 76

73 ——— Sale of office and emoluments of attending to idol —An archaka cannot sell the office and emoluments of pancharaka inasmuch as they are *extra commercium* NARASIMMA THATHA ACHARYA *v* ANANTHA BHATTA [I. L R., 4 Mad , 391

74 ——— Transfer of religious office —*Transferee not solely entitled in succession to transferor* —In a suit against the mooktessers or

[illegible]

75 ———————— *Right of suit—Suit to set aside sale in execution of decree of lands belonging to temple* —A hereditary dharmakarta of a temple who had assigned his office to a zamindar and consented to a decree being passed on the footing of such assignment is competent nevertheless to bring a suit to set aside a Court sale of temple lands treating such assignment as a nullity SUBBARAYUDU *v* KOTAYYA I. L. R., 15 Mad , 389

76 ———————— *Res extra commercium — Custom as to assignability* —The plaintiff sued for a declaration of his title as purchaser of a mirasi office in a temple to which were attached certain duties to be performed as part of a religious ceremony, and for a sum of money representing the emoluments of the office The first defendant was the plaintiff s vendor the second defendant claimed title to the office by purchase the other defendants were the trustees of the temple and they did not appear on appeal The Court of first instance passed a decree as prayed, which was reversed on an appeal preferred by the second defendant alone On second appeal,—*Held* that defendant No. 2 was not entitled to a decree on the sole ground that the office was *res extra commercium* *Per* PARKER J —Had the trustees of the temple appeared in the Court of first appeal and raised the question of the inalienability of the office, it would have been necessary for the Court to have determined the question whether by the custom of the particular institution such alienations were valid. RANGASAMI *v* RANGA I L R., 16 Mad., 146

77 ———————— *Gift of vritti (or religious office)—Validity of such gift—Compulsory alienation of vritti—Sale in execution—Private alienation* —A vritti cannot be sold in execution of a decree Such a compulsory alienation is not only opposed to the Hindu law and public policy but is also against the provisions of s. 266 of the Code of Civil Procedure (Act XIV of 1882) But private alienations are not absolutely prohibited. No general rule can be pleaded in such matters The rules of succession depend upon each particular foundation or office and in respect of it custom and practice must govern and prevail over the text law which prohibits both partition and alienation RAJARAM *v* GANESH I. L. R., 23 Bom., 131

78 ———————— *Inalienability of priestly office and turn of worship of idol—Right of sebait—Estoppel* —A priestly office with emoluments attached to it is inalienable and it would be contrary to public pol cy to allow offices like this to be transferred either by private sale or by sale in execution of a decree *Mancharam* v *Pranshankar, I L R 6 Bom. 298 Vurmah Valia* v *Ravi Kunhi Kutty I L R 1 Mad 235 Juggernath* [illegible]

the same *Juggut Mohinee Dossee* v *Sookeemonee Dossee 10 B L R 19 17 W R 41* referred to. MALLIKA DASI *v* RATAN MANI CHAKERVARTY [1 C W N, 493

8 ALIENATION OF ENDOWED PROPERTY.

79 ——— Religious offices and temple property, Transfer and alienation of—*Custom* —According to Hindu text writers as regards public endowments rel gious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE *v* LAKSHMAN RAMKRISHNA RANADE . I. L. R , 20 Bom., 495

80 ——— Power of alienation—*Sale for benefit of property—Duty of purchasers* —The case of a person alienating property which he holds as shebait of an idol is analogous to that of a Hindu widow alienating ancestral property and the question as regards the power of a shebait to grant a patni of a debutter land is whether looking to all the circumstances of the case the alienat on was a prudent and wise act in respect of the purposes for which he was shebait, and in estimating the validity of a

HINDU LAW—ENDOWMENT—*continued.*

8. ALIENATION OF ENDOWED PROPERTY —*continued.*

112. ———————— *Religious endowments—Mortgage of endowed property by de facto manager—Debt binding on the institution.*—In a suit on a mortgage, dated April 1880, and comprising lands forming part of the endowment of a muth, it appeared that the mortgagor had been the rightful manager of the muth until 1876 when he was outcasted, and consequently forfeited his office. The present defendant was appointed in 1877 to succeed him in the office of manager, but the mortgagor remained nevertheless in possession, and a suit by the present defendant to eject him was pending at the date of the mortgage. The plaintiff now sought to enforce his rights under the mortgage against the defendant and the property of which the defendant had been placed in possession as the result of the suit above referred to. *Per Curiam.*—The mortgagor was not disentitled to incur expenses so as to bind the rightful manager by the mere fact that the former was not *de jure* manager at the time the expenses were incurred, provided they were incurred for the preservation of the trust property or other justifiable purposes. On its appearing that the debt was incurred for the conduct of ceremonies in which the mortgagor, after his excommunication, was disqualified from taking part, and that all the circumstances of the case were known to the mortgagee,—*Held* that the plaintiff was not entitled to recover the amount of the mortgage-debt. KASIM SAIBA *v.* SUDHINDRA THIRTHA SWAMI . . . I. L. R., 18 Mad., 359

113. ———————— *Hereditary managers—Void alienation—Adverse possession.*—The hereditary managers of the property with which a religious foundation was endowed had purported to sell and assign the management and lands of the endowment to the representative of another institution, the first defendant's predecessor. *Held* that, there not being any custom of the foundation allowing such an assignment, it was beyond their legal competence, conveying no title. *Vurmah Valia* v. *Ravi Vurmah Mutha, L. R., 4 I. A., 76 : I. L. R., 1 Mad.,* 235, referred to and followed. The possession delivered to the purchaser was adverse to the vendors. After the twelve years' period of limitation, which expired in the lifetime of the vendor, whose son now sued to recover the hereditary managership and possession of the lands of the endowment, the suit was barred under Limitation Act XV of 1877. *Held* that there was no distinction between the claim to the office and the claim for the property in regard to the application of art. 124 of sch. II of the Act and of s. 28. If there were, art. 144 would apply to the claim for the property. In order to fix the starting point for limitation at a date later than that of the transfer, it was contended that the office and title were held in successive life-estates. If that contention had been right, the period of limitation would have commenced at the death of the plaintiff's father. The judicial committee were of opinion that it must be assumed that the origin of the endowment was by gift from the founder, and that, in accordance with the ruling in *Juttendromohun Tagore* v. *Ganendromohun Tagore, L. R., I. A., Sup. Vol., 47 : 9 B. L. R., 377,* heritable estates could not be created to take effect as successive life-estates, and inconsistently with the general law. This applied to both the office and the property. *Held* that the law of inheritance did not permit the creation of successive life-estates in this endowment; the above ruling being also contrary to the judgment in *Trimbak Bava* v. *Narayan Bawa, I. L. R., 7 Bom., 188;* and that the plaintiff could not claim to have been entitled otherwise than as heir to, and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant. GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM

[I. L. R., 23 Mad., 271
L. R., 27 I. A., 69
4 C. W. N., 329

Reversing on appeal. VELU PANDARAM *v.* GNANASAMBANDA PANDARA SANNADHI

[I. L. R., 19 Mad., 243

114. ———————— *Right of the priest to charao (offerings to an idol)—Power of priest to bind successors by ekrar making charge on offerings for maintenance.*—In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charao (offerings to the idol) and recoverable from the defendant's successors in office,—*Held*, upon a review of the Hindu law on endowments, that where an idol is an ancient one permanently established for public worship, and the offerings made to it are more or less of a permanent character, being coins and other metallic articles in the absence of any custom or express declaration by the donor to the contrary, the offerings are to be taken to be intended to contribute to the maintenance of the shrine with all its rites, ceremonies, and charities, and not to become the personal property of the priest. *Monohar Ganesh Tambekar* v. *Lakhmiram Govindram, I. L. R., 12 Bom., 247,* approved. *Held* also that the ekrar on which the claim was based could not be said to have been entered into for the benefit of the endowment, and whether the office of the priest was elective or hereditary, no holder of it could bind his successor by any act, unless it was for the benefit of the endowment. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA . . . I. L. R., 23 Calc., 645

115. ———————— *Religious endowments—Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land—Yadasts from revenue officials—Evidence—Limitation Act (XV of 1877), s. 10.*—In 1544 a village was granted to the head of a Gosami muth to be enjoyed from generation to generation, and the deed of grant provided that the grantee was "to improve the muth, maintain the charity and be happy." The office of head of the muth was hereditary in the grantee's family. In 1886 an inam title-deed was issued to the then head of the muth, whereby the village was confirmed to him and

HINDU LAW—ENDOWMENT—*continued.*

8 ALIENATION OF ENDOWED PROPERTY—*continued*

Even if it had appeared that the purchaser had notice that the whole of the purchase-money was not required for the purposes of the endowment, but that part of it was to be expended on other objects, an action would not lie to set aside the sale altogether, since the purchaser would be entitled to be reimbursed so much of the money as had been legitimately advanced DOORGANATH ROY *v* RAM CHUNDER SEN [I. L R., 2 Calc , 341 L. R., 4 I. A., 52

88. ———— *Right to charge endowed property—Necessity—Suit on bond*—A suit to recover on a bond given by the *de facto*

e no n or for nnot succeed. RAM CHURN POOREE *v* NUNHOO MUNDUL [14 W. R., 147

89. ———— *Alienation of pagoda property by managers—Purchasers from managers, Duties of.*—The paid managers of the

brought to his knowledge SAMBANDA MUDALIYAR *v.* NANASAMBANDAPANDARA . 1 Mad., 298

90 ———— *Alienation of the management of a public charity—Sale of religious office—Effect of partial illegality in*

91. ———— *Creation of tenure at a fixed rent.*—Where land is dedicated to the religious services of an idol, the rents of the land constitute in legal contemplation the property of the idol, and the shebait has not the legal property, but only the title of manager of a religious

ACHARJEE . . 13 W. R., P. C., 18 [13 Moore's I. A., 270

92. ———— *Property, portion of profits of which is charged for religious purposes*—A property wholly dedicated to religious purposes cannot be sold, but where a portion only of its profits is charged for such purposes, the property may be sold, subject to the charge with which it is burdened BASU DHUL *v* KISSEN CHUNDER GEER GOSSAIN . . 13 W. R., 200

93. ———— *Power of manager to grant patni lease*—It is doubtful whether it is competent to the manager of endowed property to grant a patni thereof. MOTEE DOSS *v* MODHOOSOODUN CHOWDHRY . . 1 W. R., 4

94. ———— *Power to grant lease of endowed property*—The shebait of a religious endowment is competent to lease the endowed lands and to appropriate the proceeds for the purpose of keeping up the worship of the idol, and a mokuddum, under such a lease, is entitled to hold possession during the lifetime of the lessor or during such period as the latter continues to be the shebait of the endowed lands ARRUTH MISSER *v* JUGGURNATH INDRASWAMEE . . . 18 W. R., 439

95. ———— *Right of priest to grant leases in his own name*—The high priest of a religious endowment in Assam, who was only a nominee of the grantees, was held to have no right to grant leases in his own name and of his own authority. RAM DOSS *v.* MOHESUR DEB MISREE [7 W. R., 446

96. ———— *Power to grant lease of endowed property—Khadim, Tenure of endowed property by.*—Unless endowed property descends to the heirs of a deceased khadim, they can have no right to manage or interfere with the property. If a khadim has only a life-interest, any lease given by him will be in force only during his lifetime, and cannot continue without the consent of the succeeding khadim, or perhaps of the mutwalli, if he has any special right to confirm leases SUJAWUT ALI *v* BUSHEEROODDEEN . 3 W. R., 189

97. ———— *Alienation of profits of debutter mehal*—The profits of a debutter mehal may be assigned so long as the deb-sheba is duly kept up SHIBBESSUREE DABEA *v.* BECKWITH [3 W. R., Act X, 152

98 ———— *Grant to gosain and his disciples—Right of gosain to encumber it.*—A grant to a gosain and his disciples in perpetual

HINDU LAW—FAMILY DWELLING-HOUSE—*continued.*

on a debt incurred for family purposes.—A house, being ancestral property of a Hindu family, was sold in execution of a decree by which the decree-amount was constituted a charge on such property. The debt sued on had been incurred for the benefit of the family by the co-parceners for the time being, but since the death of such co-parcener's father,—*Held* the widow of the latter, who resided in the said house during her husband's lifetime, was not entitled as against a purchaser for value in good faith under such decree (but with notice that she resided and during her husband's life had resided in that house, and still claimed to reside there) to continue to reside for life in such portion of the house sold as she resided in subsequent to her husband's death. *Venkatammal* v. *Andyappa, I. L. R., 6 Mad., 130,* distinguished. RAMANADAN *v.* RANGAMMAL

[I. L. R., 12 Mad., 260

5. ———— *Widow's right of residence in her husband's house after his death—House mortgaged by plaintiff's husband in his life-time and sold in execution—Auction-purchaser with notice of widow's claim to reside, Right of.*—In execution of a decree upon a mortgage effected by the plaintiff's husband in his life-time, the house in dispute was put up to auction, and purchased by the defendant. The defendant was aware that the plaintiff (the mortgagor's widow) was residing in the house at the time of the Court-sale. In a suit brought by the plaintiff to establish her right to reside in the house in question,—*Held* that in the absence of any allegation that the mortgage effected by the plaintiff's husband was not for the benefit of the family, or was in any way in fraud of the plaintiff's rights, the defendant as auction-purchaser took the house free from the plaintiff's right of residence as a Hindu widow, notwithstanding the fact that he had notice of her claim. MANILAL *v.* BAI TARA

[I. L. R., 17 Bom., 398

6. ———— *Right of auction-purchaser to eject widow.*—A Hindu widow, who resides with her husband and the members of his family in the family dwelling-house while he is alive, is entitled to reside therein after his death, and cannot be ousted by the auction-purchaser of the rights and interests in the house of her husband's nephew. GAURI *v.* CHANDRAMANI . I. L. R., 1 All., 262

7. ———— *Ancestral property—Mortgage—Sale in execution of decree.*—*L*, a Hindu, mortgaged the dwelling-house of his family, such dwelling-house being ancestral property. *Held* in a suit against *L*'s mother and wife to enforce the mortgage brought after *L*'s decease, that the mortgage could be enforced. *Mangala Debi* v. *Dinanath Bose, 4 B. L. R., O. C., 72,* and *Gauri* v. *Chandramani, I. L. R., 1 All., 262,* distinguished. BHIKHAM DAS *v.* PURA . . I. L. R., 2 All., 141

8. ———— *Auction-purchaser, Right of.*—The widow of a member of a joint Hindu family can claim a right of residence in the family dwelling-house, and can assert such right against the purchaser of such house at a sale in execution

HINDU LAW—FAMILY DWELLING-HOUSE—*concluded.*

of a decree against another member of such family. *Gauri* v. *Chandramani, I. L. R., 1 All., 262,* and *Mangala Debi* v. *Dinanath Bose, 4 B. L. R., O. C., 72,* followed. TALEMAND SINGH *v.* RUKMINA

[I. L. R., 3 All., 353

9. ———— On the 29th June 1876, the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 24th of July 1876, the plaintiff attached a house of *R*. On the 12th October 1876, the defendant sued *R* for maintenance, and alleged that the house in question was the property of her deceased husband and *R*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *R*, the house was sold under the plaintiff's decree against *R*, and the plaintiff himself became the purchaser. On the 20th of June 1877, the defendant obtained a decree against *R* in terms of the prayer of her plaint. On the 27th of August 1879, the plaintiff brought the present suit to eject the defendant from the house, *Held* that what the plaintiff bought from *R* was his right, title, and interest in the house, which being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime. PARVATI *v.* KISANSING . . . . I. L. R., 6 Bom., 567

10. ———— *Purchaser from the heir with knowledge—Widow's right of residence a charge on the property.*—Where a purchaser purchases a house, the property of a Hindu family, from the heir, with full knowledge that the widow is residing and being maintained in it, such purchaser cannot ask for the summary eviction of the widow from the house, even though there may be other property in the hands of the heir out of which her maintenance could be derived, but the purchaser takes the house subject to the right of the widow to continue to reside therein. *Lakshman Ramchandra Joshi* v. *Satyabhamabai, I. L. R., 2 Bom., 494,* distinguished. DALSUKHRAM MAHASUKHRAM *v.* LALLUBHAI MOTICHAND . . I. L. R., 7 Bom., 282

HINDU LAW—GIFT.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER . . I. L. R., 18 Bom., 177
[I. L. R., 19 Bom., 803

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . I. L. R., 1 All., 429

HINDU LAW—ENDOWMENT—*concluded*

8. ALIENATION OF ENDOWED PROPERTY—*concluded*

his successors tax free to be held without interference so long as the conditions of the grant were duly fulfilled Yadasts addressed by tahsildars to the then head of the muth in 1872 and 1882 were put in evidence to show what the object of the grant was It was found, regard being had to usage, that the trusts of the institution were the upkeep of the muth, the feeding of pilgrims, the performance of worship, the [illegible]

[illegible]

not barred by limitation ; (2) that the yadasts above referred to were admissible as indicating the general [illegible]

[illegible]

merely. SATHIANAMA BHARATI *v* SARAVANABAJI AMMAL . I. L. R., 18 Mad., 266

HINDU LAW—FAMILY DWELLING-HOUSE

See CASES UNDER EXECUTION OF DECREE —MODE OF EXECUTION—JOINT PROPERTY

See PARTITION—MODE OF EFFECTING PARTITION I. L. R., 3 Calc., 514
[I. L. R., 23 Bom., 73
I. L. R., 26 Calc., 516

1. ——— Right of widow to reside in family house—*Maintenance—Obligation of sons to provide her with residence*—Although a Hindu widow is entitled to look to her sons to furnish her

HINDU LAW—FAMILY DWELLING-HOUSE—*continued*

with a residence, she cannot insist on a right to live in any particular house MOHUN GEER *v.* TOTA [4 N. W., 153

2 ——————— *Right of son to eject widow—Doctrine of factum valet*—A Hindu died leaving a widow and an adopted son, who continued after his death to reside in the same dwelling house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent Subsequently the son sold the house, as his property by inheritance to a stranger, who gave the widow and tenants a week's notice to quit *Held* that the son, even if he had attained his majority, could not evict the widow, or authorize a purchaser to do so, without providing some other suitable dwelling for her, nor in any case could the tenants be turned out without a month's notice It seems that the passage in *Katyayana, 2 Colebrook's Digest, p. 133,* is a re[illegible]

[illegible]

the purchaser a right to turn them out MANGALA DEBI *v* DINANATH BOSE
[4 B. L. R., O. C., 72 : 12 W. R., P. C., 35

3 ——————— *Co-parcener's* [illegible]

[illegible]

house on condition of her vacating the part of the house in dispute Pending the suit, the plaintiff died and was subsequently represented by his widow [illegible]

[illegible]

in his plaint nor had the defendant complained of the unhealthiness of the premises On appeal by the defendant to the High Court —*Held* reversing [illegible]

[illegible]

defendant and the plaintiff's widow not justifying the eviction of the defendant BAI DEVKORE *v* SANMUKHRAM . I. L. R., 13 Bom., 101

4. ——————— *Right of a widow to reside in the family dwelling-house—Sale of dwelling-house in execution of a decree obtained against the managing members of family*

HINDU LAW—GIFT—*continued.*

1. REQUISITES FOR GIFT—*continued.*

the terms of the gift, or sale, entitled to possession, there is no reas n why such gift or sale, though not accompanied by possession, whether of moveable or immoveable pr perty (where the gift or sale is not of such a nature as would make the giving effect to it to be contrary to public policy), should not operate to give the donee, or vendee, a right to obtain possession. KALIDAS MULLICK *v.* KANHAYA LAL PUNDIT

[I. L. R., 11 Calc., 121: L. R., 11 I. A., 218

12. ——— *Construction of deed of gift—Gift with possession.*—*S*, on 23rd September 1874, executed an instrument of gift in favour of his two daughters and his adopted son, whereby he gave them "his houses and shops and other moveable and immoveable property and his loan transactions" in equal one-third shares. At this time he was possessed of a one-third share in a certain partnership business. After the death of *S, M*, one of the daughters, sued *N*, the adopted son, for one-third of her father's property including his share in the partnership business. *Held* that, inasmuch as the donor had relinquished the subject of the gift, so far as he could, and had vested it in the donees, possessi n under the gift had passed to *M*. *Held* also, on the construction of such instrument, that it did not give *M* a share in her father's partnership business. MANBHARI *v.* NAUNIDH . I. L. R., 4 All., 40

13. ——— *Delivery of deed of gift of immoveable property sufficient to pass title.*—The delivery to the donee of immoveable property of the deed of gift is sufficient to pass the title to such property to the donee without actual physical possession of such property being taken by the donee. *Manbhari* v. *Naunidh, I. L. R., 4 All., 40,* followed. BALMAKUND *v.* BHAGWAN DAS

[I. L. R., 16 All., 185

14. ——— *Attestation of deed, Effect of.*—In 1873, *R*, a Hindu, executed a deed of gift of his immoveable property to his daughter *M* (defendant No. 1). The deed was attested by the plaintiff. In 1878 *R* mortgaged to the plaintiff some of the land comprised in the deed of gift. *R* died in that year, and in 1882 his grandson conveyed the equity of redemption to the plaintiff, who was already in possession of the mortgaged land as mortgagee. In the year 1888, the plaintiff being dispossessed by *M* and the second defendant, to whom she had sold the land, he brought the present suit to recover possession. The defendants relied upon the gift. *Held* that the plaintiff was entitled to possession. At the time of the mortgage to him in 1878 *R* had not completed his gift to *M* by giving possession He was therefore in a position to give the plaintiff a good title. It had not been shown that *M* had ever been treated as the owner of the equity of redemption. *Held* also that the circumstance that the plaintiff attested the deed of gift in 1873 could not affect his title, as the gift had not been completed by delivery of possession. ABAJI GANGADHAR *v.* MUKTA . . . I. L. R., 18 Bom., 688

15. ——— *Declaration by donor to one in physical possession.*—Where one of several joint donees is already in physical occupation of the subject-matter of an intended gift a declaration by the donor to the donee so in occupation, assented to by such donee, that he has parted with the possession in favour of the donees, converts mere occupation into possession, and amounts to a valid gift under the Hindu law. BAI KUSHAL *v.* LAKHMA MANA

[I. L. R., 7 Bom., 452

16. ——— *Delivery of possession—Transfer of Property Act, s. 123—Immoveable and moveable property.*—Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary. *Semble*—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer. DHARMODAS DAS *v.* NISTARINI DASI . . I. L. R., 14 Calc., 446

17. ——— *Gift of moveable property—Delivery of possession—Registration of deed of gift—Transfer of Property Act (IV of 1882), ss. 123, 129—Registration.*—The rule of Hindu law, that delivery of possession is essential to complete a gift, is abrogated by s. 123 of the Transfer of Property Act (IV of 1882). *Dharmodas Das v. Nistarini Dasi, I. L. R., 14 Calc., 446,* followed. BAI RAMBAI *v.* BAI MANI I. L. R., 23 Bom., 234

18. ——— *Verbal gift of immoveable property—Death of the donor—Possession given to the donee by the son of the donor.*—One *G*, being possessed of certain lands which were his self-acquired property, died in 1878. On his death-bed he told his son, *P* (the plaintiff's father), to give these lands to his (*G*'s) daughter, the defendant. In the following year (1879) *P* by a registered deed of gift gave the lands to the defendant. The deed contained the following recital:—"Our vadil (father) *G* has made a gift to you of his self-acquired lands, Nos. 101 and 102, of mouzah Vadgaon for your own and your children's maintenance, and has directed me (*P*) to execute an instrument according to law. I (*P*) hereby execute a deed of gift to you." Shortly after the execution of this document, the defendant was put into possession of the lands, and she admittedly continued in possession down to the commencement of this suit in 1888. The plaintiffs, who were the minor children of *P*, now sought to recover these lands from the defendant, alleging that on the death of their grandfather *G* the lands had devolved by inheritance upon his son *P* (their father), and contending that the latter had no power to make a gift of these to the defendant. The lower Court found that the question of *P*'s competency to give the lands did not arise, as they had already been given to the defendant by his father *G*, and that *P* was simply an instrument in carrying out the wishes of his father

HINDU LAW—GIFT—*continued*

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS

See HINDU LAW—WILL—POWER OF DISPOSITION—DISHERISON
[I. L. R., 1 Bom., 561
I. L. R., 5 Bom., 48

See CASES UNDER MALABAR LAW—GIFT

1. REQUISITES FOR GIFT

1. ———— Gift of freehold to heirs—*Words of inheritance*.—By Hindu law no words of inheritance are necessary to pass a freehold interest in land to the heirs. ANUNDOMONEY DOSSEE *v.* DOE D. EAST INDIA COMPANY
[4 W. R., P. C., 51: 8 Moore's I. A., 43

2. ———— Gift to wife—*Words of inheritance—Husband and wife—Immoveable property*.—It is not necessary in Hindu law, in order that a wife should take an absolute ...

ance. The intention of the husband may be expressed

[I. L. R., 9 Calc., 830: 13 C. L. R., 109

3. ———— Verbal grant of land with possession.—A verbal grant of land followed by possession is valid under the Hindu law. ANONYMOUS 1 Ind. Jur., O. S., 135

4. ————Possession, Necessity of—*Se*...

MOHESHUR BUKSH SINGH *v.* GUNOON KOONWAR
[6 W. R., 245

5. ———— *Gift of land*.—A gift of land is not complete, by Hindu law, without possession or receipt of rent by the donee. HARJIVAN ANANDRAM *v.* NARAN HARIBHAI
[4 Bom., A. C., 31

6. ———— *Gift of land*— ...

CHAND AMEDBHAI HURIBHAI *v.* PREMCHAND RAICHAND . 5 Bom., O. C., 83

7. ———— *Possession retained by donor—Transfer of possession—Symbolical transfer*.—A gift by a Hindu unaccompanied either by

HINDU LAW—GIFT—*continued.*

1. REQUISITES FOR GIFT—*continued*

possession on the part of the donee or any symboli[cal] act, such as handing over documents of title, or p[er]mitting the donee to receive rents, is not in itsel[f a] valid transaction, even though the deed of gift be [re]gistered. DAGAI DABEE *v.* MOTHURA NATH CH[AT]TOPADHYA
[I. L. R., 9 Calc., 854: 12 C. L. R., 5[...]

8. ———— *Gift of land*—...

YAN DAJI DAMLE I. L. R., 7 Bom., 1[...]

9. ———— *Want of chan*[...]

declarations of trust to be binding against the decla[rant]. VENKATTACHELLA MANIYAKAREE *v.* THA[...]THAMMAL 4 Mad., 46[...]

10. ———— *Gift not followed by actual possession*.—A Hindu merchan[t] made ... perty ... lived ... *loco p*... been f... to carr... death, which happened some two years afterwards. *Held* that the gift was valid. *Anunchund Rai v. Kishen Mohun Bunoja*, 1 Sel. Rep., p. 154, cited and followed. TARA BEBEE *v.* GHASIRAM
[3 C. L. R., 24[...]

11. ———— *Gift giving righ[t] to obtain possession*.—*Held* that, consistently wit[h] the authorities in the Hindu law, a gift, where th[e] donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid fo[r] the mere reason that the donor has not delivered pos[]session; and that where a donee or vendee, is, unde[r]

HINDU LAW—GIFT—*continued.*

3. POWER TO MAKE AND ACCEPT GIFTS —*continued.*

25. ——— Gift of portion of zamindari after marriage to daughter.—A deed of gift of land forming part of a zamindari, executed by the zamindar in favour of his daughter five years subsequent to her marriage, is not valid. SIVANARANJA PERUMAL SETHURAYAR *v.* MUTTU RAMALINGA SETHURAYAR. ATTULAKSHMI AMMAL *v.* SIVANARANJA PERUMAL SETHURAYAR . **3 Mad., 75**

26. ——— Gift of separate property to Hindu widow—*Interest of Hindu widow—Power of alienation—Gift to agent as reward—Want of consideration.*—*C*, a Hindu subject to the Mitakshara law, died leaving a widow *R*, but no issue. In his lifetime he had transferred to *R* by gift mouzah R, a portion of his real estate. After his death *J* and *P*, his brothers, sued *R* for possession of mouzah R as being ancestral property. Their suit was dismissed, the Sudder Court finding it to be separate property. That Court found that *R* had acquired mouzah R from *C* by gift, and that *R* only took under this gift a life-interest in it. *J* and *P* having died, *R* made a gift of mouzah R to her agent, a reward for his faithful services. In a suit by *N*, son of *J*, as the heir of his uncle *C*, to set aside this gift to the agent as illegal,—*Held* on the finding that *R* had acquired the property from her husband by gift, that she did not take an absolute interest in the property under the gift, and her husband's heirs could question the validity of the gift to the agent. *Held* also that the gift to the agents, being made only out of motives of generosity, was invalid. RUDR NARAIN SINGH *v.* RUP KUAR

[I. L. R., 1 All., 734

27. ——— Gift by married woman to kinsman—*Gift of immoveable property by woman without consent of her husband.*—Plaintiff sued to enforce a gift to him of immoveable property by a woman living under his guardianship as against her husband. *Held* that such taking of the woman's property by her kinsman is wholly repugnant to Hindu law. *Quære*—Can a woman, without the consent of her husband, during coverture, absolutely alienate her own landed property? DANTULURI RAYAPPARAZ *v.* MALAPUDI RAYUDU . **2 Mad., 360**

28. ——— Gift among Parsis—*Gift to married woman.*—Among Parsis a gift may be made to the separate use of a married woman or of a woman about to be married. MERBAI *v.* PEROZBAI

[I. L. R., 5 Bom., 268

29. ——— Leper, Gift by.—By Hindu law a person becoming a leper is not incapable of making a gift of property to which he had previously succeeded. SAMACHURN AUDICAREE BYRAGEE *v.* ROOP DASS BYRAGEE . . . . **6 W. R., 68**

30. ——— Gift to one son to exclusion of others—*Mitakshara law—Self-acquired immoveable property.*—A Hindu son, subject to the Mitakshara law of inheritance, sued to obtain a declaratory decree for a moiety of a house which the father had conveyed by deed of gift to plaintiff's brother, being the self-acquired immoveable property of his father, on the ground that under the Hindu law a father is not permitted to make a gift of immoveable property to one son to the injury of the other. *Held* (reviewing all the authorities and precedents on the subject) that, although prohibition of such a gift, on moral or spiritual grounds, may be implied by the texts of Hindu law, yet, where it is not declared that there is absolutely no power to do such acts, those acts, if done, are not necessarily void, and that therefore an exclusive gift to one son by the father of self-acquired immoveable property is not illegal. SITAL *v.* MADHO . **I. L. R., 1 All., 394**

31. ——— Gift by co-sharers without consent of others.—*Held* that on the Bombay side of India a member of an undivided Hindu family cannot, without the consent of his co-parceners, make a gift of his share in the undivided property or dispose of it by will. GANGUBAI KOM SIDHAPPA *v.* RAMANNA BIN BHIMANNA

[3 Bom., A. C., 66

VRANDAVANDAS RAMDAS *v.* YAMUNABAI

[12 Bom., 229

32. ——— Gift of undivided share by a co-parcener—*Voluntary alienation—Alienation to strangers and relatives.*—The rule of Hindu law which forbids voluntary alienations of the family estate by a Hindu co-parcener applies as well to gifts to relatives as to gifts to strangers. PONNUSAMI *v.* THATHA . . . **I. L. R., 9 Mad., 273**

33. ——— Gift to concubine—*Validity of gift.*—*G*, a member of an undivided Hindu family, died leaving him surviving two nephews, *V A* and *V R*, and *Y*, a concubine of *G*. *V A* lived with *G* at the time of his death, and had the whole of *G*'s property, moveable and immoveable, left in his (*V A*'s) possession. *V A*, before his death, made a gift of the said property to *Y* in consideration of her having been *G*'s concubine for many years. In a suit brought by *V R* to recover the whole property from *Y*, she claimed it by virtue of the gift to her by *V A*. *Held* that the gift was invalid as against *V R*, who was entitled to the whole property, subject to the maintenance of *Y* as a concubine of *G* for many years; the High Court also directed the said maintenance to be secured for her (*Y*) by investment of a sufficient part of the property in trust for that purpose. VRANDAVANDAS RAMDAS *v.* YAMUNABAI . . **12 Bom., 229**

34. ——— Gift to idiot—*Validity of gift.*—There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance, a gift by a parent to an idiot child to operate after the parent's death is valid. KOOLDEBNARAIN SHAHEE *v.* WOOMA COOMAREE **Marsh., 357: 2 Hay, 370**

35. ——— Genuine gift by father-in-law to his widowed daughter-in-law—*Gift by way of affection of a small share of moveable property acquired by the donor while living in*

HINDU LAW—GIFT—*continued*

1. REQUISITES FOR GIFT—*concluded*

and in executing the deed of gift to the defendant On appeal, the District Judge considered that the point for determination was whether the gift by *G* to the defendant was valid by Hindu law, not having been accompanied by possession He held the gift to be valid. On special appeal to the High Court,—*Held*, dismissing the appeal, that whether the gift by *G* to the defendant was to be regarded as a gift, possession being afterwards given to the defendant, or whether *G* was to be regarded as having constituted himself a trustee and having made *P* a trustee to carry out his wishes the defendant was in lawful possession of the lands and that the plaintiffs had neither by Hindu law nor otherwise any legal or equitable claim to have the deed of gift to the defendant cancelled. BHASKAR PURSHOTAM *v.* SARASVATIBAI . I. L. R., 17 Bom., 486

19 ———— *Gift without delivery of possession—Transfer of Property Act (IV of 1882), ss. 123, 129—Immoveable property—Acceptance of gift—Registration*—*P* executed a deed of gift of certain property in favour of the plaintiff in 1877 before the Transfer of Property Act was passed, and the deed was duly registered In 1881 *P* sold certain portions of the same property to [illegible]

Courts found that there had been no delivery of possession given by the donor nor acceptance by the donee In a suit brought five years after the death of *P* for possession of the property, the subject of the alleged gift,—*Held* that mere registration was not sufficient to [illegible] the Hindu law, acceptance by th[illegible] neither possession [illegible] dismissed *Dagai Dabee v Mothuranath Chattopadhya, I L R, 9 Calc, 854; Kishto Soondery Debea v. Kishtomotee, Marsh, 367,* and *Harjivan Anandram v Naran Haribhai, 4 Bom H C, 31,* referred to. *Dharmodas Das v. Nistarini Dasi, I L R, 14 Calc, 446,* approved. LAKSHMIMONI DASI *v* NITTYANANDA DAY

[I. L. R., 20 Calc., 464

20. ———— *Gift of immoveable property without possession—Mutation of names without objection of donor*—A gift of immoveable property, followed shortly afterwards (pursuant to the terms of the gift) by mutation of names without any objection being made by the donor, was not invalid by Hindu law for the mere reason that the donor did not deliver actual possession *Kalidas Mullick v Kanhaya Lal Pundit, I L R, 11 Calc, 121,* and *Dharmadas Das v Nistarini Dasi, I. L R, 14 Calc, 446,* referred to. RAM CHANDRA MUKERJEE *v.* RUNJIT SINGH

[I. L. R., 27 Calc., 242
4 C. W. N., 405

HINDU LAW—GIFT—*continued*

2. GIFTS *MORTIS CAUSA*

21. ———— **Donatio mortis causa**—*Gift inter vivos*—A Hindu on his death bed, a few days before he died, caused certain Government paper to be given to his son in his presence in these words "Bring out the papers, and give them to my son," but he did *not make or direct endorsement thereof* Subsequently, being asked to endorse them, he said, "I am very weak, how can I sign so many papers? When I get a little strength, I will sign them What cause have you for being anxious?" *Held* by PHEAR, [illegible]

the Government papers, and not the mere paper, passed to the donee By MACPHERSON, J—The circumstances amounted to a gift by a nuncupative will made in contemplation of death. UPENDRA KRISHNA DEB *v* NABIN KRISHNA BOSE

[3 B L R., O. C., 113

S C KRISHNA DEB *v* WOOPENDRA KRISHNA DEB . 12 W. R., O C, 4

22. ———— *Giving with intention to pass property*—The Hindu law makes no distinction in favour of gifts in contemplation of death, as respects the legal requisites to constitute [illegible]

effect being given to a gift in contemplation of death The theory of the *donatio mortis causa* considered VISALATCHMI AMMAL *v* SUBBU PILLAI

[6 Mad., 270

23. ———— **Deed of gift made on death-bed**—*Proof of such deed*—In establishing the validity of a deed of gift taken from a woman stricken with a mortal disease and in expectation of death, proof at least of equal strictness, as is required to prove a testamentary disposition, must be given, and the proof to support such a transaction ought to be sufficient to establish that she knew what she was about, and intended to make such disposition of her property THAKOOR DAYHEE *v* RAI BALACK RAM

[10 W. R., P. C., 3
11 Moore's I. A., 139

3 POWER TO MAKE AND ACCEPT GIFTS

24. ———— **Self-acquired immoveable property**—*Benares law—Gift to one child to exclusion of others*—Under the Benares law, a man's immoveable property, though self-acquired, is not within his power of disposal so absolutely by gift in his lifetime as to enable him to give it all to one son or grandson to the exclusion of the rest. MAHASOOKH *v* BUDREE . 1 N. W., Ed. 1873, 153

HINDU LAW—GIFT—*continued.*

4. CONSTRUCTION OF GIFTS—*continued.*

43. ———— Deed professing to be a will—*Deed of absolute gift.*—A deed professing to be a will, but making a gift of property during the testator's lifetime, *held* to be a deed of absolute gift. HURRO SOONDUREE DOSSEE *v.* CHUNDER MOHINEE DOSSEE . . . . **3 W. R., 200**

44. ———— Gift to woman without express words—*Power of donee to alienate.* In the case of gifts, as in the case of wills, the well-established rule must be followed that, in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enabled to alienate. ANNAJI DATTATRAYA *v.* CHANDRABAI . . **I. L. R., 17 Bom., 503**

See ANANDIBAI *v.* RAJARAM CHINTAMAN PETHE [**W. R., 22 Bom., 984**

45. ———— Gifts to daughter as stridhanam.—A Hindu executed in favour of his daughter an instrument in the following terms: "I have hereby given to you to be enjoyed as stridhanam after my death 2,320 fanams out of 6,000 fanams, which remain as kanom on the land T. . . The proportionate rent on 2,320 fanams is 365 paras. This quantity of paddy . . shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons. After certain clauses restricting the mode of enjoyment and the power of alienation, the instrument proceeded, "In the event of the said kanom being paid, that money shall be received by my sons, and shall be invested on some other property which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income,—*Held* that the instrument was not invalid under Hindu law, and that the plaintiff was entitled to a decree. KRISHNA AYYAN *v.* VYTHIANATHA AYYAN . . . **I. L. R., 18 Mad., 252**

46. ———— Construction of will making gift—*Absolute gift.*—Where it was plain, as far as the words of a will went, that the testator (a Hindu) intended to make an absolute gift of his property in favour of his widow and daughter, saying that after his death they should be proprietors, and his entire estate should devolve upon them, the Court held itself bound, with reference to the rulings of the Privy Council, to regard the gift as an absolute gift, unless it could be shown (and this was not done) that by the Hindu law a gift to a female meant a limited gift, or carried with it the effect of creating an estate exactly similar to the "widow's estate" under the law of inheritance. KOLLANY KOER *v.* LUCHMEE PERSHAD [**24 W. R., 395**

47. ———— Nature of gift to widow—*Construction of will.*—*Held,* on the construction of a will, that the testator did not give his widow a full proprietary right which she could transmit to her daughter, so as to entitle the latter's husband to succeed to the estate on her dying childless. PERTAB SINGH *v.* KHOOSIAL SINGH . . **2 Agra, 90**

HINDU LAW—GIFT—*continued.*

4. CONSTRUCTION OF GIFTS—*continued.*

48. ———————— *Absolute gift.*—*A*, a Hindu, executed a dan-patro (deed of gift) of a talukh in favour of his youngest wife, *B*, wherein he stated: "You are my youngest wife, and your two sons are minors; therefore, for your charitable expenses (dan o khairath) and for the maintenance of your minor sons, I make a gift of the above talukh to you. You, from this day becoming possessor thereof, after deduction of the Government revenue, with the balance of the profits, will perform acts of charity (dan o khairath) and maintain the sons. For this purpose I execute this dan-patro." *A* died leaving *C*, a son by his first wife, two minor sons by *B*, and *B*, his widow. The minor sons of *B* died unmarried and without issue. *B* made a gift of the property to *D*, her daughter's son. In a suit by *C* against *B* and *D* for a declaration of his reversionary right to the property after the death of *B*,—*Held* that the gift to *B* under the dan-patro was absolute. PABITRA DASI *v.* DAMUDAR JANA [**7 B. L. R., 697 : 24 W. R., 397 note**

49. ———————— *Alienation, Suit to set aside.*—*A*, a Hindu living under the Mitakshara law, executed a petition to the Collector, stating that he was in possession of all his ancestral property; that his only son was dead; that he had no wife; that his son had left a widow, *B*, and two daughters, and no other children or heirs; the petitioner went on to state, "I declare her (*B*) my heir; and as, with the exception of the said *B*, I have no other heir or malik, nor can there be any, of which circumstances I have already preferred information in my petition of 16th April 1830, and life is uncertain, I consequently request that the name of *B*, the widow of my late son, be registered in the Collectorate mutation book as proprietor and malguzar in the place of my name with regard to the property," etc. "Further, as of *B* there are two daughters, who after marriage, by the blessings of Providence, may be blessed with children, they and their children, therefore, are and will be heirs and maliks. But as long as I live, I shall keep the management of my own affairs in my own hands, and look after all the transactions of dihat, etc., myself, as heretofore." *B* sold and conveyed parcels of the property. In a suit by her daughter's son against the purchasers for a declaration of his reversionary right to the property sold,—*Held* that, under the terms of the petition, there was an absolute gift to *B*, and that, as the gift was not fettered by any restrictions, the alienation by *B* was good and valid. CHATTAR LAL SINGH *v.* SHEWUKRAM **5 B. L. R., 123 : 13 W. R., 285**

A contrary construction was put on this document in the case of *Mahomed Shamsool Hoda* v. *Shewakram (7 B. L. R., 700 note : 14 W. R., 315)*, which was a suit by a grandson of the testator against a purchaser from the widow to set aside the alienation; and the Court held that the widow only took an estate for life, and after her the daughters took absolutely as joint owners. COUCH, C.J., and MITTER, J. (BAYLEY, J., dissenting).—And this decision was affirmed by the Privy Council. MAHOMED SHAMSOOL HODA *v.* SHEWAKRAM . **14 B. L. R., 226 : L. R., 2 I. A., 7** [**22 W. R., 409**

HINDU LAW—GIFT—*continued.*

3 POWER TO MAKE AND ACCEPT GIFTS
—*continued*

union with his sons and grandson—Gift valid—Hindu law —Where there is a genuine gift by a father-in law to his widowed daughter in-law by way of affection, out of a small share of moveable property most of which was acquired by the donor while living in union with his sons and grandsons, the gift cannot be impeached as being opposed to the principles of Hindu law HANMANTAPA v JIVUBAI

[I. L. R., 24 Bom., 547

36. ———— **Gift of ancestral property by father to stranger**—*Suit by minor son to recover* —Where a Hindu made a gift of certain land, which he had purchased with the income of [illegible]

[illegible]

37 ———— **Gift to widow by member of joint Hindu family**—*Joint Hindu family —Maintenance—Construction—Gift presumed to be of life-estate only* —Disputes having arisen between the sole surviving members of a joint Hindu family and his brother's widow, an amicable arrangement was come to, and certain deeds were executed by both parties, under which the widow was placed in possession of a certain house On the part of the brother in law it was recited that, with a view to permanently settling the matters in dispute, he had received in cash from the widow the value of his share in the house that she had been put in possession of the house and was in sole proprietary possession thereof, and that he had no connection whatever with it Subsequently the widow executed a deed of gift purporting to convey to the donee an absolute proprietary title to the house After her death, the brother-in law [illegible]

[illegible] the general rights of the donor at the time of execution, as a Hindu widow in a joint Hindu family entitled only to maintenance *Rabutty Dossee* v [illegible]

HINDU LAW—GIFT—*continued.*

3 POWER TO MAKE AND ACCEPT GIFTS
—*concluded*

the absolute ownership of the property, and that her estate therefore could at best be regarded as a life estate, and the deed of gift as binding upon the plaintiff during her lifetime, but not further GANPAT RAO v RAM CHANDRA I. L. R., 14 All., 296

38. [illegible]

[illegible] to, and for possession of, the land it appeared that the sale was not justified by any circumstances of family necessity, and that the adoption (which was disputed) was a valid one During the pendency of the suit the undivided uncle died, having made a gift of his property to his daughter-in law, not for value, but in consideration of natural affection *Held,* referring to *Baba* v *Timma, I. L R., 7 Mad., 357,* and *Ponnusami* v *Thatha, I L R., 9 Mad., 273,* that the gift by the undivided uncle to his daughter in law was invalid, and that the plaintiff was entitled to a moiety of the land sold to him VIRAYYA v. HANUMANTA

[I. L R., 14 Mad., 459

39. ———— **Gift of land on daughter's marriage**—*Woman's estate—Power of alienation* —A Hindu in whom the whole of the family property had vested died without issue, and his mother took the estate She subsequently gave a portion of the property to her son in law on the occasion of his marriage with her daughter The gift was not found to be otherwise than reasonable in extent *Held* that the gift was binding on the reversioner RAMASAMI AYYAR v VENGIDUSAMI AYYAR . I. L. R., 22 Mad., 113

4 CONSTRUCTION OF GIFTS

40. ———— **Mode of construction**—*Deed of gift* —A deed of gift should be interpreted by itself according to the whole of its context to the expressions it contains, and to the intention of the party making it Any other direct evidence to explain the surmised or alleged intention of the donor is inadmissible COLLECTOR OF MOORSHEDABAD v ANUND NATH ROY KISHENMONEE DABEE v ANUND NATH ROY . . . W. R., F. B, 112

41. **Limitation of gift**—*Words "angoja santan"*—The words "angoja santan" occurring in a deed of gift would limit the gift to the male issue of the donee BUGOLA MOYEE v BHOWANI CHURN PAUL . . 5 W. R., 110

42. [illegible] *Intention* [illegible] whole tenor [illegible] intention of [illegible] qualifying words used in the deed were held not to control its operation KALEE DOSS ROY v KHIRODA SOONDUREE DEBIA . 16 W. R., 300

HINDU LAW—GIFT—*continued.*

4. CONSTRUCTION OF GIFTS—*continued.*

death of all the ladies, and therefore that her son could not, after her death, claim through her while *R K* was alive. JOYPROKASH BHUGGUT *v.* BHUGWAN DASS . . . . . Marsh., 589

57. ——— Gift of land as "kasi or badi"—*Reversion of gift to grantor—Canarese Mapilla marriage.*—Upon the marriage of his daughter, a Canarese Mapilla executed to the husband a deed of gift of certain land to be enjoyed, but not alienated, by the wife and her issue from generation to generation. It was recited in the deed that the gift was made as "kasi or badi." The former term implies that the property reverts to the grantor on the dissolution of the marriage; the latter means a gift to a bride by her relations. The wife died in 1877, leaving a daughter, who also died before suit. The grantor sued the husband to recover the land on the ground that it reverted to him on the death of his daughter in 1877. *Held* that upon the true construction of the deed of gift the grantor could not recover. ISMAIL BEARI *v.* ABDUL KADER BEARI

I. L. R., 6 Mad., 319

58. ——— Gift charging profits of estate—*Corrody—Settlement.*—In 1845 a Hindu executed a document called a sanad attested by witnesses, whereby he agreed to pay to his sister, and after her death to her daughter, R10 per annum, from the produce of an estate inherited by him from his maternal grandmother. *Held* that a corrody or charge on the profits of the estate was created, which bound the estate in the hands of the widow of the grantor. CHATTI CHALAMANNA *v.* PANDRANGI SUBBAMMA . . . I. L. R., 7 Mad., 23

59. ——— Gift conditional on liability for maintenance—*Liability of son for maintenance of family.*—Where a father executed a deed of gift in favour of his son with the condition that the son should take the property subject to the same liability in respect of the maintenance of the family as it was subject to in the hands of the father,—*Held* that this was not an obligation entered into by father or son as a matter of contract, but a reservation in the father's gift which did not give the son a greater right to be maintained at the expense of the father, or in the family-house, than he had before. HUREEHUR MOOKERJEE *v.* RAJ KISHEN MOOKERJEE . . . . . . 23 W. R., 236

60. ——— Gift to Brahmans—*Restriction against alienation—Rule of perpetuities.*—According to Hindu law, a restriction against alienation in a gift of land to Brahmans is inoperative as being a condition repugnant to the nature of the grant. Where a grantor creates a secular estate with a religious motive, the grant does not stand on the same footing with a religious endowment, and is not exempt from the rule as to perpetuities. ANANTHA TIRTHA CHARIAR *v.* NAGAMUTHU AMBALAGAREN

I. L. R., 4 Mad., 200

61. ——— Construction of gift as to quantity of estate given.—The rule as to the construction of the language in which a gift is made, independently of the "Transfer of Property Act," Act IV of 1882 (which may, or may not have been expressed so as to lay down, in favour of absolute gifts, a rule more positive), is that indefinite words of gift are calculated to convey all the interest of the grantor, it being also necessary to read the whole of an instrument in order to gather the intention. A gift being thus expressed,—"I put a stop to my interest in those talukhs, and withdraw my enjoyment thereof, and I make them over to you,"—*Held* that this must be read with what preceded it, *viz.*, "in order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support, by having the property under your authority and control;" and that the words of gift must be taken to be limited by the purpose of the gift; the whole taken together showing that the donor's intention was that the donee should take the property for life only. KALIDAS MULLICK *v.* KANHAYA LAL PUNDIT

I. L. R., 11 Calc., 121
L. R., 11 I. A., 218

62. ——— Gift to designated person—*Construction of will—Persona designata.*—*G*, a childless Hindu, by his will directed as follows: "And as I am desirous of adopting a son, I declare that I have adopted *K*, third son of my eldest brother. My wives shall perform the ceremonies according to the shastras, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami left by me, also that adopted son: when he comes to maturity, the executors shall make over everything to him to his satisfaction. . . . God forbid, but should this adopted son die, and my younger brother *N* have more than one son, then my wives shall adopt a son of his. If at that time *N* has not a son eligible for adoption, they shall adopt another son of *S*, and the wives and executors shall perform all the aforementioned acts." In a suit by one of *G*'s widows as heir of her husband to set aside his will and recover half his property, it appeared that the abovementioned ceremonies had been performed by one widow only. *Held* that according to the true construction of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person independently of the performance of the ceremonies. NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE . . L. R., 3 I. A., 253: 26 W. R., 91

63. ——— Gift to "adopted son"—*Invalid adoption—Motive from gift—Persona designata.*—*Held,* upon the true construction of an angikarpatro whereby an estate was given to the donee in virtue of his being "adopted son" of the donor, that the gift did not take effect, inasmuch as the adoption was invalid. The distinction between what is description only, and what is the reason or motive for a gift or bequest, may often be fine; but it must be drawn from a consideration of the language and the surrounding circumstances. *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee, L. R., 3 I. A., 253,*

HINDU LAW—GIFT—*continued*

4. CONSTRUCTION OF GIFTS—*continued*

50. ——— *Succession* A, a Hindu, executed a deed of gift of certain villages in favour of his wife in the following terms "The

chargeable with her debts SHEOTUHUL RAM v. RAM NARAIN SINGH . . . 5 C. L. R, 291

51. ——— Gift to widow—*Duration of a grant held by a Hindu widow made to her by her husband in his lifetime* —On the distribution of compensation under the Land Acquisition Act, 1870, the title of a widow to a village she alleging it to be her property by absolute right, as a jaghir granted to her by her husband, came into contest Her late husband's adopted son being now possessed of the zamindari within which the village was disputed her right, alleging that the grant had been only for her

law, was in question. The power of the husband as zamindar to have made such a grant for life or for more was not in dispute All that was known was that the widow had received rents for about twenty six years There was no sufficient evidence for hold

52 ——— Gift to daughter's sons,

53. ——— Gift of land to a daughter —*Presumption as to interest taken by donee* —In a suit to recover possession of certain land, the plaintiff claimed title under a gift made to his mother, deceased, by her father, whose sons and grandsons, the defendants, had entered into possession on the death

HINDU LAW—GIFT—*continued*

4 CONSTRUCTION OF GIFTS—*continued*

of the donee, which took place less than three years

gift *Held* that the plaintiffs were entitled to a decree there being no ground to presume that a life interest merely was intended to pass under the gift RAMASAMI v. PAPAYYA I. L R, 16 Mad, 466

54. ——— Gift to daughter with remainder to grandsons—*Right to mesne profits uncollected in lifetime of daughter—Mesne profits* —A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons The daughter was put in possession, was dispossessed in 1858, and died in 1862

then went

in 1864

In 1865

d possession from the defendants His representatives now sued for mesne profits of the property from 1860 to 1865 *Held* that the plaintiffs were not entitled to mesne profits which had accrued due but were uncollected in the lifetime of her daughter, that such mesne profits would go to her heirs who would alone be entitled to them GURU PRASAD ROY v. NAFAR DAS ROY 3 B L R, A. C, 121

empowered her to adopt a son, it was thus directed "You are the son of my co-wife, you are still living; the funeral cake will be preserved to us by you, and on my death the talukh is your rightful property After my death out of the whole profits for my two daughters, separating by demarcation

the gift lapsed ... KISHTOMOTEE Marsh., 367 ; 2 Hay, 405

should both R K and D K die, then their share shall be enjoyed and appropriated by the surviving ladies, but none of them shall ever be able to make gift or alienation to anybody After the demise of us five ladies Mussamut N, daughter of my deceased son, P B, and N A, daughter of I K, shall be heiresses and proprietors in equal shares" *Held* that, according to the true construction of the ikrarnamah, N K was not entitled to succeed as heiress until after the

HINDU LAW—GIFT—*continued.*

4. CONSTRUCTION OF GIFTS—*continued.*

bakshishpatra and given possession of the property to *M* under it. He directed the property to be restored to the possession of *M*, to be held according to the terms of the bakshishpatra. *C* appealed, but subsequently withdrew his appeal, admitting the execution of the bakshishpatra and agreeing to give over the property to *M* according to the terms of the Munsif's decree. *M* accordingly obtained possession of the property. On the 16th March 1874, the plaintiff brought the present suit against the grandson of *M* (*M* then being dead) for a moiety of the property on the ground that *C*, his adoptive father, could not alienate more than one-half of the property. Both the lower Courts allowed the plaintiff's claim, the Court of first instance being of opinion that the document was a gift, and did not bind the plaintiff, and the Appellate Court holding that it was not a gift, but a will, and that it had been revoked by the testator before his death. On appeal to the High Court,—*Held* that the document was a conveyance and not a will, and that it vested the property in *M*, the donee, subject to a trust regarding any surplus that remained of the income after payment of the Government assessment and village expenses in favour of *C* as long as he lived, and that the donor could not revoke it, inasmuch as the document contained no power of revocation. *Held* also that, inasmuch as the plaintiff had been adopted before the hearing and decree in suit No. 446 of 1859 and might have been made a party to it, but was not, he could not be bound by proceedings in that suit, and that he was therefore at liberty to re-open the question whether the bakshishpatra was intended by *C*, when executing it, to operate as a deed or as a will. An adoption *pendente lite* is not to be regarded in the same light as an alienation *pendente lite*. If a legitimate son has been born to *C* during the suit, such son, to be bound by a pending suit affecting his father's ancestral property, must have been made a party, and a son adopted during the suit is in the same position. The one at his birth and the other at his adoption would take a vested interest in his father's property according to the Hindu law in the Presidency of Bombay. The circumstances that *C* might have adopted the plaintiff for the purpose of endeavouring to defeat the bakshishpatra did not alter the case. As a sonless Hindu, he had a right to adopt a son, and he was not under any obligation to *M* not to adopt; and, even if he had so contracted, *quære*—whether such a contract would affect the validity of the adoption. RAMBHAT *v.* LAKSHMAN CHINTAMAN

[I. L. R., 5 Bom., 630

68. ———— **Contingent gift to a class**—*Construction of settlement Successive interests—Member of the class in existence on failure of prior interest—Rule in the Tagore case.*—A karar, executed to the father of *S*, a minor grandson of the executant, after reciting that the executant had appointed *S* to perpetuate his family and had handed over certain property to the father, provided that the property should be delivered to *S* on his attaining majority and proceeded as follows: "If the said *S* shall have descendants, neither your male descendants nor any one else shall have any interest in any of the property herein mentioned. If the said *S* happen to be without descendants, the male offspring of my daughter *K*, your wife, shall enjoy the property equally, but no others shall have any interest therein; such is the swatantra karar executed with my free will and pleasure." *S* attained his majority, but died without issue. His elder brother sued for possession of the property under the above clause. *Held* that, since the plaintiff was a person capable of taking, subject to the life-interest, at the time when the gift was made, he was entitled to succeed. *Semble*—If the gift to the plaintiff had failed, the property would have reverted to the heirs of the settlor on *S*'s death without issue. *Ram Lall Sett v. Kanai Lall Sett, I. L. R., 12 Calc., 663*, followed. MANJAMMA *v.* PADMANABHAYYA

[I. L. R., 12 Mad., 393

69. ———— **Hindu widow's power of alienation—Operation of gift by her to two donees, one of whom could not take**—*Inheritance in a village community in Oudh—Wajib-ul-urz modifying the Mitakshara law.*—A clause in the wajib-ul-urz of a village in Oudh authorized any co-parcener not having male issue, or his widow, to make a gift of his share in the village to a daughter or a daughter's son; the intention apparent from this, and from a further provision as to the descendants of a sharer's daughter, being to modify the law otherwise prevailing, *viz.*, the Mitakshara, and authorize the introduction of a daughter, or her son, and their descendants, male or female, in priority to brothers or nephews of the sharer. *Held* that such introduction was authorized, and that the inheritance, where the widow had made a gift of it in favour of a daughter, was transmitted to the daughter's daughter, the gift being of more than the donor would have taken as a widow. The gift was to the daughter and to her husband jointly. *Held* that, the gift being invalid as to the husband, the daughter took the whole estate given on the general principle of gifts to two persons jointly, where they failed as to one of them, operating entirely for the benefit of the other who could take, declared in *Humphrey v. Tayleur, (Ambler, 138)*, which, not depending on any peculiarity of English law, was applicable here. NANDI SINGH *v.* SITA RAM

[I. L. R., 16 Calc., 677
L. R., 16 I. A., 44

5. REVOCATION OF GIFTS.

70. ———— **Gift made under mistake of law**—*Right to revoke gift.*—By Hindu law a man may make a gift of any of his property binding as against himself. Even when a deed of gift is voidable, on the ground of fraud, accident, or mistake, it is a question for the discretion of the Court whether cancellation or delivery up ought to be ordered. Where a Hindu made a gift to a person whom he said he had taken as his manasaputra,—*Held* that he could not set it aside on the ground that he erred in supposing that the donee could perform his funeral rites. ABHACHARI *v.* RAMA CHANDRAYYA . 1 Mad., 393

HINDU LAW—GIFT—*continued*

4 CONSTRUCTION OF GIFTS—*continued*

distinguished FANINDRA DEB RAIKAT *v* RAJESWAR DAS
[I L R, 11 Calc., 463 : L R, 12 I. A., 72

See VENKATA SAYA MAHIPATI RAMA KRISHAN RAO *v* COURT OF WARDS I L. R, 22 Mad, 383
[L R, 26 I A, 83

where this case is distinguished

64. ——— **Transfer of shares in joint family estate by the head of the family and** ... *ilure* ... the ... and

though the gift to possible brothers could not take effect, the gift by the head of the family with the ...

father and grandson while the father was alive But it was a family arrangement partaking so far of the nature of a partition that the father received a portion and was thenceforth totally excluded, and *quoad ultra*, the grandfather surrendered his interest to the grandson RAI BISHENCHAND *v* ASMAIDA KOER
[I. L. R., 6 All, 560 L R., 11 I. A, 164

65 ——— **Gift to a class**—*Construction* ...

also his intention that other persons unborn at the ... and share ... pable of ... thstand ... carried out in its entirety ... *Chand* v *Asmaida Koer, L R, 11 I A, 164 I. L R, 6 All, 560,* followed *Semble*—As a general rule, ... whom are, or ... ause not born ...

HINDU LAW—GIFT—*continued*

4 CONSTRUCTION OF GIFTS—*continued*

R, 2 Calc, 262, and *Kherodemoney Dassee* v *Doorgamoney Dassee, I. L R, 4 Calc, 455,* questioned RAM LAL SETT *v* KANAI LAL SETT
[I. L R, 12 Calc., 663

66. ——— *Vested and contingent interest*—A will made by a Hindu con... tor's death his eldest daughter was delivered of a son, who died in a few months She died subsequently, leaving the plaintiff, her husband, but no male issue, her surviving The plaintiff sued as heir of his son to recover the amount of the above bequest *Held* that, as the daughter's son never acquired a vested interest in the bequest, the plaintiff's suit must be dismissed SRINIVASA *v* DANDAYUDAPANI
[I. L R, 12 Mad, 411

67. ——— **Conveyance by a Hindu without male issue**—*Adoption pendente lite—Adoption from improper motive—Will*—A conveyance by a Hindu without male issue at the date thereof, will bind his subsequently born or adopted male issue Such issue at birth takes a vested interest in such property only as is that of their father at that time *C*, a Hindu Brahmin without male issue, executed on the 10th September 1856 a bakhshishpatra (a deed of gift) to *M* containing words to the following effect "I have given to you as gift and charity my property at —, together with my moveable property [Here follow the particulars of the property.] The garden and house, etc, etc, I have given to you as gift this day of my own accord, and I have made the same over to you. You shall pay the ... xpenses, and you ... same property ... in peace there ... and you shoul l ... members of your family ... I have no ownership whatever in the property, the ownership belongs to you from this day This day I owe no money to anybody. Whatever property there may be after my death, other than that described above, is all given to you No person has any claim thereto, the entire ownership belongs to you *I have given in writing this* deed in sound mind and of my own accord." The document was registered on the 4th October 1856. *M* was put in possession of the property and managed it for some time He paid the Government assessment and held receipts for the same On the 6th January 1858, *C* addressed a letter to the Assistant Magistrate of the place, purporting to revoke the bakhshishpatra, and he (*C*) was restored to possession by that officer In 18 9, *M* brought a suit (No. 446 of 1859 against *C* for the property Before any decree was passed in it, *C*, on the 6th June 1859, adopted the plaintiff, who was then eight years of age The plaintiff was not made a party to that suit. On the 2nd April 1860 the Munsif made a decree in favour of *M*, holding that *C* had executed the

HINDU LAW—GUARDIAN—*continued.*

1. RIGHT OF GUARDIANSHIP—*continued.*

to the custody of such daughter. Even if there were a rule of Hindu law which in such a case inflicted a forfeiture of such right, such rule could not, with reference to the provisions of Act XXI of 1850, be enforced. Where accordingly, because a Hindu had been deprived of caste for the reason above mentioned, a person sued to have the custody of the infant himself as her guardian in lieu of her father, and as such to be declared empowered to arrange for her marriage to a suitable husband, basing his suit on Hindu law,—*Held* that such suit was not maintainable. KANAHI RAM *v.* BIDDYA RAM

[I. L. R., 1 All., 549

12. ——— **Father converted to Christianity.**—A father is not precluded from being custodian of his children by the fact that he has become a convert to Christianity. MUCHOO *v.* ARZOON SAHOO . . . . **5 W. R., 235**

13. ——— **Immorality of father**—*Keeping concubine.*—A Hindu goldsmith kept a concubine and had a family by her, and then married and had legitimate issue, but continued to keep the concubine in his house. *Held* that this circumstance alone did not justify a Court in refusing him the custody of his legitimate children. JUMMALAPUDI KALIDAS *v.* ATTALURI SUBBAMMA

[I. L. R., 7 Mad., 29

14. ——— **Right of guardianship**—*Right of father to give his daughter in marriage—Conduct of father forfeiting such right—Suit by a father to restrain his wife from giving their daughter in marriage without his consent.*—The plaintiff and *R*, the second defendant, were husband and wife belonging to the Prabhu caste, and lived together in the house of the first defendant, who was *R*'s father, until the year 1880. In 1877 a daughter, *S*, had been born to them. In 1880 the plaintiff was convicted of theft and sentenced to two years' imprisonment. At the end of his term of imprisonment he did not return to live with his father-in-law, but went to reside in his own father's house, where in 1884 he requested his wife *R* to join him with their daughter. *R* refused, and she and *S* continued to live in the house of the first defendant, her father. The plaintiff then married a second wife. In November 1885, *S* having attained nine years of age—an age at which it is customary for Prabhus to seek husbands for their daughters—demanded his daughter *S* from the defendants, who, however, refused to deliver the girl to the plaintiff. In May 1886, the plaintiff filed this suit against the defendants, complaining that they were about to have his daughter *S* married to her cousin without his (the plaintiff's) consent. He prayed that he might be declared entitled to the custody of his daughter, and for an injunction against her marriage without his consent. On filing this suit he obtained a rule *nisi* for an injunction against the defendants. *Held* that, pending the hearing of this suit, he was entitled to the injunction asked for. NANABHAI GANPATRAV DHAIRYAVAN *v.* JANARDHAN VASUDEV . . . **I. L. R., 12 Bom., 110**

HINDU LAW—GUARDIAN—*continued.*

1. RIGHT OF GUARDIANSHIP—*concluded.*

15. ——— *Grant of certificate of administration under Act XL of 1858.*—The relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. A certificate of administration under Act XL of 1858 was therefore granted to one of the former in preference to the latter. KHUDIRAM MOOKERJEE *v.* BONWARI LAL ROY

[I. L. R., 16 Calc., 584

2. POWERS OF GUARDIANS.

16. ——— **Power of Hindu mother acting as manager for minor**—*Power of alienation.*—*Held* that a Hindu mother, acting as manager of the estate of a minor, has no more authority to alienate or charge that estate than the managing member of an undivided Hindu family. DALPAT SING *v.* NANABHAI **2 Bom., 333: 2nd Ed., 306**

17. ——— **Contract made without authority**—*Necessity for sale.*—Under the Hindu law, a contract made by a guardian without authority cannot bind the minor. Even if it is desirable that a minor should have any benefit, such as increase to a very small income, from some undertaking or enterprise, *e.g.*, obtaining a lease of certain rents, that circumstance is not sufficient to constitute a necessity for the mother and guardian to mortgage the minor's ancestral property with a view to secure such benefit. RADHA PERSHAD SINGH *v.* TALOOK RAJ KOOER . . . . . **20 W. R., 38**

18. ——— **Power to deal with estate of minor**—*Minor—Act XL of 1858—Mother.*—The mother and guardian of a Hindu minor, though not a guardian appointed under Act XL of 1858, when acting *bonâ fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor. SOONDER NARAIN *v.* BENNUD RAM

[I. L. R., 4 Calc., 76

19. ——— *Minor—Mother—Act XL of 1858.*—The mother and guardian of a Hindu minor, although a certificate of guardianship has not been granted to her under Act XL of 1858, may deal with the estate of the minor within the limits allowed by the Hindu law. ROSHAN SINGH *v.* HARKISHAN SINGH . **I. L. R., 3 All., 535**

See ABHASSI BEGUM *v.* RAJROOP KONWAR

[I. L. R., 4 Calc., 33: 2 C. L. R., 249

20. ——— **Compromise made by a father as guardian of his natural son**—*Suit by son to set aside compromise—Minor adopted by religious celibate.*—*C*, who was the head of a Lingayat muth, died in 1862. The plaintiff, who was then a minor, claimed through his natural father, *R*, to be *C*'s heir. This claim was disputed by *V* on behalf of his son, the defendant, who was also a minor. In 1863, pe[illegible] between them, *R* and *V* [illegible] and agreed that the muth and the property appertaining to it should be divided between the plaintiff and the

HINDU LAW—GIFT—*concluded.*

5 REVOCATION OF GIFTS—*concluded*

71. ——— **Gift on condition**—*Revocation of gift on failure of condition, Power of*—Under [illegible]

gift is revocable MAHADEO PUNDIT CHEYDFE *v* BADAMO . . 5 N W, 5

72 ——— **Revocation of gift by will**— [illegible]

HINDU LAW—GUARDIAN.

See CUSTODY OF CHILDREN

See CASES UNDER GUARDIAN.

See SPECIFIC PERFORMANCE
[I. L. R., 18 Mad., 415
I. L. R., 22 Calc., 545
I. L. R., 27 Calc., 276

1 RIGHT OF GUARDIANSHIP

1. ——— **Age of discretion**—*Father's* [illegible]

[illegible] Hyde, 111

2. ——— **Guardian of adopted son**—*Act XX of 1864—Natural and adoptive parents*—The natural father of a minor who has been adopted into another family is not by Hindu law his proper guardian when either of the adoptive parents is living and willing to act as guardian The residence of the minor with the adoptive parents is a part of the [illegible]

[illegible] TAKLE . . . I. L. R., 5 Bom., [illegible]

3. ——— **Guardian of daughter**—*Koolin Brahmin*—A Koolin Brahmin is not so much the natural guardian of his daughter as her mother MODHOOSOODUN MOOKERJEE *v* JADAB CHUNDER BANERJEE . . . . . 3 W R., 194

4. ——— **Mother**—*Mithila law—Minor—Certificate of guardianship*—Under Mithila law, the mother of a minor is entitled to a certificate of guardianship in preference to the father JUSODA KOER *v.* LALLA NETTYA LALL
[I. L. R., 5 Calc., 43

[illegible]

HINDU LAW—GUARDIAN—*continued*

1 RIGHT OF GUARDIANSHIP—*continued*

in preference to the step-mother *Held* also in the present case that the paternal grandmother, with the assent of the nearest male relative had in preference to the step-mother, power to dispose of the minor in marriage RAM BUNSEE KOOMAREE *v* SOOBH KOOMAREE . 2 Ind. Jur, N. S, 193
[7 W R., 321

6. ——— **Mother in-law**—*Deceased son's widow*—A Hindu widow is the proper guardian of her deceased son's widow in the absence of any person claiming a preferential title to succeed to the estate of the latter BAI KESEE *v.* BAI GANGA
[8 Bom., A. C., 31

7. ——— **Husband and wife**—*Infant wife—Marriage*—According to Hindu law, after marriage a husband is the legal guardian of his wife's person and property whether she is a major or minor The marriage of an infant being under the Hindu law a legal and complete marriage the husband has the same right as in other cases to demand that his wife shall reside in the same house as himself, except under special circumstances such as absolve the wife from the duty KATEERAM DOKANEE *v.* GENDHENEE . 23 W. R, 178

8. ——— **Mother**—*Power of father to appoint another person*—The Hindu law does not prohibit a father from appointing, by writing or by word any other person than the mother to be the guardian of his minor children SOOBAH PIRTHEE LAL JHA *v* SOOBAH DOORGA LAL JHA SOOBAH DOORGAH LAL JHA *v* NEELANUND SINGH
[7 W. R., 73

9. ——— **Right of relatives (after parents are dead) to custody of child**—*Nearest paternal relatives—Selection of guardian by Court*—The claims of relatives to the guardianship of a minor stand upon quite a different footing from those of parents The nearest paternal relatives have no legal right to the immediate custody of a child on the death of its parents In the absence of father or mother or guardian appointed by the father, the selection of a guardian for a Hindu minor is to be made by the Court, as it represents the ruling power KISTO KISSOR NEOGHY *v* KADER MOYE DASSEE
[2 C. L. R., 583

See BHIKTO KOER *v.* CHAMELA KOER
[2 C. W. N., 191

10 ——— **Proximity of connection**—*Outcast*—Proximity of connection does not necessarily entitle a person to the office of guardian. A person out of caste is not a proper person to be the guardian of Hindu minors FUGGOO DAYE *v* PAWAH DAYE . . 4 W. R., Mis, 3

11. ——— **Loss of caste**—*Act XXI of 1850—Suit to obtain custody of minor from father who intends to marry her to an impotent man*—A Hindu who has been deprived of caste by the members of his brotherhood on account of intending, for a money consideration to give his infant daughter in marriage to a man both old and impotent, does not, under Hindu law, thereby forfeit his rights as guardian

HINDU LAW—INHERITANCE
—*continued.*

HINDU LAW—INHERITANCE
—*continued.*

See Cases under Hindu Law—Adoption—Effect of Adoption.

See Cases under Hindu Law—Custom—Inheritance and Succession.

——— **Exclusion from inheritance.**

See Arbitration—Awards—Construction and Effect of.

[I. L. R., 2 All., 809
I. L. R., 6 All., 322
L. R., 11 I. A., 20

See Cases under Hindu Law—Widow—Disqualification—Unchastity.

1. AUTHORITIES ON LAW OF INHERITANCE.

1. ——— **Law in Western India**—*Comparative authority of Mitakshara and Mayukha in South Maratha country.*—In Western India, on questions of inheritance, the first place is assigned to the Mitakshara, and only a subordinate, though still

HINDU LAW—GUARDIAN—*continued*

2. POWERS OF GUARDIANS—*continued*

defendant in equal shares In the present suit the plaintiff sought to set aside the compromise made on his behalf by his natural father, *R*, on the ground that *R* had no authority to make it, and that there was no necessity for it *Held* that the plaintiff's natural father was his proper guardian to assert his rights as adopted heir against rival claimants and that the compromise was binding NIRVANAYA *v* NIRVANAYA I. L. R., 9 Bom., 365

21. ———— **Partition by minor's mother as guardian**—*Partition made during minority—Suit to set aside a partition on the ground of fraud* —A partition made by a mother as the guardian of her minor son, a member of an undivided Hindu family, is valid, and if just and legal, will bind the minor. When the minor arrives at full age, he may apply to have the division set aside if it

minor's name in the sale deed —Under Hindu law the mother, as guardian of her minor son, has authority to sell her husband's estate in order to pay off his

23 ———— **Authority of guardian to borrow money for funeral ceremonies of minor's father**—*Liability of the estate for such debt* —On the death of his father, the minor defendant was taken charge of by one *N*, his father's cousin, who also took possession of the estate of the deceased To defray the expenses of the funeral ceremonies of the deceased, *N* borrowed money from the plaintiff, [illegible] from the estate

monies of the minor's father NATHURAM *v* SHOMA CHHAGAN . I. L. R., 14 Bom., 562

24. ———— **Uncertificated guardian, Powers of**—*Manager of joint Hindu family, Powers of—Sale by de facto guardian of lunatic's share* —Act XXXV of 1858 does not affect the general provisions of Hindu law as to guardians who do not

does not hold a certificate under the said Act [illegible] *Chunder Chuckerbutty v. Brojonath Mozoomdar. I. L R., 4 Calc., 929,* followed in principle *Court of Wards v. Kupulmun Singh, 10 B L R.,*

HINDU LAW—GUARDIAN—*concluded*

2 POWERS OF GUARDIANS—*concluded*

364 19 W R., 163 disapproved KANTI CHUNDER GOSWAMI *v* BISHESWAR GOSWAMI

[I. L. R., 25 Calc., 585
2 C. W. N., 241

HINDU LAW—HUSBAND AND WIFE.

———— **Suit for restitution of conjugal rights**—*Desertion—Cruelty—Insanity of husband—Limitation—Act XV of 1877 (Limitation Act), s 23, sch ii, arts 34, 35, and 120* —The texts of

and duties which they create may be enforced by either party against the other, and not exclusively by the husband against the wife The Civil Courts of British India, as occupying the position in respect of judicial functions formerly occupied in the system of Hindu law by the king, have undoubtedly jurisdiction in respect of the enforcement of such rights and duties. The Civil Courts of British India can therefore properly entertain a suit between Hindus for the restitution of conjugal rights, or for the recovery of a wife who has deserted her husband It is not necessary, as a condition precedent to such suits, the parties being Hindus, that there should be any demand by the plaintiff and refusal by the defendant The provisions of arts 34 and 35 of the second schedule

which could not have been contemplated by a statute of the nature and scope of the Limitation Act The limitation applicable to suits of the present nature is that of art 120 of the second schedule, read with s 23 of the Limitation Act Desertion by a wife of her husband is permitted by the Hindu law under certain circumstances, but the insanity of the husband will not justify his desertion by the wife In any case, desertion does not terminate the relation of husband and wife. A suit for restitution of conjugal rights could in such case only be effectually met by establishing a plea of some matrimonial offence on the part of the complainant such as would entitle the defendant to a separation Legal cruelty on the part of the complainant may be a ground for refusing restitution of conjugal rights or for imposing terms on the complainant BINDA *v* KAUNSILIA

[I. L. R., 13 All., 126

HINDU LAW—INHERITANCE.

HINDU LAW—INHERITANCE
—*continued*.

2. LAW GOVERNING PARTICULAR CASES —*concluded*.

observance of ancient customs in other matters. CHUNDRO SEEKHUR ROY *v.* NOBIN SOONDUR ROY [2 W. R., 197

11. ——— **Usage of the country.**—No statute law exists regulating the devolution of property amongst Hindus. The law, therefore, to be applied in cases of inheritance is the usage of the country in which the suit arises (*see* Bom. Reg. II of 1826, s. 26). The commentaries and text-books embody in many instances the rules formed and enforced by custom, but custom, even on Hindu principles, may and must have power without their aid. They do not govern the usage of the country, save by a reflex process; it is the usage which adopts them, and they are law only because of this adoption in the sense and within the limits according to which their rules are accepted. Not merely the reception, but the exact extent of the reception of any law book is governed by usage. BHAGIRTHIBAI *v.* KAHNUJIRAV . . I. L. R., 11 Bom., 285

3. SPECIAL LAWS.

(*a*) COORG.

12. ——— **Inheritance, Law of**—*Mitakshara law.*—The ex-Rajah of Coorg died in England in 1859, leaving considerable moveable property which he had himself acquired and accumulated, chiefly by means of his pensions and some ancestral jewels and ornaments. By his last will and testament he left all his property to trustees in trust to pay thereout certain legacies, and to divide the residue in certain proportions among various members of his family. Some difficulty having arisen after his death regarding the distribution of his estate, the Court of Chancery stated a case and propounded certain questions under 22 & 23 Vict., c. 63, for the opinion of Her Majesty's late Supreme Court at Fort William in Bengal, with reference to the Hindu law as administered by that Court, and so far as the same was applicable to the facts set forth in the case stated. The first and chief question propounded was—"What school of Hindu law would govern the succession to the estate of the deceased Rajah, and the rights and interests of the members of his immediate family, with reference to the will and facts stated, and also supposing he had died without having made any testamentary disposition of his property?" In answer to this question, the Court held that the doctrines of the Benares school of Hindu law, as laid down in the Mitakshara, should govern the decision of the case regarding the succession to the estate of the deceased Rajah, on the ground that the Mitakshara is the leading authority of Hindu law throughout Southern India as well as Benares, and that the Court had no reason to suppose that the doctrines of the Mitakshara had been in any way varied or altered by any text book recognized as an authority in Coorg, although some variations prevail in various parts of Southern India. The Court were further of opinion that the doctrines of the

HINDU LAW—INHERITANCE
—*continued*.

3. SPECIAL LAWS—*continued*.

same school of Hindu law would govern the case, supposing the Rajah died without having made any testamentary disposition of his property. The succession to the property of a Hindu is governed by the laws which regulate his religious rites and ceremonies, and not by the domicile of himself or his family. LOGIN *v.* PRINCESS VICTORIA GOURAMMA OF COORG . . 1 Ind. Jur., O. S., 109

(*b*) KANARA.

13. ——— *Inheritance of females—Aliyasantana law.*—In Kanara females only are recognized as the proprietors of family property. The Aliyasantana system of inheritance differs only from that of Malabar in more consistently carrying out the doctrine that all rights to property are derived from females. MUNDA CHETTI *v.* TIMMAJU HENSU . . . 1 Mad., 380

(*c*) CUTCHI MEMONS.

14. ——— *Absence of special custom.*—In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons. ASHABAI *v.* TYEB HAJI RAHIMTULLA . . I. L. R., 9 Bom., 115

ABDUL CADUR HAJI MAHOMED *v.* TURNER [I. L. R., 9 Bom., 158

See, however, IN RE ISMAEL [I. L. R., 6 Bom., 452

15. ——— *Custom—Joint family—Joint and ancestral property.*—Cutchi Memons are governed by the Hindu law of inheritance in the absence of proof of special custom. A custom alleged to exist among Cutchi Memons of recognizing no difference between ancestral and self-acquired property held not proved. Four brothers of the Cutchi Memon community carried on trade with capital inherited from their father. Large profits were made in the course of business. It was alleged that some of the profits were made by means of borrowed capital, and some arose out of a commission business in which the capital of the firm was not used at all; and it was contended that such profits could not be considered as ancestral funds. It appeared, however, that the entire business was carried on by the same firm. There were common books, common expenses, and a common staff. The borrowed money was put into the general cash with the original capital. *Held* that the whole property was ancestral. Augmentations which blend, as they accrue, with the original estate partake of the character of that estate. Moreover, the loans in question and the extension of business to which they led might have produced heavy losses instead of great profits, and the family property would have been liable to debts so incurred. The family property, being thus subject to liabilities arising from the loans, was entitled to participate in any benefits resulting from them. MAHOMED SIDICK *v.* AHMED. ABDULA HAJI ABDSATAR *v.* AHMED . . . I. L. R., 10 Bom., 1

HINDU LAW—INHERITANCE—*continued*

1. AUTHORITIES ON LAW OF INHERITANCE—*concluded*

Anandrav Bhaskar, unreported, commented upon KRISHNAJI VYANKTESH *v* PANDURANG PANDURANG *v* KRISHNAJI VYANKTESH 12 Bom., 65

2. ——— *Commentaries and text-books—Mitakshara—Mayukha—Usage* —The

reception, of any law book is governed by usage. In the Maratha country the Mitakshara is the principal authority upon Hindu law, but in doubtful cases it may properly be construed by the light of the Mayukha, the usage of the country having adopted the latter as well as the former. This course was followed in *Vinayak Anandrav* v. *Lakshmibai, 1 Bom, 118,* where a different construction of the Mitakshara was allowed to prevail in Bombay from that which had been adopted for Bengal BHAGIRTHIBAI *v.* KAHNUJIRAV . I L. R., 11 Bom., 285

3. ——— *Comparative authority of the Mitakshara and the Mayukha in the Ratnagiri District* —The Ratnagiri District forms part of the Maratha country where the doctrines of the Mitakshara are paramount, and where the Mayukha, notwithstanding the eminent position it has gained, is still a secondary authority. BALKRISHNA BAPUJI APTE *v.* LAKSHMAN DINKAR

[I. L. R., 14 Bom., 605

JANKIBAI *v.* SUNDRA I. L. R, 14 Bom., 612

2 LAW GOVERNING PARTICULAR CASES.

4. ——— Mitakshara law—*Presumption where that law prevails.*—In the absence of all evidence to the contrary, a Hindu must be considered to be governed by the Mitakshara law where it prevails JUGO BUNDHOO TEWAREE *v.* KURUM SINGH

[22 W. R., 341

5. ——— Lands transferred to district having different law of succession— ... *of law* —When lands

such change. PRITHEE SINGH *v.* COURT OF WARDS

[23 W. R., 272

6. ——— *Local or family custom.*—In a case where the question was as to the

HINDU LAW—INHERITANCE—*continued*

2 LAW GOVERNING PARTICULAR CASES—*continued*

right of succession to an estate held by *S,* the common ancestor of the plaintiff and the defendant which estate was *formerly* within zillah Beerbhoom and subject to the law of the Dayabhaga, but was transferred to zillah Bhagulpore, the High Court refused to go into the question of the transfer, and held the case

REE *v.* PIRTHEE SINGH . 21 W. R., 89

S C in High Court, PIRTHEE SINGH *v* SHEO SOONDERY . 8 W. R., 261

the Court below, after an examination of the whole evidence, that the Mithila law was applicable PADMAVATI *v* DOOLAR SINGH

[7 W R., P. C, 41; 4 Moore's I. A., 259

8. ——— *Dayabhaga—Mitakshara.*—The question being whether the de...

9. ——— *Mithila law—Preference of paternal to maternal lines—Migration* —By the Hindu law in force in Mithila or Tirhoot the right of succession vests in the descendants in the paternal line in preference to those in the maternal line; and such law continues to regulate the succession to property in a family who have migrated from that district, but have retained the religious observances and ceremonies of Mithila A suit having been instituted to recover the estate of a Hindu Mithilese by the maternal first cousin of the last male proprietor who claimed to be entitled according to the law in force in Bengal,—*Held* by the judicial committee, affirming the judgment below that according

10. ——— Evidence showing what law governs family—*Inheritance* —Proof of the fact that, in matters connected with succession, the law of the country of domicile has been adopted by a family, negatives any presumption arising from the

HINDU LAW—INHERITANCE —*continued.*

3. SPECIAL LAWS—*concluded.*

alleged son of the deceased. This son, who was a minor, was in possession through his mother and guardian. The Judicial Committee, without deciding as to the alleged mode of succession to property among Nihangs forming this brotherhood, affirmed the decision of the High Court that it had not been proved that the deceased was a member of the sect, and on this ground the dismissal of the suit was maintained. GAJRAJ PURI *v.* ACHAIBAR PURI [I. L. R., 16 All., 191 L. R., 21 I. A., 17

(*k*) SUNI BORAH MAHOMEDANS.

26. ——— **Hindu converts to Mahomedanism** *Effect of conversion—Custom and usage of inheritance.*—The Suni Borah Mahomedan community of the Dhaudpudra talukh in Gujarat are governed by the Hindu law in matters of succession and inheritance. BAI BAIGI *v.* BAI SANTOK [I. L. R., 20 Bom., 53

4. MIGRATING FAMILIES.

27. ——— **Hindu family migrating**—*Presumption as to law applicable.*—In a case where a Hindu family migrates from one territory to another, if they preserved their ancient religious ceremonies they also preserve the law of succession. The presumption is, until the contrary be proved, that the family so migrating have brought with them, and retain, all their religious ceremonies and customs; especially when the family is shown to have brought with it its own priests, who, and descendants after them, continued their ministrations down to the period of contest. JUNARUDDEEN MISSER *v.* NOBIN CHUNDER PERDHAN . . **Marsh., 232 : 1 Hay, 534**

S. C. OOTUM CHUNDER BHUTTACHARJEE *v.* OBHOY CHURN MISSER. NOBIN CHUNDER PERDHAN *v.* JANARDHUN MISSER . . **W. R., F. B., 67**

SONATUN MISSER *v.* RUTTUN MOLLAH [W. R., 1864, 95

28. ——— *Laws of origin and domicile.*—Hindu families are ordinarily governed by the law of their origin, not by that of their domicile. The presumption is in favour of the law of origin until the adoption of the law of a new domicile is proved. LUKKEA DEBEA *v.* GUNGAGOBIND DOBEY [W. R., 1864, 56

PIRTHEE SINGH *v.* SHEO SOONDUREE [8 W. R., 261

S. C. in Privy Council, where it was remanded. SHEO SOONDUREE *v.* PIRTHEE SINGH [21 W. R., 89

29. ——— *Adoption of local custom.*—Where a Hindu family came from the Punjab accompanied by their priests at a time when they were not governed by the Bengal law, and it was afterwards alleged that they were now governed by that law, the onus of proving the allegation was held

HINDU LAW—INHERITANCE —*continued.*

4. MIGRATING FAMILIES—*concluded.*

to be with those who made it. The mere adoption of local customs and observances of occasional local festivals and ceremonies would not prove that the law which originally governed a family had been set aside and another law substituted. HURO PERSHAD ROY CHOWDHRY *v.* SHIBO SHUNKUREE CHOWDRAIN [13 W. R., 47

See SURENDRA NATH ROY *v.* HIRAMANI BURMONI [1 B. L. R., P. C., 26 **10 W. R., P. C., 35 : 12 Moore's I. A., 81**

30. ——— *Presumption of importing its own laws—Rebutting presumption.*—The presumption that a Hindu family, immigrating into Bengal from the North-Western Provinces, imports its own customs and law as regulating the succession and the ceremonies of Hindu law in that family, may be rebutted by showing that, except as regards marriage, all other ceremonies are performed according to the law of the Bengal school and by Bengal priests. RAM BROMO PUNDAH *v.* KAMINEE SOONDERY DOSSEE . . . **6 W. R., 295**

31. ——— *Presumption as to change in law.*—When a family originally migrated from the Mithila province to the province of Bengal, the presumption is that they have preserved the religious rights and customs prescribed by the Mitakshara law, unless the contrary be proved. KOOMUD CHUNDER ROY *v.* SEETAKANTH ROY . **W. R., F. B., 75**

32. ——— *Migration from N.-W. P. to Bengal—Mitakshara and Dayabhaga laws.*—*Held* that, although a family migrating from the North-West Provinces to Bengal would ordinarily remain governed by the Mitakshara law, the Dayabhaga law was, under circumstances of this case, applicable to a family so migrating. HEERAMONEE BRAHMINEE *v.* NUFFAREE BRAHMINEE **1 Hay, 292**

The Privy Council, however, without deciding which law prevailed, seem to have doubted whether the decision of the High Court was correct on the evidence. SURENDRANATH ROY *v.* HIRAMANI BURMONI [1 B. L. R., P. C., 26 **10 W. R., P. C., 35 : 12 Moore's I. A., 81**

5. MODIFICATION OF LAW.

33. ——— **Consent**—*Modification of operation of law.*—The operation of the law of inheritance can be modified by consent of the parties. MAHERBAN SINGH *v.* SHEO KOONWAR . **1 Agra, 106**

34. ——— *Waiver of rights acquired by operation of law.*—*Held* that the plaintiffs were competent to waive their right of inheritance, and that on the construction of a wajib-ul-urz it was not designed to give the widow a right of inheritance in the joint estate in preference to that of the brothers of the deceased contrary to Hindu law. DAL CHUND *v.* SOONDER . . . **2 Agra, 173**

35. ——— *Waiver of rights—Absence of special custom.*—In the absence of any evidence of special custom,—*Held* that a nephew

HINDU LAW—INHERITANCE
—*continued*

3 SPECIAL LAWS—*continued.*

(*d*) JAINS

16 ——— *Widow claiming separate property of husband*—In the absence of evidence to the contrary the rules of inheritance of the Jains must be taken to be the same as those of the orthodox Hindus in that part of the country in which the property is situate Therefore where the widow of a Jain claimed as heiress of her husband who was separate in estate property situate in a district in which the Mitakshara prevails —*Held* that she was entitled to succeed LALLA MAHABEER PERSHAD *v* KUNDUR KOONWAR
[2 Ind Jur, N S, 312 8 W R, 116

17 ——— *Custom*—In the absence of proof of special custom varying the ordinary Hindu law of inheritance that law is to be applied to Jains CHOTAY LALL *v* CHUNNOO LALL
[I L R, 4 Calc, 744 3 C L R, 465

BACHEBI *v* MAKHAN LALL I L R, 3 All., 55

LALLA MOHABEER PERSHAD *v* KUNDUR KOONWAR 2 Ind Jur, N S, 312 8 W R, 116

MANDIT KOER *v* PHOOL CHAND LAL
[2 C W N, 154

RUKHAB *v* CHUNILAL AMBUSHET
[I. L. R, 16 Bom., 347

18 ——— Mitakshara law—*Absence of special custom*—They are governed by Mitakshara law in the absence of custom to the contrary BACHEBI *v* MAKHAN LAL I L R, 3 All, 55

19 ——— Gujarati Jains settled in Belgaum—*Succession among Jains—Rights of illegitimate sons of a Jain—Division into four castes—Dassa Porwad caste of Jains*—The Courts in India have always recognized the existence of four castes *viz* Brahmins Kshatriyas Vaishyas and Shudras Jains are dissenters and are mostly of Vaishya origin A Jain converted into orthodox Hindu faith returns to the caste from which he traces his first descent. The four main divisions of Jains are Pramar Oswal Agarwal and Khandewal Unless a special custom to the contrary be established the ordinary Hindu law governs succession among the Jains Ordinary Hindu law is that of the three superior castes. Under the ordinary Hindu law, illegitimate sons do not inherit but are only entitled to maintenance *Held* that a Jain of the Dassa Porwad caste was governed by the general Hindu law applicable to the three regenerate castes being though not a Brahmin certainly not a Shudra but a Vaishya by origin and having as such carried this law with him from Gujarat to the Belgaum District *Held* therefore that his widow was his sole heir and that his illegitimate sons were only entitled to maintenance *Quære*—Whether even among Shudras the widow is altogether excluded from inheritance by illegitimate sons? *Rahi v Govinda I L R 1 Bom 97* doubted AMBABAI *v* GOVIND I. L. R., 23 Bom., 257

HINDU LAW—INHERITANCE
—*continued*

3 SPECIAL LAWS—*continued*

(*e*) SADHS

20 ——— Inheritance, Law of—*Absence of special custom*—*Held* that the Hindu law of inheritance was presumably applicable to the parties and the defendant had not shown that any custom among the Sadhs having the force of law prevailed opposed to the Hindu law GOPI CHAND *v* SUJAN KUAR I L R, 8 All., 646

(*f*) SAKULDIPI BRAHMINS

21 ——— *Mitakshara law*—The tribe of Brahmins called Sakuldipi living in various parts of Northern India are governed by the Mitakshara school of Hindu law RUDER PERKASH MISSER *v* HARDAI NARAIN SAHU
[9 C L R., 16

(*g*) NAMBUDRIS

[illegible]

v SECRETARY OF STATE FOR INDIA
[I. L. R., 11 Mad., 157

(*h*) RAJBANSIS.

23 — Family adopting Hindu religion—*Custom* In the absence of any custom to the contrary or of any satisfactory evidence to show what form of Hindu law they have adopted the members of a family who have adopted the Hindu religion are governed by the school of Hindu law in force in the locality where they reside *Fanindra Deb Raikat v Rajeswar Das I L R 11 Calc, 463 L R 12 I A 72* RAM DAS *v* CHANDRA DASSIA I L R., 20 Calc., 409

(*i*) MOLESALAM GIRASIAS

24 ——— Hindu converts to Mahomedanism—*Retention of Hindu law and usages*—The Hindu law of inheritance and succession applies to Molesalam Girasias who were originally Rajput Hindus but were subsequently converted to Mahomedanism FATESANGJI JASVATSANGJI *v* KUVAR HARISANGJI FATESANGJI
[I L R, 20 Bom., 181

(*j*) NIHANGS

25 ——— Nihangs in Gorakhpur—*Alleged mode of succession to property by survivorship among a brotherhood of Nihangs—Failure to prove that the deceased who possessed property, was a member*—The plaintiffs claimed that they as members of a fraternity of Nihangs were on the decease [illegible] to the succession to the

HINDU LAW—INHERITANCE—*continued.*

7. GENERAL HEIRS—*continued.*

45. ———— *Father's sister's daughter's son—Bhinna gotra-sapinda—Succession of cognates.—H,* a Hindu, died leaving a widow and a son of a first cousin, *viz.*, the son of his father's sister's daughter. *Held* that, on the death of the widow, the latter, *viz.*, the son of his father's sister's daughter, being a bandhu or bhinna gotra-sapinda of *H*, was entitled to succeed to his property. In regard to the succession of cognates, there seems no difference in the rules laid down in the Mayukha and the Mitakshara, and under the Mitakshara law succession depends upon propinquity and not upon religious efficacy. PAROT BAPALAL SEVAKRAM *v.* MEHTA HARILAL SURAJRAM

[I. L. R., 19 Bom., 631

46. ———— *Succession of bandhu—Priority of mother's half-brother over sons of father's paternal aunt—Mitakshara law.*—The statement of bandhus entitled to inherit given in the Mitakshara, Ch. II, s. 6, is not an exhaustive one. The maternal uncle of the deceased is omitted, but the sons of that uncle are specified. The omission to mention a maternal uncle does not signify that he is excluded from the first class of bandhus. The grounds of the judgment in *Gridhari Lal Roy* v. *Government of Bengal, 1 B. L. R., P. C., 44 : 12 Moore's I. A., 448,* apply not only to the heirship of a maternal uncle as against the claim in default of heirs, but also apply equally to questions between nearer and more remote bandhus. A maternal uncle is accordingly an heir, though not specified in the Mitakshara list, and he also has priority over the sons and grandsons of the paternal aunt of the father of the deceased, who are more remote than he is. A mother's brother by the half-blood stands on the same footing as her whole brother in regard to priority over more remote bandhus. A half-brother may be postponed to a whole-brother, but there is no ground for his postponement to more distant kinsmen. MUTHUSAMI MUDALIYAR *v.* SIMAMBEDU MUTHUKUMARASWAMI MUDALIYAR

[I. L. R., 19 Mad., 405
L. R., 23 I. A., 83

(*b*) GENTILES AND COGNATES.

47. ———— **Preference of heirs**—*Gentiles—Cognates.*—In looking for an heir under Hindu law, the gentiles must be exhausted before the cognates are entitled to succeed. DIGDAYI *v.* BHATAN LAL . **5 B. L. R., 448 note : 11 W. R., 500**

(*c*) SAMANODAKAS.

SHF **8.** ———— **Definition of samanodakas**
"Gotra" of deceased person.—"Samanodakas"
sons allied by a common oblation of water) be-
29.— to the "gotra" (race or general family) of
custom-sed person are, according to Hindu law, suffi-
Punjab cognate to succeed to property in default of
they w nearer of kin. NURSING NARAIN *v.* BHUTTUN
afterw. . . . . **W. R., 1864, 194**
that law.

49. ———— *Preference of, to bandhus or bhinna gotra-sapindas—Vatan service, Alienability of, beyond lifetime by will—Effect of subsequent change in the tenure rendering it alienable.*—The word "samanodakas," meaning literally those participating in the same oblation of water, includes descendants from a common ancestor more remotely related than the thirteenth degree from the propositus. One *P* died childless, devising his entire property, including his right to receive annually a certain desaigiri cash allowance, to the plaintiff's husband after the death of his (testator's) widow, *B A*. The testator and the plaintiff's husband were great-grandsons of one *K* by his son and daughter respectively. The plaintiff's husband having predeceased *B A*, she made another will in favour of the plaintiff. Subsequently *B A* died. The plaintiff thereupon brought a suit against the defendants, claiming the aforesaid cash allowance and arrears under these wills and as heir of *P*. The defendants, who were distant cousins of *P*, being related to him beyond the thirteenth degree, *inter alia* contended that the wills were invalid, as *P*, when he made the will, had only a life-interest in the vatan, which was a service vatan, and that they were nearer heirs to *P* than the plaintiff, who was a bhinna gotra-sapinda or bandhu of *P*. Both the lower Courts rejected plaintiff's claim. The plaintiff appealed to the High Court. *Held*, confirming the decree of the lower Court, that plaintiff's claim should be disallowed. The alienation by will by *P* of what was then a vatan held for service, being in its inception invalid as against his heirs, did not become valid because of a change in the tenure of the estate after his life-interest had terminated. *B A*, the widow of *P*, had nothing more than a widow's estate incapable of alienation beyond her lifetime, and therefore the wills executed by her were invalid. The case was one to be determined by the Hindu law of inheritance. The defendants, though more than thirteen degrees removed from *P*, were included in the term "samanodakas," and as such had a claim to the estate of *P* superior to that of the plaintiff or her deceased husband as his bandhus. BAI DEVKORE *v.* AMRITRAM JAMIATRAM **I. L. R., 10 Bom., 372**

50. ———— **Collateral distant relation**—*Right to share.*—A descendant of a brother of the original acquirer, and a descendant not less than six generations, are not entitled under Hindu law to a share of the property. CHYTUN MYTEE *v.* LUKHEE CHURN PATNAIK . . . **8 W. R., 258**

(*d*) SAPINDAS.

51. ———— **Definition of sapindas.**—The author of the Mitakshara in v. 3, s. 5, Ch. II, uses the word "sapinda" in the sense of "connection by particles of one body," and not in the sense of "connection by funeral oblations." In order to determine whether a person is a "sapinda" of the propositus within the meaning of the definition given by the author of the Mitakshara in Acharakanda

HINDU LAW—INHERITANCE
—*continued*

5 MODIFICATION OF LAW—*concluded*

could not inherit the tenant-right from his uncle, [illegible]

[illegible] [3 Agra, 143

36. ——— Conditions in wajib-ul-urz [illegible]

[illegible] selves SARUPI *v* MUKH RAM . 2 N. W., 227

37. ——— *Private arrangement—Alteration of law* —A son by birth or adoption can for adequate reasons be disinherited, but the course of [illegible]

38. ——— Deed containing restrictions [illegible]

6 GENERAL RULES AS TO SUCCESSION.

39. ——— Preference of heirs—*Ability* [illegible] *obla-* [illegible] in the [illegible] of the [illegible]

confers the right to inherit temporal wealth MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAR *alias* KATTAMA NACHIAR *v* DORASINGA TEVAR
[6 Mad., 310

40. ——— *Spiritual benefit rendered by heir* —*Per* MAHMOOD, *J.*—There is no difference between the Mitakshara and the Bengal schools of Hindu law regarding the principle that the right of inheritance is based on the spiritual benefit which the heir, by taking the estate, renders to the soul of the deceased proprietor There is a difference between the two schools only on a matter of detail relating to questions of preference between various competing classes of heirs JANKI *v* NAND RAM . . . . I. L. R., 11 All., 194

41. ——— *Bengal school —Oblations, Offering of* —According to the Bengal school of law, inheritance goes to him who offers

HINDU LAW—INHERITANCE
—*continued*

6 GENERAL RULES AS TO SUCCESSION
—*concluded*

oblations to the deceased, or to ancestors of the deceased, in which oblation the deceased would participate Where more than one person offers such oblations, succession goes to him who offers oblations to the father of the deceased, and an heir who offers such an oblation will be preferred to an heir who offers oblations to the grandfather and great grandfather of the deceased PRAN NATH SURMA JOWARDAR *v.* SURUT CHUNDER BHUTTACHARJEE
[I. L. R., 8 Calc, 460. 10 C. L. R., 484

42. ——— *Heir of last full owner* —The rule of Hindu law is that in the case of inheritance the person to succeed must be the heir of the last full owner On the death of the last full owner, his wife succeeds as his heir to a widow's [illegible]

7 GENERAL HEIRS

(*a*) BANDHUS

[illegible] GOVERNMENT OF BENGAL
[1 B. L. R., P. C., 44: 10 W. R., P. C., 31

Reversing decision of High Court in GOVERNMENT *v* GREEDHAREE LAL ROY . 4 W. R., 13

44. ——— *Bandhu ex-parte materna—Bandhu ex-parte materna—Son of* [illegible]

assigned by her to *A*, *B*, and *C*, (2) that other portions of the property had been conveyed in 1859 by the same persons, with the concurrence of *D*, as a gift to the daughters of the adoptive sisters of the deceased; (3) that *D* was the son of a sister of the adoptive mother The plaintiffs were grandsons of the brother of the deceased's adoptive father, being re [illegible] *Held* (1) that [illegible] *paterna*, were [illegible] a bandhu *ex p* [illegible] daughters had no title, whether by the law of inheritance or under the gift asserted by them. SUNDRAMMAL *v.* RANGASAMI MUDALIAR
[I. L. R., 18 Mad., 193

HINDU LAW—INHERITANCE—*continued.*

8. SPECIAL HEIRS—*continued.*

another daughter in the inheritance left by his maternal grandfather *Uma Sunker Moitro v. Kali Komul Mozumdar, I. L. R., 6 Calc., 256,* followed. SURJO KANT NUNDI *v.* MOHESH CHUNDER DUTT . . . . I. L. R., 9 Calc., 70

65. ———— *Natural son born after adoption.*—An adopted son is entitled to one-fourth of the estate of the adoptive father if a natural son is born after the adoption. RUKHAB *v.* CHUNILAL AMBUSHET . I. L. R., 16 Bom., 347

66. ———— *Share of adopted son where a son is subsequently born—Mitakshara—Vyavahar Mayukha.*—In Western India, both in the districts governed by the Mitakshara and those specially under the authority of the Vyavahar Mayukha, the right of the adopted son, where there is a "legitimate son" born after the adoption, extends only to a fifth share of the father's estate. In a suit by an adopted son to recover his share in his adoptive father's estate, a son having been born to the adoptive father subsequently to the plaintiff's adoption, the Court of first instance awarded the plaintiff a fourth share of the property in dispute. The defendant appealed to the District Court, but in appeal raised no question as to the extent of the share awarded to the plaintiff. On second appeal to the High Court it was contended that, in any event, the plaintiff was only entitled to a fifth share. *Held* that, under the circumstances and having regard to the nature of the question, the point might be taken in second appeal on behalf of the defendant, and the High Court varied the decree by awarding the plaintiff a fifth share instead of a fourth share, but ordered the appellant (defendant) to bear his own costs of the appeal. GIRIAPA *v.* NINGAPA

[I. L. R., 17 Bom., 100

67. ———— Affiliated son—*Custom of illatam—Reddi caste of Nellore.*—Under the custom of illatam (affiliation of a son-in-law) which obtains among the Reddis or Pedda Kapu caste of Nellore, the illatam son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. BALARAMI REDDI *v.* PERA REDDI . . . . I. L. R., 6 Mad., 267

68. ———— *Burden of proof.*—*N,* a Hindu, who had admittedly been taken as illatam into the family of his father-in-law, died, leaving property which he had acquired by virtue of his illatam marriage. He was succeeded by his son, who died without issue, leaving only a sister surviving him. In a suit by the brother of *N,* who was the managing member of his family, to recover the property from the sister of the last holder,—*Held* that, as an illatam can succeed to property in his natural family, his natural relatives can succeed to his property, and as the paternal uncle is preferable as an heir to the sister, the plaintiff was *primâ facie* entitled to recover notwithstanding the admission, and that it was for the defendant to establish any special circumstances to rebut his claim. RAMAKRISTNA *v.* SUBBAKKA

[I. L. R., 12 Mad., 442

69. ———— *Custom—Survivorship.*—The father (since deceased) of the second defendant took into his family an illatam son-in-law, who died leaving a son. After the death of the son, one of his two daughters (who were his only children) sued to recover a one-fourth share of the property left by the second defendants's father. *Held* that the plaintiff was entitled to recover in the absence of proof of a custom by which the rights of the plaintiff's father should have passed by survivorship to the second defendant. MALLA REDDI *v.* PADMAMMA . . . . I. L. R., 17 Mad., 48

70. ———— Brother's daughter's son—*Mitakshara law.*—A brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs. DURGA BIBEE *v.* JANAKI PERSHAD

[10 B. L. R., 341 : 18 W. R., 331

71. ———— *Great-grandson of paternal grandfather.*—By the Hindu law the great-grandsons of the paternal grandfather are entitled to succeed as heirs to the deceased proprietor, and are to be preferred to the brother's daughter's son, because, although the former can offer but one oblation and the latter two, yet that offered by the former is offered to a paternal ancestor, and is therefore of superior religious efficacy to those offered by the latter, which are to maternal ancestors only. GOBIND PROSHAD TALOOKDAR *v.* MOHESH CHUNDER SURMA GHUTTUCK

[15 B. L. R., 35 : 23 W. R., 117

See IN THE MATTER OF OODOY CHURN MITTER

[I. L. R., 4 Calc., 411

And JUGGUT NARAIN SINGH *v.* COLLECTOR OF MANBHOOM . . I. L. R., 4 Calc., 413 note

72. ———— *Bengal school of Hindu law—Sapinda.*—According to the Bengal school of Hindu law, a brother's daughter's son is a sapinda, and is therefore a preferable heir to the great-great-great-grandfather's great-great-great-grandson. DIGUMBER ROY CHOWDHRY *v.* MOTI LAL BUNDOPADHYA

[I. L. R., 9 Calc., 563 : 12 C. L. R., 204

Contra, CHOORAL MONEE BOSE *v.* PROSONNO COOMAR MITTER . . . . 1 W. R., 43

73. ———— *Dayabhaga school—Great-grandson of paternal grandfather.*—A brother's daughter's son does not succeed in preference to a great-grandson of the paternal grandfather of the deceased. HARIDAS BUNDOPADHYA *v.* BAMA CHURN CHATTOPADHYA

[I. L. R., 15 Calc., 780

74. ———— Brother's son's daughter's son—*Brother's son's son's son.*—The right of inheritance of a brother's son's daughter's son is inferior

HINDU LAW—INHERITANCE
—*continued*

7 GENERAL HEIRS—*concluded*

(chapter treating of rituals) it is necessary to see whether they are related as "sapindas" to each other, either through themselves or through their mothers and fathers UMAID BAHADUR *v.* UDOI CHAND *alias* MUNMUN

[I. L R, 6 Calc, 119: 6 C. L. R, 500

52 ———— **Sapindas tracing relationship to common ancestor through two females** —The
property from h
less without dispo
the heirs of the
defendants, who were the brother and sister of the widow The plaintiffs were found to be the sons of the daughter's daughter of the husband's paternal grandfather *Held* that, inasmuch as plaintiffs were sapindas of the deceased husband, it was immaterial that their relationship to the common ancestor should have to be traced through two females They must therefore be held to be his bandhus and, as such, entitled to succeed to the property left by the widow VENKATAGIRI *v.* CHANDRU

[I. L. R, 23 Mad, 123

53. ———— **Preference among sapindas.**—Amongst sapindas the nearest sapinda excludes those more remote KHETTUR GOPAL CHATTERJEE *v* POORNOO CHUNDER CHATTERJEE

[15 W. R., 483

54. ———— **Extent of right of succession of sapindas.**—Regarding the right of succession of sapindas,—*Held* that the relationship extends to the sixth in descent below the point of divergence of the two lines The rule laid down by the Smriti Chandrika and the literal language of the Mitakshara in Ch II, s 5, not followed. PARASARA BHATTA *v.* RANGARAJA BHATTA

[I. L. R., 2 Mad, 202

55 ———— **Gotraj sapindas**—*Males excluding females* —The females in each line of gotrajas are excluded by any males existing in that line within the limits to which the gotraj relationship extends RAGHAVA *v* KALINGAPA

[I L. R., 16 Bom, 716

56 ———— *Succession among the remoter gotraj sapindas—Succession per capita and per stirpes* —Among the remoter gotraj-sapindas the inheritance goes per *capita* and not per *stirpes* NAGESH *v* GURURAO

[I. L. R., 17 Bom., 303

8 SPECIAL HEIRS

(*a*) MALES

57 ———— **Adopted son**—*Kinsmen* —An adopted son represents his adoptive father, and is entitled to the share which his father would have obtained. When he comes to share with heirs other

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued*

58. ———— *Right of one of family from which he was adopted* —A member of a Hindu family cannot as such inherit the property of one taken out of that family by adoption The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them SRINIVASA AYYANGAR *v* KUPPAN AYYANGAR RAYAN KRISHNAMACHARIYAR *v* KUPPANNAYYANGAR

[1 Mad., 180

59 ———— *Adoptive mother's father—Brother* —An adopted son does not succeed to the estate of his adoptive mother's father in preference to the son's son of the brother of the adoptive mother's father CHINNARAMAKRISTNA AYYAR *v* MINATCHI AMMAL

[7 Mad., 245

60 ———— *Mitakshara law* —An adopted son under Dattaka Mimausa and Mitakshara succeeds to property to which his adopted mother succeeded as the heiress of her father SHAM KUAR *v* GAYA DIN I L R., 1 All., 255

61. ———— *Succession of adopted son to relatives of adoptive mother* —According to Hindu law, an adopted son takes by inheritance from the relatives of his adoptive mother in the same way as a legitimate son *Morun Moyee Debea* v *Bejoy Kristo Gossamee, W R, F B, 121,* and *Chinnaramakristna Ayyar* v *Minatchi Ammal, 7 Mad, 245* overruled UMA SUNKER MOITRO *v* KALI KOMUL MOZUMDAR

[I. L. R., 6 Calc, 256 7 C L. R., 145

Confirmed by Privy Council KALI KOMUL MOZUMDAR *v* UMA SUNKER MOITRO

[I. L R, 10 Calc., 232 13 C. L R., 379
L R., 10 I. A., 138

JOYKISHORE CHOWDHRY *v* PANCHOO BABOO

[4 C. L R., 538

62. ———— *Share on death of one more than three generations from common ancestor* —An adopted son is not precluded from inheriting the estate of one related lineally, although at a distance of more than three generations from the common ancestor MOKUNDO LALL ROY *v* BYKUNT NATH ROY

[I. L. R., 6 Calc, 289, 7 C. L. R., 478

63. ———— *Collateral inheritance* —An adopted son inheriting collaterally along with collateral heirs is entitled to receive the same share as the other heirs The Dattaka Chandrika, s 5, paras. 24 and 25, cannot be construed as an express text limiting the share of an adopted son inheriting collaterally to half the share taken by the other collateral heirs. DINONATH MOOKERJEA *v* GOPAL CHUNDER MOOKERJEA

[8 C L. R., 57; 9 C L. R., 379

64. ———— *Succession of adopted son of one daughter and natural son of another—Grandfather's estate* —The adopted son of one daughter shares equally with the natural son of

HINDU LAW—INHERITANCE —*continued.*

8. SPECIAL HEIRS—*continued.*

88. ———— *Mitakshara law.* —According to Mitakshara law, a daughter's son takes his maternal grandfather's estate as full proprietor, and on his death such estate devolves on his heirs, and not on the heirs of his maternal grandfather. His gotraja-sapindas, or the persons related to him through his father, have therefore preferential right to succeed him to the persons related to him through his mother. SIBTA *v.* BADRI PRASAD [I. L. R., 3 All., 134

89. ———— *Adopted son of daughter—Brothers.*—According to Hindu law, a person cannot succeed as the adopted son of a daughter who has brothers alive, and who cannot be an appointed daughter if she had brothers when she married. Nor can he succeed as claiming under a bought son. YACHEREDDY CHINNA BASSAVAPA *v.* YACHEREDDY GOWDAPA . 5 W. R., P. C., 114

90. ———— *Great-grandson.* —A daughter's son does not inherit where there is a great-grandson of the deceased alive. GOOROOGOBINDO CHOWDHRY *v.* HUREE MADHUB ROY [Marsh., 398: 2 Hay, 401

91. ———— *Estate of maternal grandfather—Daughter.*—A suit brought against *K*, the widow of *R*, a Hindu, by the representatives of *R*'s brothers, *H* and *P*, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After *K*'s death, *M*, a daughter of *R*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently *S*, *M*'s son, who had been born after *K*'s compromise, brought a suit against *M* and the representatives of *H* and *P* to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K* and the withdrawal of the former suit by *M* were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and upon these findings gave him a decree declaring his right to possession on *M*'s death. The lower Appellate Court reversed the decree, holding that the compromise entered into by *K* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Per* MAHMOOD, J., that the plaintiff's rights as a daughter's son (which were not affected by his birth having taken place after his maternal grandfather's death) did not entitle him, under ordinary circumstances, to succeed to his maternal grandfather's estate in a divided Hindu family during the existence of a daughter, whether she were his own mother or his maternal aunt: and that the claim for possession was therefore rightly dismissed. *Amirtolal Bose* v. *Rajoneekant Mitter, 15 B. L. R., 10; Sibta* v. *Badri Prasad, I. L. R., 3 All., 134;* and *Baijnath* v. *Mahabir, I. L. L., 1 All., 608,* referred to. SANT KUMAR *v.* DEO SARAN . I. L. R., 8 All., 365

92. ———— *Estate of sonless Hindu.*—In the case of a sonless Hindu, his separate estate devolves, in the first instance, upon his widow or widows, and thereafter upon the daughter or daughters, and it is not till the death of the daughter that the daughter's son's right of inheritance initiates; and the death of a daughter's son antecedent to the death of a daughter would prevent the estate from devolving upon the son of such daughter's son. DHARUP NATH *v.* GOBIND SARAN. GOBIND SARAN *v.* DHARUP NATH [I. L. R., 8 All., 614

93. ———— Father—*Law in Gujarat—Mother.*—In Gujarat the right of succession to the estate of a Hindu who is separate in interest, and who, at his death, leaves a father and mother, but no issue or widow, devolves upon the father, in preference to the mother. KHODABHAI MAHIJI *v.* BAHDHAR DALA [I. L. R., 6 Bom., 541

94. ———— Father's brother's daughter's son.—A father's brother's daughter's son cannot inherit according to Hindu law. GOBINDO HURBEKAR *v.* WOOMESH CHUNDER ROY [W. R., F. B., 176

RAJ GOBIND DEY *v.* RAJESSUREE DOSSEE [4 W. R., 10

95. ———— *Sapinda.*—A father's brother's daughter's son is entitled to be recognized as an heir according to the Hindu law current in the Bengal school. GURU GOBIND SHAHA MANDAL *v.* ANAND LAL GHOSE MAZUMDAR [5 B. L. R., F. B., 15 : 13 W. R., F. B., 49

96. ———— *Whether preferential heir to mother's brother's son.*—Under the Bengal School of Hindu law, the father's brother's daughter's son as heir is preferential to the mother's brother's son. BRAJA LALL SEN *v.* JIBAN KRISHNA ROY . . . I. L. R., 26 Calc., 285

97. ———— *Spiritual benefit —Father's father's brother's son.*—The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father's brother's daughter's son; the former is therefore preferentially entitled, on the death of the deceased person's widow, to a certificate under Act XXVII of 1860, enabling him to collect the debts due to the estate. GOPAL CHUNDER NATH COONDOO *v.* HARIDAS CHINI . . I. L. R., 11 Calc., 343

98. ————Father's sister's son—*Great-grandson of great-great-great-grandfather.*—A father's sister's son does not inherit when opposed to the great-grandson of the great-great-great-grandfather of the deceased. JIBNATH SINGH *v.* COURT OF WARDS . 5 B. L. R., 442 : 14 W. R., 117

S. C. on appeal to Privy Council [15 B. L. R., 190 : 23 W. R., 409 L. R., 2 I. A., 163

HINDU LAW—INHERITANCE —*continued*

8 SPECIAL HEIRS—*continued*

to that of a brother's son's son's son KASHEE MOHUN ROY *v* RAJ GOBIND CHUCKERBUTTY [24 W. R., 229

75.———— Cousin—*Uncle's son—Childless daughter.*—According to the Hindu law, an uncle's son succeeds in preference to a childless widowed daughter TARAMONEE GUPTEA *v* LUKHEEMONEE DASSEA . Marsh., 29 : 1 Hay, 67 [1 Ind. Jur, O. S, 22

76. ———— *Bandhu—Pater-*

PONNAMMAL . I. L. R, 12 Mad, 155

77. ———— *Sapindas — First cousin's daughter's son—Collateral succession* — The sapinda relationship exists between the daughter's son and the son's son of two first cousins, the former therefore is an heir to the latter *Uma Sunker Moitra* v *Kali Kamal Mozumdar, I L R, 6 Calc, 256 1 C L R, 145* affirmed on appeal by the Privy Council *I L R, 10 Calc, 232 13 C L R, 379 L R, 10 I A, 138,* and *Padmakumari Debi Chowdhrani* v *Court of Wards, I L R, 8 Calc, 302 L R, 8 I A, 229,* relied on MANIK CHAND GOLECHA *v* JAGAT SETTANI PRANKUMARI BIBI I L R, 17 Calc, 516

78 ———— *Widow of another paternal uncle* —By the Hindu law the sons of a paternal uncle inherit in preference to the widow of another paternal uncle of the propositus RAGHAVA *v* KALINGAPA I. L. R., 16 Bom., 716

79 ———— *Cousin in third degree* —*Held* that a cousin in the third degree has no right of inheritance in the presence of cousins in the second degree MAHABEER PERSHAD *v* RAM SURUN 3 Agra, 6

80.———— *Sapindas—Bandhus—Mitakshara law—Descendants in third degree from common ancestor—Second cousins* — The plaintiffs were descended in the third degree from *M* who was *R*'s maternal great-grandfather,

Hindu law the parties were governed), that the plaintiffs were *R*'s sapindas through his mother, and *R* was the plaintiff's sapinda directly, and being thus mutually related as sapindas, the plaintiffs were heritable sapindas and bandhus of *R, ex-parte materna*, and on his death without issue were entitled to his property as his heirs. BABU LAL *v* NANKU RAM . I. L. R., 22 Calc, 339

See SHEOBARAT KUARI *v* BHAGWATI PRASAD [I. L. R., 17 All., 523

81. — Daughter's son—*Brother's son.*—A daughter's son is one of the nearer sapindas, and in the line of heirs before a brother's son according to Hindu law KRISHNAMMA *v* PAPA [4 Mad, 234

82 ———— Under the Hindu law, where property is proved to be a separate and divided property, the daughters and daughter's son are the legal heirs entitled to it and not more remote relations to the deceased. BURYAR SINGH *v* HUNSEE [2 Agra, 166

See GOLAB KOONWER *v* SHIB SAHAI [2 Agra, 54

and HIMUNCHULL *v* MAHARAJ SINGH [1 Agra, 210

83 ———— *Zamindari karnam—Order of succession to hereditary office*

late husband's paternal uncle *Held* that the defendant was entitled to succeed in preference to the plaintiff *Krishnamma* v *Papa, 4 Mad, 234,* followed. SEETARAMAYYA *v.* VENKATARAZU [I. L. R, 18 Mad, 420

84. ———— *Death of widow of last male proprietor* —A daughter's son is on the death of the widow of the last male proprietor a preferable heir to descendants in the third or fourth remove HIMUNCHULL *v* MAHARAJ SINGH [1 Agra, 210

BURYAR SINGH *v* HUNSEE 2 Agra, 166

85 ———— *Law at Benares* —*Held* that, according to Hindu law current at Benares, the daughters' sons inherit in default of qualified daughters, and that, if there be sons of more than one daughter, they take *per capita* and not *per stirpes* RAM SAWRUTH PANDEY *v.* BASDEO SINGH . 2 Agra, 168

So in Madras MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAR *alias* KATTAMA NACHIAR *v* DORA SINGHA TEVAR 6 Mad., 310

86 ———— *Succession to cultivator—Distant relation* —Distant relation (such

KOORMEE . 3 Agra, Pt. II, 166

87. ———— *Mother's sisters* —According to Hindu law, a deceased daughter's son has no right of inheritance to the estate of his maternal grandfather during the life of any of his mother's sisters. RAMDAY *v.* BEHAREE LALL [1 N. W., 114 : Ed. 1873, 200

HINDU LAW—INHERITANCE —*continued.*

8. SPECIAL HEIRS—*continued.*

88. ——— *Mitakshara law.* —According to Mitakshara law, a daughter's son takes his maternal grandfather's estate as full proprietor, and on his death such estate devolves on his heirs, and not on the heirs of his maternal grandfather. His gotraja-sapindas, or the persons related to him through his father, have therefore preferential right to succeed him to the persons related to him through his mother. SIBTA *v.* BADRI PRASAD [I. L. R., 3 All., 134

89. ——— *Adopted son of daughter—Brothers.*—According to Hindu law, a person cannot succeed as the adopted son of a daughter who has brothers alive, and who cannot be an appointed daughter if she had brothers when she married. Nor can he succeed as claiming under a bought son. YACHEREDDY CHINNA BASSAVAPA *v.* YACHEREDDY GOWDAPA . 5 W. R., P. C., 114

90. ——— *Great-grandson.* —A daughter's son does not inherit where there is a great-grandson of the deceased alive. GOOROOGOBINDO CHOWDHRY *v.* HUREE MADHUB ROY [Marsh., 398: 2 Hay, 401

91. ——— *Estate of maternal grandfather—Daughter.*—A suit brought against *K*, the widow of *R*, a Hindu, by the representatives of *R*'s brothers, *H* and *P*, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After *K*'s death, *M*, a daughter of *R*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently *S*, *M*'s son, who had been born after *K*'s compromise, brought a suit against *M* and the representatives of *H* and *P* to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K* and the withdrawal of the former suit by *M* were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and upon these findings gave him a decree declaring his right to possession on *M*'s death. The lower Appellate Court reversed the decree, holding that the compromise entered into by *K* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Per* MAHMOOD, J., that the plaintiff's rights as a daughter's son (which were not affected by his birth having taken place after his maternal grandfather's death) did not entitle him, under ordinary circumstances, to succeed to his maternal grandfather's estate in a divided Hindu family during the existence of a daughter, whether she were his own mother or his maternal aunt: and that the claim for possession was therefore rightly dismissed. *Amirtolal Bose* v. *Rajoneekant Mitter*, *15 B. L. R.*, *10*; *Sibta* v. *Badri Prasad*, *I. L. R.*, *3 All.*, *134*; and *Baijnath* v. *Mahabir*, *I. L. L.*, *1 All.*, *608*, referred to. SANT KUMAR *v.* DEO SARAN . I. L. R., 8 All., 365

92. ——— *Estate of sonless Hindu.*—In the case of a sonless Hindu, his separate estate devolves, in the first instance, upon his widow or widows, and thereafter upon the daughter or daughters, and it is not till the death of the daughter that the daughter's son's right of inheritance initiates; and the death of a daughter's son antecedent to the death of a daughter would prevent the estate from devolving upon the son of such daughter's son. DHARUP NATH *v.* GOBIND SARAN. GOBIND SARAN *v.* DHARUP NATH [I. L. R., 8 All., 614

93. ——— Father—*Law in Gujarat—Mother.*—In Gujarat the right of succession to the estate of a Hindu who is separate in interest, and who, at his death, leaves a father and mother, but no issue or widow, devolves upon the father, in preference to the mother. KHODABHAI MAHIJI *v.* BAHDHAR DALA [I. L. R., 6 Bom., 541

94. ——— Father's brother's daughter's son.—A father's brother's daughter's son cannot inherit according to Hindu law. GOBINDO HUREEKAR *v.* WOOMESH CHUNDER ROY [W. R., F. B., 176

RAJ GOBIND DEY *v.* RAJESSUREE DOSSEE [4 W. R., 10

95. ——— *Sapinda.*—A father's brother's daughter's son is entitled to be recognized as an heir according to the Hindu law current in the Bengal school. GURU GOBIND SHAHA MANDAL *v.* ANAND LAL GHOSE MAZUMDAR [5 B. L. R., F. B., 15 : 13 W. R., F. B., 49

96. ——— *Whether preferential heir to mother's brother's son.*—Under the Bengal School of Hindu law, the father's brother's daughter's son as heir is preferential to the mother's brother's son. BRAJA LALL SEN *v.* JIBAN KRISHNA ROY . . . I. L. R., 26 Calc., 285

97. ——— *Spiritual benefit —Father's father's brother's son.*—The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father's brother's daughter's son; the former is therefore preferentially entitled, on the death of the deceased person's widow, to a certificate under Act XXVII of 1860, enabling him to collect the debts due to the estate. GOPAL CHUNDER NATH COONDOO *v.* HARIDAS CHINI . . I. L. R., 11 Calc., 343

98. ———Father's sister's son—*Great-grandson of great-great-great-grandfather.*—A father's sister's son does not inherit when opposed to the great-grandson of the great-great-great-grandfather of the deceased. JIBNATH SINGH *v.* COURT OF WARDS . 5 B. L. R., 442 : 14 W. R., 117

S. C. on appeal to Privy Council [15 B. L. R., 190 : 23 W. R., 409
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HINDU LAW—INHERITANCE
—continued

8 SPECIAL HEIRS—*continued*

99. ——— Grandfather—*Paternal aunt —Maternal grandfather* —Under the Hindu law obtaining in the Madras Presidency, the maternal grandfather of a deceased Hindu succeeds to him in preference to his paternal aunt CHINNAMMAL v. VENKATACHALA **I L. R., 15 Mad., 421**

100. ——— Grandson—*Mitakshara law.* —Under the Mitakshara law, a grandson (his father being dead) shares equally with a son the self ac quired property of the grandfather LUCHOMUN PERSHAD v. DEBEE PERSHAD **1 W. R , 317**

101 ——— *"Sons" as used in the Mitakshara* —The term "sons" used in Mitakshara, Ch II, s 4 § 7, and s 5 § 1, does not include grandsons SURAYA v LAKSHMINARASAMMA **I. L. R , 5 Mad , 291**

102. ——— *Grandson of brother Mitakshara law* —Under the Mistakshara law, a brother's grandson may be an heir OORHYA KOOER v RUJOO NYE SOOKOOL **14 W. R., 208**

KUREEM CHAND GUSAIN v. OODUNG GUSAIN **[6 W. R , 158**

103 ——— *Law in Madras Presidency—Paternal uncle's son* —According to the Hindu law of succession current in the Madras Presidency, a paternal uncle's son succeeds to the inheritance before a brother's grandson SURAYA v LAKSHMINARASAMMA **I L. R , 5 Mad., 291**

104 ——— *Grandson of maternal grandfather's brother.*—According to Hindu law, the grandson of a brother of a grandfather of the deceased is heir to his property in default of nearer heirs BRAJA KISHOR MITTER MOZUMDAR v RADHA GOBIND DUTT **[3 B. L. R , A. C , 435: 12 W. R , 339**

105. ——— *Grandson of sister—Maternal uncle's son—Right to sue as rever-*

[illegible]

the deceased, but defendant No 3 was the nearer reversionary heir BALUSAMI PANDITHAR v NARAYANA RAU **I. L R., 20 Mad., 342**

106 ——— *Grandson of daughter of alienor's deceased husband —Bandhus—Reversioners — Held,* in a suit to set aside an alienation made by a Hindu widow of property which had been of her deceased husband in his lifetime, that the [illegible]

v *Nanku Ram, I L R 22 Calc , 339,* referred to SHEOBARAT KUARI v BHAGWATI PRASAD **[I. L. R., 17 All , 523**

107. ——— *Grandson of mother's maternal uncle—Bandhu* —According to the Hindu law of succession in force in the Madras Presidency, the grandson of the maternal uncle of the deceased's mother is in the line of heirs RATNASUBBU v PONNAPPA **I L. R , 5 Mad., 69**

108 ——— Great-grandson—*Son of son's son—Daughter's son* —According to the Hindu law of descent, the son of a son's son is preferred in the order of succession, before a daughter's son GOOROOGOBINDO CHOWDHRY v HURREEMADHUB ROY . **Marsh., 398: 2 Hay, 401**

109. ——— *Sons of granddaughter* —According to the Hindu law which pre- [illegible]

of the deceased. KISSEN LALA v JAVALLA PRASAD LALA . **3 Mad., 346**

110. ——— *Daughter's son's son — Great grand-daughters — Bandhu — N,* the daughter of *J,* inherited his property under Hindu [illegible]

111. ——— *Great-grandson of great great great-grandfather—Mitakshara law —Great grandson Bandhu—Gentiles Father's* [illegible]

S C on appeal to the Privy Council **[15 B. L. R., 190: 23 W. R., 409 L R., 2 I. A., 163**

112. ——— *Great great-grandson of grandson—Samanodaka —D,* being the grandson's great great-grandson of the common ancestor, who was the ninth in descent from *K*, deceased, was reckoned as a samanodaka and among the heirs of *K*. KALIAN SINGH v PANKUAR **7 N. W , 338**

113 ——— *Great great-great grandson of great great-great-grandfather—Mitakshara law—Gentiles* —According to the Mitakshara, the great-great grandson of the great-great great-grandfather of the deceased is entitled to succession as one of the gentiles BIRHA RAM SINGH v AGAR SINGH **[5 B. L. R., 293: 11 W. R., P. C., 1 13 Moore's I. A., 373**

HINDU LAW—INHERITANCE —*continued.*

8. SPECIAL HEIRS—*continued.*

114. ———— **Half-blood relatives**—*Distinction between whole-blood and half-blood—Sapinda relations other than brothers and their sons.*—The distinction of whole-blood and half-blood applies, according to the rule of succession of the Mitakshara founded on propinquity of blood, to sapinda relations other than the brother and his sons. *Samat* v. *Amra, I. L. R., 6 Bom., 394,* not followed. SUBA SINGH *v.* SARAFRAZ KUNWAR

[I. L. R., 19 All., 215

115. ———— *Half-brothers—Brothers of the whole-blood and of the half-blood.*—By the Hindu law current in Bengal a brother of the whole-blood succeeds in the case of an undivided immoveable estate in preference to a brother of the half-blood. Overruling *Tiluck Chunder Roy* v. *Ram Luckhee Dossee, 2 W. R., 41; Koylash Chunder Sircar* v. *Gooroo Churn Sircar, 3 W.R., 43; Gooroo Churn Sircar* v. *Koylash Chunder Sircar, 6 W. R., 93.* RAJKISHORE LAHOORY *v.* GOBIND CHUNDER LAHOORY. RAMMONEY DOSSEE *v.* GOBIND CHUNDER LAHOORY

[I. L. R., 1 Calc., 27 : 24 W. R., 234

ISHEN CHUNDER CHOWDHRY *v.* BHYRUB CHUNDER CHOWDHRY . . . **5 W. R., 21**

116. ———— *Nephew of half-blood—Brothers of whole and half-blood.*—A nephew of the half-blood is excluded from succession by brothers of the whole and half-blood. PRITHEE SINGH *v.* COURT OF WARDS . **23 W. R., 272**

117. ———— *Brothers of whole and half-blood.*—Where two uterine brothers and a half-brother are members of a joint Hindu family, and one of the two former dies, the brother of the half-blood is not entitled to receive anything out of the share of the deceased. CHEYT NARAIN SINGH *v.* BUNWAREE SINGH . **23 W. R., 395**

118. ———— *Rule of succession as between relatives of the whole-blood and half-blood—Brothers—Brother's sons—Collaterals.*—The plaintiffs (along with others not parties to the suit) were relations of the half-blood to the propositus, and the defendants were his relations of the whole-blood; but, counting from the ancestor, the plaintiffs were sapindas of the fifth degree, and some of the defendants sapindas of the sixth, and the rest sapindas of the seventh degree of the propositus. *Held* that, there not being any special provision in the Mitakshara or the Mayukha in respect of persons of the half-blood other than brothers and their sons, the general rule applies, that the nearest sapinda succeeds in the absence of special local custom to the contrary, and therefore the plaintiffs were the heirs of the propositus to the exclusion of the defendants or any of them. SAMAT *v.* AMRA

[I. L. R., 6 Bom., 394

119. ———— *Dayabhaga law.*—According to the Dayabhaga, a brother of the whole-blood in a joint family succeeds in preference to the brother of the half-blood to the share of a deceased brother. *Rajkishore Lahoory* v. *Gobind Chunder Lahoory, I. L. R., 1 Calc., 27 : 24 W. R., 234,* approved. SHEO SOONDARY *v.* PIRTHEE SINGH

[L. R., 4 I. A., 147

120. ———— *Sons of half-sisters—Succession to estate of deceased brother.—Half-blood and whole-blood.*—Under the Bengal school of Hindu law, sons of sisters of the half-blood are entitled to succeed equally with sons of sisters of the whole-blood to the property of a deceased brother. BHOLANATH ROY *v.* RAKHAL DASS MUKHERJI

[I. L. R., 11 Calc., 69

121. ———— *Uncles of whole-blood and half-blood.*—For the purpose of inheritance, an uncle of the whole-blood is not entitled to preference over one of the half-blood. One *B*, a minor, died leaving him surviving two paternal uncles, one of whom was an uncle of the whole-blood and the other of the half-blood. The nephew and the uncles were found to be divided from each other. *Held* that the two uncles were entitled to inherit the property of their deceased nephew in equal shares. *Samat* v. *Amra, I. L. R., 6 Bom., 394,* considered. *Suba Singh* v. *Sarofraz Kunwar, I. L. R., 19 All., 215,* not followed. VITHALRAO KRISHNA VINCHURKAR *v.* RAMRAO KRISHNA VINCHURKAR

[I. L. R., 24 Bom., 317

122. ———— **Husband**—*Childless wife—Gift at marriage.*—If a Hindu wife dies childless, all property given to her by her father at the marriage ("before the nuptial fire") goes to the husband. "Given before the nuptial fire" is only a term to signify all gifts during the continuance of the marriage ceremonies. BISTOO PERSHAD BURRAL *v.* RADHA SOONDAR NATH . . **16 W. R., 115**

123. ———— *Husband, Heirs of—Childless widow—Nagar Vissa Vania caste.*—Property inherited from her deceased husband by a childless widow among the Nagar Vissa Vanias, at her death intestate, devolves on the relations in blood, on the mother's side, of the husband in preference to the heirs and next-of-kin of the widow. IN THE GOODS OF NATHIBAI. JAIKISEN DAS GOPAL DAS *v.* HARKISEN DAS HULLODHAR DAS

[I. L. R., 2 Bom., 9

124. ———— **Nephew**—*Mitakshára law.*—Under the Mitakshara, a nephew succeeds, not as the heir of his father, but as the direct heir of his uncle. BROJO MOHUN THAKUR *v.* GOUREE PERSHAD CHOWDHRY . . . . . **15 W. R., 70**

125. ———— In default of brothers, brothers' sons succeed, taking according to numbers, and not by representation as grandsons; but brothers' sons are totally excluded by the existence of brothers. BROJOKISHOREE DOSSI *v.* SREE NATH BOSE . . . . **9 W. R., 463**

126. ———— *Brother—Joint undivided family.*—Where, in an undivided Hindu family living under the Mitakshara law, a

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued*

99. ——— Grandfather—*Paternal aunt —Maternal grandfather* —Under the Hindu law obtaining in the Madras Presidency, the maternal grandfather of a deceased Hindu succeeds to him in preference to his paternal aunt CHINNAMMAL v. VENKATACHALA I. L. R., 15 Mad, 421

100. ——— Grandson—*Mitakshara law* —Under the Mitakshara law, a grandson (his father being dead) shares equally with a son the self acquired property of the grandfather LUCHOMUN PERSHAD v. DEBEE PERSHAD 1 W. R., 317

101. ——— "*Sons*" *as used in the Mitakshara* —The term "sons" used in Mitakshara, Ch II, s 4, § 7, and s 5, § 1, does not include grandsons SURAYA v LAKSHMINARASAMMA I. L R, 5 Mad, 291

102. ——— *Grandson of brother Mitakshara law* —Under the Mitakshara law, a brother's grandson may be an heir OOBHYA KOOER v RUJOO NYE SOOKOOL 14 W. R, 208

KUREEM CHAND GUSAIN v. OODUNG GUSAIN [6 W. R, 158

103. ——— *Law in Madras Presidency—Paternal uncle's son* —According to the Hindu law of succession current in the Madras Presidency, a paternal uncle's son succeeds to the inheritance before a brother's grandson SURAYA v LAKSHMINARASAMMA . I. L. R, 5 Mad., 291

104 ——— *Grandson of* [illegible] —According to [illegible]

RADHA GOBIND DUTT [3 B. L. R., A. C, 435: 12 W. R, 339

105. ——— *Grandson of sister—Maternal uncle's son—Right to sue as reversioner* [illegible]

the son of V's maternal uncle *Held* that [illegible] the plaintiff and defendant No 3 were athma bandhus of the deceased, but defendant No 3 was the nearer reversionary heir BALUSAMI PANDITHAR v NARAYANA RAU I. L R., 20 Mad., 342

106 ——— *Grandson of* [illegible]

reversioners and, as such, [illegible] the alienation made by the widow *Krishnayya v Pichamma, I L R, 11 Mad, 287*, and *Babu Lal v Nanku Ram, I L R, 22 Calc, 339* referred to SHEOBARAT KUARI v BHAGWATI PRASAD [I. L. R., 17 All, 523

107. ——— *Grandson of mother's maternal uncle—Bandhu* —According to the Hindu law of succession in force in the Madras Presidency, the grandson of the maternal uncle of the deceased's mother is in the line of heirs RATNASUBBU v PONNAPPA I. L. R., 5 Mad., 69

108 ——— Great-grandson—*Son of son's son—Daughter's son* —According to the Hindu law of descent, the son of a son's son is preferred, *in the order of succession, before a daughter's son* GOOROOGOBINDO CHOWDHRY v. HURREEMADHUB ROY . . Marsh., 398. 2 Hay, 401

109 ——— *Sons of granddaughter* —According to the Hindu law which prevails in Madras, the sons of a granddaughter are excluded from the inheritance The plaintiff brought a suit for a moiety of the estate of his deceased second [illegible]

LALA [illegible] 3 Mad., 5[illegible]

110 ——— *Daughter's son's son — Great-grand-daughters — Bandhu* — N, the daughter of J inherited his property under Hindu [illegible] leaving a son [illegible]

[illegible] I. L. R., 11 M[illegible]

111 ——— *Great-grandson of great great great-grandfather—Mitakshara law* [illegible] *Father's* [illegible]

[illegible] R., 117

S C on appeal to the Privy Council [15 B L R, 190: 23 W. R., 409 L R., 2 I. A., 163

112. ——— *Great-great-grandson of grandson—Samanodaka* —D, being the grandson's great-great-grandson of the common ancestor who was the ninth in descent from K, deceased, was reckoned as a samanodaka and among the heirs of K. KALIAN SINGH v PANKLAR 7 N. W., 338

[illegible] great great-grandfather of the deceased [illegible] succession as one of the gentiles BIHA RAM SINGH v AGAR SINGH [5 B. L. R., 293: 14 W. R., P. C., 1 13 Moore's I. A., 373

HINDU LAW—INHERITANCE—*continued.*

8. SPECIAL HEIRS—*continued.*

must be junction of estate. When such reunion is satisfactorily established, Courts are bound to give a preference to the reunited parceners to the exclusion of the members or their issue who have not been so reunited. GOPAL CHUNDRA DAGHORIA *v.* KENARAM DAGHORIA . . . . . . 7 W. R., 35

140. ——— *Separated brother.—A,* one of four brothers in joint possession of ancestral property, separated himself in food, worship, and estate, leaving his three brothers jointly possessed of their undivided three-fourth shares. *A* died unassociated, leaving a son and heir *B.* The three brothers continued and died associated, two without heirs, and a third leaving a son and heir *C. Held B* had no claim to any part of the undivided three-fourth shares as against *C,* who took the whole absolutely. JADUB CHUNDER GHOSE *v.* BENODBEHARY GHOSE . . . . . . 1 Hyde, 214

141. ——— *Reunion of descendants of members—Reunion not effecting inheritance.—Held* that after separation reunion in order to affect the inheritance must be made by the parties or some of them who made the separation. If any of their descendants think fit to unite, they may do so; but such a union is not reunion in the sense of the Hindu law, and does not affect the inheritance. VISVANATH GUNGADHUR *v.* KRISHNAJI GUNESH [3 Bom., A. C., 69

142. ——— *Separated brother.*— Of three brothers forming together a joint Hindu family, one separated himself therefrom, and died leaving a son, the plaintiff. The other two with their families remained joint; one died leaving a son, the defendant; the other died leaving a widow. On the widow's death, this suit was brought to establish the plaintiff's right as one of the two next reversionary heirs. *Held* that a separated brother does not inherit, and that the defendant was alone entitled to succeed. *Quære*—as to the effect of reunion in inheritance. KESABRAM MAHAPATTAR *v.* NANDKISHOR MAHAPATTAR [3 B. L. R., A. C., 7: 11 W. R., 308

143. ——— *Separated and reunited brothers—Widow.*—A Hindu died leaving a widow, a brother, and two nephews, the plaintiff and the defendant. The brother was the defendant's father; he and the widow were since dead, the widow having died in the brother's lifetime. The plaintiff claimed to be entitled to a moiety of the estate of the deceased by inheritance. The defendant claimed the whole on the ground that the deceased lived as a reunited or associated brother with his (the defendant's) father, whereas the plaintiff was the son of a separated brother of the deceased. *Held* that the material issue to be tried in the case was whether the widow lived in a state of reunion with the defendant, as her husband had done with the defendant's father, or whether she at the time of her death lived separate from him, though in the same family house. RAMHARI SARMA *v.* TRIHIRAM SARMA [7 B. L. R., 337: 15 W. R., 442

144. ——— *Succession, Application of the law of.*—Where there has been a reunion between persons expressly enumerated in the text of Brihashpati, *viz.*, father, brother, and paternal uncle, and where their descendants continue to be members of the reunited Hindu family, the law of inheritance applicable to the latter is the same as in the case of the death of any of those between whom the reunion took place. *Tara Chand Ghose* v. *Pudum Lochun Ghose, 5 W. R., 249: 1 Ind. Jur., N. S., 207; Gopal Chunder Daghoria* v. *Kenaram Daghoria, 7 W. R., 35;* and *Ramhari Sarma* v. *Trihiram Sarma, 7 B. L. R., 336: 15 W. R., 442,* referred to. ABHAI CHURN JANA *v.* MANGAL JANA . . . I. L. R., 19 Calc., 634

145. ——— *Divided brothers of the full-blood—Son of a reunited half-brother.*—In 1872 a partition took place between the members of a joint Hindu family, being three brothers of the full and three of the half-blood. Two of the brothers, being the sons of different mothers, subsequently reunited. The elder took the plaintiff in adoption, and died during the infancy of the plaintiff. The reunited half-brother retained possession of their joint property till his death, when the present suit was instituted to recover his share in the property. The two uterine brothers of the deceased resisted the plaintiff's claim. *Held* that the plaintiff was entitled to a one-third share. RAMASAMI *v.* VENKATESAM . . . I. L. R., 16 Mad., 440

146. ——— *Presumption—Marriage of daughter into another family.*—A partition having taken place among three brothers, *A, B, C,* the members of a joint family, two of the brothers, *A* and *B,* subsequently reunited. *A* died leaving two grandsons. On the death of *B* leaving a daughter, who married but subsequently died without male issue, the grandsons and the sole representative of *C,* who also had died, claimed to be entitled as one of the reversionary heirs of *B* to one-third of his property. *Held* that, the daughter of *B* having married into another family, no presumption could be drawn from the reunion of *A* and *B* that the co-parcenary continued as between the defendants of *A* and *B* up to the death of *B*'s daughter. KRODESH SEN *v.* KAMINI MOHUN SEN . . . 10 C. L. R., 161

147. ——— Sister's daughter's son—*Inheritance—Mitakshara—Sister's daughter's son.*—A sister's daughter's son is an heir according to the Mitakshara. UMAID BAHADUR *v.* UDOI CHAND *alias* MUNMUN [I. L. R., 6 Calc., 119: 6 C. L. R., 500

148. ——— Sister's son—*Mitakshara.*—In the absence of nearer relatives, a man may be heir to his mother's brother as regards property subject to the Mitakshara. AMRITA KUMARI DEBI *v.* LUKHINARAYAN CHUCKERBUTTY . 2 B. L. R., F. B., 28

S. C. OMRIT KOOMAREE DABEE *v.* LUCKHEE NARAIN CHUCKERBUTTY . 10 W. R., F. B., 76

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—*continued.*

8 SPECIAL HEIRS—*continued*

person dies without leaving issue, but leaving a brother and a nephew, the son of a predeceased brother, the latter is not excluded from succession by the former BHIMUL DOSS *alias* LALL BABOO *v.* CHOONEE LALL . . I. L. R., 2 Calc., 379

127. ——————— *Property purchased by widow benami for a relation—Stepson* —A stepson made over property to his stepmother for her support Out of the produce she bought properties for her nephew in the names of other parties *Held* under the circumstances that the purchased property on her death went to the nephew, and not to the stepson, as heir of her husband CHANDRANATH ROY *v.* RAMJAI MAZUMDAR

[6 B. L. R., 303. 15 W. R., P. C., 7

128. ——————— *Deceased brother's son* —A brother's son succeeds as heir in preference to a sister or a grand-daughter (daughter of a predeceased son) Both under the Mayukha and the Mitakshara, the sister comes in as a gotraja sapinda, and as such must be postponed to the brother's son, who is a sapinda MULJI PURSHOTUM *v.* CURSANDAS NATHA . I. L. R., 24 Bom., 563

129. ——————— *Succession to*

130. ——————— *Succession to tenant-right—Custom* —In the absence of any evi-

131. ——————— *Interest of*

BINDESSERY ROY . . . . 3 Agra, 101

132. ——————— Separated son—*Father's widow—Inheritance not subject to obstruction* —Under

NAICKEN *v.* SITHAMMAL . I. L. R., 2 Mad., 182

133. ——————— *Relinquishment*

property of his father, ... agreeing not to claim it during or after his father's

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued.*

lifetime, is to place him in the position of a separated son The relinquishment does not amount to disherison If therefore the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow BALKRISHNA TRIMBAK TENDULKAR *v.* SAVITRIBAI I. L. R., 3 Bom., 54

134. ——————— *Mitakshara—Partition—Right of son, born after partition, to father's property* —The property acquired by a Hindu governed by the law of the Mitakshara after a partition has taken place between him and his sons devolves on his death, when he leaves a son born after partition, on such son to the exclusion of the other sons NAWAL SING *v.* BHAGWAN SINGH

[I. L. R., 4 All., 427

135. ——————— *Sons of a separated brother—Vyavahara Mayukha, Ch* ...

CHAND *v.* HEMCHAND I. L. R., 9 Bom., 31

136. ——— Separated brothers—*United brother—Survivorship, Right of* —Two Hindu brothers who hold the ancestral estate in common with a third brother may nevertheless hold self-acquired property in common between themselves in such a manner as to give a right of survivorship to one of themselves. Leaving out of the question the survivor's right to succeed and looking at the half share of the deceased brother as having been held separately on his own account, his heir in respect of that property would be his widow, and during her lifetime the third brother could have no right of succession SHAM NARAIN *v.* COURT OF WARDS 20 W. R., 197

137.——————— *Separated grandson—Partition—Self-acquired property of grandfather, Descent of—United sons, Right of* —As between united sons and a separated grandson, the succession on the grandfather's death to the property, both ancestral and self acquired, left by him goes in preference according to Hindu law, to the united sons. FAKIRAPPA *v.* YELLAPPA . I. L. R., 22 Bom., 101

138. ——————— Reunion—*Succession of reunited members* —In a Hindu family, when, after partition, certain members of the family reunite,—*Held* that, if a reunion actually takes place between the proper parties, their representatives and descendants however remote, will remain joint until a fresh partition takes place The members of the reunited family and their descendants succeed to each other, to the exclusion of the members of the unassociated or not reunited branch TARA CHAND GHOSE *v.* PUDUM LOCHUN GHOSE

[5 W. R., 249 : 1 Ind. Jur., N. S., 207

139. ——————— *Requisites for proof of reunion* —According to Hindu law, mere living together in one residence or joint trade does not constitute a reunion after partition, but there

HINDU LAW—INHERITANCE—*continued.*

8. SPECIAL HEIRS—*continued.*

son—Kindred of half-blood—Bandhus.—Under the Hindu law of inheritance prevailing in the Madras Presidency, a maternal uncle of the half-blood is entitled to succeed in preference to the son of the father's paternal aunt. The former is an atma bandhu, the latter is pitru bandhu. MUTTUSAMI *v.* MUTTUKUMARASAMI . **I. L. R., 16 Mad., 23**

(*b*) FEMALES.

166. ——— **General rules** - *Succession of female heirs—Nature of property.*—It is not the universal rule that a Hindu woman cannot inherit so long as there is a male representative of the family. Her right to inherit depends on the nature of the property. If the property be the joint property of an undivided Hindu family, females are only entitled to maintenance; but if the property be held as a separate or divided property, it devolves upon the female heirs in their proper order of succession. SOORJOON *v.* ISHREE BRAHMAN . **3 N. W., 74**

167. ——— *Exclusion of female heirs—Mitakshara law—Joint property.*—When it is sought to exclude female heirs from succession to a husband or father under the Mitakshara, on the ground that the estate is joint, it must be shown to have been so at the time of the husband's or father's death, and not merely at the death of a predeceasing brother, the father of the claimant. PITUM KOONWAR *alias* MUNAR BEBEE *v.* JOY KISHEN DOSS . . . . **6 W. R., 101**

168. ——— *Limited estate in immoveable property inherited by females who have become members of family by marriage—Absolute estate in immoveable property taken by females who have not become members of family by marriage—Nature of estate taken by widow, mother, grandmother, daughter, sister, maternal great-niece.*—A maternal great-niece inheriting property is in the same position, as regards the nature of the estate taken by her, as a daughter or a sister. The rule which, in the Presidency of Bombay, restricts the alienation of property by a widow succeeding to her husband or a mother succeeding to her son, does not apply to women who have not become members of the family by marriage, *e.g.*, a daughter takes an absolute estate in the property which she inherits from her father, and a sister takes a like estate in property inherited from her brother. The above rule, which restricts the alienation of property by a widow inheriting from her husband or by a mother inheriting from her son, would seem to be applicable to a grandmother inheriting from her grandson, or to the widow of a sapinda, for they, like the widow and mother, enter by marriage into the family whence the property comes which they inherit. The plaintiff sued to recover the moveable and immoveable property left by his brother's widow, *L*, who died without issue. The property in question had been given to *L* and her grandmother, *R*, jointly by *R*'s sister, *M* (*L*'s maternal grand-aunt), who executed to them a deed of gift dated 17th December 1843. On her death, *R* and *L* took possession, and remained in joint possession until the death of *R*, which occurred in 1867. *L* was thenceforward, until her death on April 19th, 1869, in sole possession. The plaintiff had obtained a certificate of heirship to *L* under Bombay Regulation VIII of 1827. The defendants were *L*'s first cousins once removed. They claimed under a deed of gift executed to them dated 27th February 1869, and duly registered. The Subordinate Judge allowed the plaintiff's claim, holding the deed of gift to be *ultra vires* both as to the moveable and immoveable property. On appeal to the District Court, the Judge varied the decree of the lower Court, holding the deed of gift to be *ultra vires* only as to the immoveable property, and he varied the decree by awarding to the plaintiff as heir of *L* the immoveable property only. On appeal to the High Court, the only question argued was the nature of the estate taken by *L* in the immoveable property, her absolute right to the moveable property being admitted. *Held* that, whether *L* took by grant or by inheritance from *M*, she took an absolute estate, and, being as she was without issue, had complete power to execute the deed of gift in favour of the defendants. TULJARAM MORARJI *v.* MATHURADAS **I. L. R., 5 Bom., 662**

169. ——— *Law of inheritance in Bombay Presidency—Female taking absolute estate.*—In Bombay, if not in other provinces in India, a female may take by inheritance from a male an absolute as opposed to a life-estate, and one excluding any interest of the next heir as such of the propositus. BHAGIRTHIBAI *v.* KAHNUJIRAV . . **I. L. R., 11 Bom., 285**

170. ——— **Brother's son's daughters.** —A brother's son's daughters are not heirs according to Hindu law. RADHA PEAREE DOSSEE *v.* DOORGA MONEE DOSSIA . . **5 W. R., 131**

171. ——— **Daughters**—*Mitakshara law—Son's daughter.*—According to the Mitakshara law, a daughter or son's daughter does not inherit. KOOMUD CHUNDER ROY *v.* SEETAKUNT ROY [**W. R., F. B., 75**

172. ——— *Widow.*—The daughter has no right where there is a widow of the deceased. MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAR *alias* KATTAMA NACHIAR *v.* DORASINGA TEVAR . . . **6 Mad., 310**

173. ——— *Descendants in third and fourth degree.*—A daughter is, on the death of the widow of the last male proprietor, a preferable heir to descendants in the third and fourth remove. HIMUNCHULL *v.* MAHARAJ SINGH . **1 Agra, 210**

BURYAR SINGH *v.* HUNSEE . . **2 Agra, 166**

See GOLAB KOONWER *v.* SHIB SAHAI [**2 Agra, 54**

174. ——— *Absence of male issue or widow.*—The general rule of Hindu law is that, if a man die separate in estate from his kinsmen

HINDU LAW—INHERITANCE —*continued*

8 SPECIAL HEIRS—*continued*

149 ——— *Mitakshara and Mithila law*—A sister's son, except in Bengal is no heir according to the Mitakshara or the Mithila school JOWAHIR RAHOOT *v* KAILASSOT [1 W. R., 74

150 ——— A sister's son is not an heir according to law BHEEM RAM CHUCKERBUTTY *v* HUREE KISHORE ROY 1 W R, 359

151 ——— *Death of last female heir of uncle*—If a sister's son is alive at the death of his uncle's last preceding female heir who succeeded to the property, he takes the succession SEETA RAM GOSSAIN *v* FAKEER CHAND CHUCKERBUTTY 15 W. R., 433

See RASHBEHAREE ROY *v* NIMAYE CHURN [W R, 1864, 223

152 ——— *Mother's sister's son*—According to the general principles of Hindu law, a sister's son is a preferential heir to a mother's sister's son as being capable of conferring greater spiritual benefits upon the soul of the deceased GONESH CHUNDER ROY *v* NIL KOMUL ROY [22 W R, 264

153 ——— According to the Mitakshara a sister's son cannot inherit THAKOORAIN SAHIBA *v* MOHUN LALL [7 W R, P C, 25 11 Moore's I A, 386

154 ——— *Law in Madras*—According to the Hindu law in force in the Madras Presidency, a sister's son does not inherit DOE D KULLAMMAL *v* KUPPU PILLAI 1 Mad., 85

155. ——— *Bandhu*—Ac

[illegible]

SIMHA RAU [illegible]

156. ——— *Sapinda*—A sister's son does not succeed as a sapinda. STRINIVASA AYYANGAR *v* RENGASAMI AYYANGAR [I. L. R., 2 Mad., 304

157. ——— *Mitakshara Law*—*Held* that in the absence of nearer relatives a man may be heir to his mother's brother as regards [illegible]

Narayan Chuckerbutty, 2 B L R, F B, 28 *Gridhari Lall Roy* v *Bengal Government*, 1 B L R P C 44; *Naraini Kuar* v *Chandi Din* I L R, 9 All 467, and *Umaid Bahadur* v *Udoi Chand*, I L R., 6 Calc, 119, referred to RAGHUNATH KUARI *v* MUNNAN MISR [I. L. R., 20 All., 191

158. ——— *Bandhu*—According to the Hindu law current in the Madras Presidency, assuming that a sister is entitled to inherit as a bandhu, the claims of a sister's son are superior *Kutti Ammal* v *Radakrishna Aiyan* 8 *Mad* 88, approved LAKSHMANAMMAL *v* TIRUVENGADA MUDALI I L R., 5 Mad., 241

159 ——— *Mitakshara law*—By the Mitakshara a male descendant in the fifth degree from the great-grandfather of the propositus succeeds to the exclusion of the sister's son GOLAB SING *v* RAO KURUN SING RAO KURUN SING *v* MAHOMED FYAZ ALI KHAN [10 B L R, P C, 1 14 Moore's I A, 176, 187

160 ——— *Mitakshara*—According to the Mitakshara a sister's son who is a bandhu and not a sapinda similar to a daughter's son cannot inherit until the direct male line down to and including the last samanodaka *i e* fourteen degrees of the direct male line, has been exhausted. *Kooer Golab Singh* v *Rao Kuran Singh* 10 *B L R* 1 *Bhyah Ram Singh* v *Bhyah Ugur Singh* 13 *Moore's I A* 373 and *Lakshmanammal* v *Tiruvengada*, *I L R* 5 *Mad* 241 referred to NARAINI KUAR *v* CHANDI DIN I L R, 9 All, 467

161 ——— Step-sister's son.—A step sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency SUBBARAYA *v* KYLASA I. L R., 15 Mad, 300

162. ——— Uncle—*Maternal uncle—Father's maternal uncle*—The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown GRIDHARI LALL ROY *v* GOVERNMENT OF BENGAL 1 B L. R., P C, 44 [10 W R., P. C, 31

Reversing decision of High Court in GOVERNMENT *v* GREEDHAREE LALL ROY 4 W R., 13

163 ——— *Maternal uncles—Mother's sister's sons—Bandhus*—Maternal uncles are included in the class of bandhus and succeed in priority to mother's sister's sons MOHANDAS *v* KRISHNABAI I L R., 5 Bom., 597

164. ——— *Paternal uncle—Illatam—Burden of proof*—*N*, a Hindu who had admittedly been taken as illatam into the family of his father in law, died having property which he had acquired by virtue of his illatam marriage He was succeeded by his son, who died without issue leaving only a sister surviving him In a suit by the brother of *N*, who was the managing member of [illegible]

succeed to his property, and a paternal uncle being a preferable heir to a sister, the plaintiff was *primâ facie* entitled to recover, notwithstanding the admission, and that it was for the defendant to establish any special circumstances to rebut his claim. RAMAKRISTNA *v* SUBBAKKA I. L R., 12 Mad., 442

165. ——— *Maternal uncle of the half blood—Father's paternal aunt's*

HINDU LAW—INHERITANCE—*continued.*

8. SPECIAL HEIRS—*continued.*

of "unprovided" for.—The estate of a deceased Hindu governed by the law of the Mitakshara was in the possession of one of his daughters, who was in poor circumstances. His other daughter, who was well off and possessed of property, claimed to share in such estate, contending, with reference to the law of the Mitakshara, that, as no provision had been made for her by her father, she was "unprovided" for within the meaning of that law, and therefore entitled to share in such estate. *Held* that such expression must be construed irrespective of the sources of provision or non-provision. DANNO *v.* DARBO
[I. L. R., 4 All., 243

186. ——— *Succession among daughters—Test of right to inherit—Comparative poverty.*—In the Presidency of Bombay, the principle of law which governs the succession of daughters *inter se* as heirs to their father's estate is that, though the Courts ought not to go minutely into the question of comparative proverty, yet where the difference in wealth is marked, the whole property passes to the poorest daughter. TOTAWA *v.* BASAWA
[I. L. R., 23 Bom., 229

187. ——— *Married daughters.*—Married daughters are not excluded from succession by either the Dayabhaga or Mitakshara. BENODE KOOMAREE DEBEE *v.* PURDHAN GOPAL SAHEE . . . . . 2 W. R., 176

188. ——— *Law of inheritance in Presidency of Bombay—Daughter, Interest of, in Bombay, in property inherited from her parents.*—Under the Hindu law as prevailing in the Presidency of Bombay, a daughter inheriting from a mother or a father takes an absolute estate, which passes on her death to her own heirs, and not to those of the preceding owner. BHAGIRTHIBAI *v.* KAHNUJIRAV . I. L. R., 11 Bom., 285

189. ——— *Exclusion of sons by daughters in succession to stridhan property—Mitakshara law—Mayukha law.*—According to the Mitakshara, the daughter takes an absolute estate which classes as her stridhan, and descends to her own heirs, *i.e.*, to her daughters to the exclusion of her sons. The plaintiff sued, as the heir of her mother, *V*, to recover certain property which *V* had inherited from her father. The defence was that plaintiff's brothers excluded her title. *Held* that, the case being governed by the Mitakshara (which, and not the Mayukha, is the chief authority in the Ratnagiri District), the property in dispute descended to *V*'s daughter (the plaintiff), and not to *V*'s sons. JANKIBAI *v.* SUNDRA
[I. L. R., 14 Bom., 612

190. ——— *Widow.*—A Hindu, an inhabitant of Bombay, entitled to separate moveable and immoveable property, died without male issue, leaving a widow, four daughters, and brother, and the male issue of other deceased brothers. *Held* that the widow was entitled to the moveable property absolutely and to the immoveable property for life. Subject to the widow's interest,

HINDU LAW—INHE
—*continued.*

8. SPECIAL HEIRS—c

the immoveable property descended absolutely, in preference to the issue of the deceased brothers. TULSIDAS *v.* DEVKUVARBHAI

191. ——— *daughter—Subsequent marriage and* ing to the Hindu law current in Beng of son, grandson, great-grandson, o unmarried daughter succeeds in prefere daughters; and if the unmarried dau subsequently marry and die leaving her son will succeed to the exclusion of sisters and their male issue. RADE MANJEE *v.* RAM MUNDUL . 6 W

192. ——— *Danc Property left by Sister.*—By Hindu la death of one of two sisters to whom hereditary office of dancing girls attached to had passed on the death of their mother, the the deceased sister in the office devolves daughter, and not on the surviving sist survivorship. KAMAKSHI *v.* NAGARATHNAM
[5 Mad

193. ——— *Daugh estate—Stridhan—Jain law—Mitakshara.*—U the Mitakshara law, the estate which a daug takes in property inherited by her father is a qualified estate, and on her death such prope descends to the heirs of her father, and not to own heirs. CHOTAY LALL *v.* CHUNNOO LALL
[12 B. L. R., 235: 29 W. R., 49
S. C. on appeal to Privy Council
[I. L. R., 4 Calc., 744: L. R., 6 I. A., 15
3 C. L. R., 465

194. ——— *Daughter, Alienation by.*—A daughter inheriting property from her father takes a life-interest only in such property, and has no power of alienation beyond her lifetime. The heir of the father on her death takes the property as heir of the ancestor, and not as her heir. DEO PERSHAD *v.* LUJOO ROY
[14 B. L. R., 245 note: 20 W. R., 102

195. ——— *Mitakshara law.*—Under the Mitakshara law, the unmarried daughter succeeds only in priority of her married sisters, not to the ultimate exclusion of such sisters' right of inheritance from their father. Therefore, where a Hindu under the Mitakshara died leaving two daughters, one married and the other unmarried, and the latter succeeded to the father's estate, and then married and subsequently died, leaving a son and her sister her surviving,—*Held* that the sister was entitled to the property as the next heir of the father. DOWLUT KOOER *v.* BURMADEO SAHOY
[14 B. L. R., 246 note: 22 W. R., 54

196. ——— *Succession by daughter before her marriage—Subsequent marriage and birth of son—Death of such daughter—Succession of married sister.*—On the death of a daughter who had succeeded before her marriage to her

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued*

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175 ——— *Unmarried daughter* —According to the Mitakshara law, a maiden daughter does not succeed to her father in preference to her paternal uncle TOOLSEE *v.* MOHADEB RAOT 6 W R., 197

176 ——— *Unmarried or married daughters* —Unmarried or married daughters on whom as a class paternal property devolves, take a joint life interest with rights of survivorship The estate of inheritance passes from their father to the sons of all the daughters as his nearest heirs; and on the death of the last surviving daughter the sons take the property equally MUTTU VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAR *alias* KATTAMA NACHIAR *v* DORASINGA TEVAR 6 Mad., 310

177. ——— *Self acquired immoveable property—Widow* —A Hindu died possessed of self acquired property in land leaving no sons or sons' sons but one widow a daughter by the widow, and another daughter by an elder wife deceased The last died in the widow's lifetime leaving two sons *Held* that the daughters as co heiresses took an estate in remainder vested in interest on their father's death and that such vested right on the death of one of them during the widow's lifetime passed by inheritance to her sons, who upon the ...

Dissented from in LAKSHMIBAI *v* GANPAT MOWBA [5 Bom, O C, 128

178 ——— *Daughters as co-heiresses—Power of alienation or dealing otherwise* ...

are competent to enter into any arrangement regarding their respective rights in that estate, provided that such arrangement does not interfere with the rights of the reversionary heirs except by way of accelerating their succession KAILASH CHANDRA CHUCKERBUTTY *v* KASHI CHANDRA CHUCKERBUTTY I. L. R, 24 Calc, 339

179 ——— *Childless widowed daughter* —A childless widowed daughter, having no possibility of continuing the line of inheritance can never inherit. LUKHEEMONEE DOSSEE *v* TARAMONEE GOOPTEA [1 Ind. Jur, O S., 22 Marsh., 23: Hay, 67

180 *Mitakshara law* —*Semble*—According to the Mitakshara law, a married daughter with male offspring is entitled to inherit in preference to a sonless widowed daughter. GOCOOLANUND DASS *v* WOOMA DAEE [15 B L. R., 405 · 23 W. R., 340

In the same case on appeal to the Privy Council it was held that in the case of inheritance by daughters on default of nearer heirs no preference is awarded by the authorities recognized by the Benares school of Hindu law in Upper India to a daughter who has or is likely to have male issue, over a daughter who is barren or a childless widow *Semble*—Under the law of the Benares school a married daughter who is indigent succeeds to the inheritance of her deceased father in preference to a married daughter who is wealthy WOOMA DAEE *v* GOCOOLANUND DASS I. L. R., 3 Calc, 587 2 C L R, 51 [L R., 5 I. A, 40

181. ——— *Barren daughters* —Sonless or barren daughters are not excluded from inheritance by their sisters who have male issue SIMMANI AMMAL *v* MUTTAMMAL [I. L. R, 3 Mad., 265

182 — *Married daughters—Daughter having son—Priority—Unendowed daughter* —As between two married daughters the circumstance of having a son is no qualification on this side of India giving the married daughter ...

MANCHHABAI 2 Bom., 5

183 ——— *Test of daughter's priority* —On this side of India having male issue does not determine the right to inherit Comparative poverty is the only criterion for settling the claims of daughters to their father's estate A nirdhan (unendowed) daughter has preference over a sadhan (endowed) daughter *Bakubai* v *Manchhabai, 2 Bom, 5,* followed. POLI *v* NAROTUM BAPU [6 Bom., A. C., 183

184. — *Right of succession of daughters to father's estate* —*Held* that comparative poverty is the only criterion for settling the claims of daughters on their father's estate *Bakubai* v *Manchhabai, 2 Bom, 5* and *Poli* v *Narotum Bapu 6 Bom, A C 183* followed Where, therefore two of four daughters brought suits claiming each a moiety of their father's estate, to the exclusion of the two remaining daughters and such remaining daughters resisted such suits on the ground that they were entitled to the whole estate, being poor and needy, while their sisters were rich, and it was found that such remaining daughters were, as compared with their sisters, poor and needy, the Court dismissed such suits AUDH KUMARI *v* CHANDRA DAI I. L. R., 2 All, 561

185 ——— *Mitakshara, Ch I, s 8 v 11, and Ch II, s 9 v 13—Daughter's right of succession to father's estate—Meaning*

HINDU LAW—INHERITANCE —continued.

8. SPECIAL HEIRS—*continued.*

current in the Madras Presidency the father's sister is not entitled to inherit in preference to the mother's brother. *Semble per* WILKILSON, *J.*—The father's sister is a bandhu. NARASIMMA *v.* MANGAMMAL [I. L. R., 13 Mad., 10

207. ———— Grand-daughter—*Mitakshara law.*—According to Mitakshara law, a son's daughter does not inherit. KOOMUD CHUNDER ROY *v.* SEETAKUNT ROY . . W. R., F. B., 75

208. ———— *Bandhu—Son's daughter.*—A son's daughter is entitled to inherit to her grandfather as a bandhu. NALLANNA *v.* PONNAL [I. L. R., 14 Mad., 149

209. ———— *Daughter's daughter.*—On the principle laid down in *Nallanna* v. *Ponnal, I. L. R., 14 Mad., 149,* a daughter's daughter is, in the absence of preferential male heirs, entitled to succeed to her grandfather as a bandhu. RAMAPPA UDAYAN *v.* ARUMUGATH UDAYAN [I. L. R., 17 Mad., 182

BANSIDHAR *v.* GANESHI . I. L. R., 22 All., 338

210. ———— *Daughter of predeceased son—Great-grandson of a brother—Gotraja-sapinda—Bandhu.*—According to Hindu law, the daughter of a predeceased son of the propositus is not a gotraja-sapinda, and is not entitled to inherit in preference to the great-grandson in the male line of a separated brother. VENILAL *v.* PARJARAM . . . I. L. R., 20 Bom., 173

211. ———— Grandmother—*Paternal grandmother inheriting property from maiden grand-daughter—Estate taken by grandmother—Power to dispose by will.*—A paternal grandmother in Gujarat, inheriting moveable and immoveable property from her maiden grand-daughter, takes an absolute interest in such property, and on her death the property goes to her heir and not to the heir of the grand-daughter, and the grandmother can dispose of such property by will. GANDHI MAGANLAL MOTICHAND *v.* BAI JADAB I. L. R., 24 Bom., 192

212. ———— Mother.—By Hindu law the mother is a possible heir under certain circumstances. TARA SOONDUREE *v.* RASH MUNJUREE [12 W. R., 78

213. ———— *Mother's inheritance from son.*—According to Hindu law, a mother inheriting from her son has not an absolute property in the estate, but merely a life-interest, without power of alienation. BACHIRAJU *v.* VENKATAPPADU [2 Mad., 402

214. ———— *Widowed mother's estate as heir of son.*—*Held* that in a separate family a Hindu mother succeeding to her son's immoveable property takes in it the same estate as a Hindu widow takes in the immoveable property of her husband dying without male issue. A Hindu died, leaving by his first wife, who predeceased him, three sons, from whom he had separated, his second wife, and a minor son by the latter. The minor son died in infancy.

HINDU LAW—INHERITANCE —continued.

8. SPECIAL HEIRS—*continued.*

Held that the mother succeeded to the immoveable property of her minor son, but took only a life-interest in it. NARSAPPA LINGAPPA *v.* SAKHARAM KRISHNA [6 Bom., A. C., 215

215. ———— *Mother's right to succeed to a childless son's property—Priority of the mother over the father—Mitakshara law—Mayukha law—Law in Ratnagiri District.*—In the Ratnagiri District, the Mitakshara is the paramount authority on Hindu law. Under the Mitakshara, the mother of a childless separated Hindu comes in the order of succession next after his widow and before his father. The rule of the Mayukha, that the father is to be preferred to the mother, being directly opposed to the rule of the Mitakshara, cannot prevail in the Ratnagiri District. BALKRISHNA BAPUJI APTE *v.* LAKSHMAN DINKAR [I. L. R., 14 Bom., 605

216. ———— Niece—*Sister's daughter—Appointed daughter.*—According to Hindu law, a sister's daughter cannot become an "appointed daughter" nor her son a "putrika putra, nor is the adoption of a "putrika putra" valid in the present day. NURSING NARAIN *v.* BHUTTUN LALL [W. R., 1864, 194

217. ———— *Husband's nieces—Bandhu.*—A Hindu widow, married according to one of the approved forms, died without issue, leaving her surviving the plaintiffs, who were the daughters of her husband's deceased brother, and the first defendant, who was the adopted son of her sister's daughter, and the second defendant, who was the adopted son of her maternal uncle, and the third defendant, who was the widow of her brother. The defendants having taken possession of her stridhanam property on her death, the plaintiffs now sued as heirs under the Hindu Law for possession. *Held* that the plaintiffs were entitled to succeed. VENKATASUBRAMANIAM CHETTI *v.* THAYARAMMAH I. L. R., 21 Mad., 263

218. ———— Sisters—*Mitakshara law.*—According to the law of the Mitakshara, none but females expressly named can inherit, and the sister of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. *Gauri Sahai* v. *Rukko, I. L. R., 3 All., 45,* followed. JAGAT NARAIN *v.* SHEO DAS . . I. L. R., 5 All., 311

219. ———— *Sister's daughter.*—According to Hindu law, neither a sister nor a sister's daughter can inherit. KALI PERSHAD SURMA *v.* BHOIRABEE DABEE . . . 2 W. R., 180

ANUND CHUNDER MOOKERJEE *v.* TEETOORAM CHATTERJEA . . . . 5 W. R., 215

220. ———— *Mitakshara law—Male gotraja-sapindas.*—According to the Mitakshara law, a sister is not in the line of heirs, and is not entitled to succeed in preference to male gotraja-sapindas. JULLESSUR KOOER *v.* UGGUR ROY [I. L. R., 9 Calc., 725 : 12 C. L. R., 460

HINDU LAW—INHERITANCE —*continued*

8 SPECIAL HEIRS—*continued.*

father's estate to the exclusion of her married sister, the estate so inherited by her devolves upon her married sister who has or is likely to have male issue and not upon her own son IINUMONI DASI v. NIJARUN CHUNDER GUPTA

[I L R, 9 Calc, 154. 12 C L R, 376

197. ——— *Daughter's power of alienation* —Under the Hindu law, a daughter who succeeds to an absolute and several estate in her father's immoveable property may if she has no issue make a gift of that property in her lifetime or devise it by will and her devisee is entitled to hold it against her own heirs or the heirs of her father HARIBHAT v. DAMODARBHAT

[I. L R, 3 Bom, 171

198. ——— *Daughter's power of alienation* According to the law of the Presidency of Bombay the daughter of a Hindu dying without male issue takes absolutely, and may alienate lands by deed or devise them by will BABAJI v BALAJI GANESH I L R, 5 Bom, 660

199 ——— *Daughter's right of survivorship—Joint estate—Widows—Difference in the law of Bombay and the other Presidencies* —In these parts of the Presidency of Bombay where the doctrines of the Mayukha prevail,

200 ——— *Childless daughter Joint estate—Survivorship* —*R*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died, leaving a widow, *S* and three unmarried daughters *B* *S* *M*, and *N* On her husband's death *S* continued to reside with her brothers and was supported out of the income

tives of *R*'s brothers who ... the male defendants in the suit, joining *B* and *N* with them as co-defendants *Held* that *B*, being a childless widow at the time of her mother's death could take no interest in her father's estate *Held* also that on their mother's death *S M* and *N* as heirs of their father took a joint estate in his succession and on *S M*'s death the estate which had come to her and *N* jointly survived to *N* since the fact of the latter being at that time a childless widow did not destroy the right

of survivorship which she had previously acquired by inheritance AMIRTOLALL BOSE v RAJONIKANT MITTER 15 B L R, 10. 23 W. R., 214

[L R, 2 I A., 113

201. ——— *Right of daughter's son to maternal grandfather's estate—Reversioners* —So long as a daughter not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate *Amirtolall Bose v Rajonikant Mitter, 15 B L R, 10,* followed Where therefore *R* died leaving issue, two daughters *B* and *P* and *P* died shortly after *R*, leaving sons and while *B* was alive her sons and the sons of *P* sued as the heirs of *R* to set aside a mortgage of his real estate made by *B* as the guardian of her minor sons and by *A* the father of *P*'s sons as their father and guardian, such suit was held not to be maintainable BAIJ NATH v MAHABIR

[I L R., 1 All, 608

202 ——— sion ... the he... law

203 ——— *Priority of, to a paternal first cousin* —A Hindu widow, who had inherited the estate of her separated husband died leaving her surviving a widowed daughter-in-law and a first cousin of her deceased husband i e, his paternal uncle's son In a suit brought by the

ity to the paternal first cousin of her deceased husband VITHALDAS MANICKDAS v JESHUBAI

[I. L R., 4 Bom., 210

204 ——— *Mitakshara law* —Under the Mitakshara and usages obtaining in the District of Behar, a daughter-in-law whose husband has predeceased his father, is not in the line of heirs of her father-in-law *Per* MITTER *J*—A daughter-in-law, not being a joint owner with her father-in-law, cannot after his death take his estate by right of survivorship ANANDA BIBI v NOWNIT LAL I. L. R., 9 Calc., 315

205 ——— *Mayukha—Property given to a woman by a stranger—Devolution of such property—Daughter's daughters not entitled to it—Son's widow preferred as a sapinda* —By the law of inheritance laid down in the Mayukha a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male The daughter-in-law of the deceased owner succeeds therefore, in preference to the daughters of a deceased daughter BAI NARMADA v BHAGWANTRAI

[I. L. R., 12 Bom., 505

206 ——— Father's sister—*Mother's brother—Bandhus* —According to the Hindu law

HINDU LAW—INHERITANCE —continued.

8. SPECIAL HEIRS—*continued.*

paternal uncle's widow. The law as to the succession of a full-sister in the Presidency of Bombay does not rest solely upon either the Mitakshara or the Mayukha, but is built upon both taken conjointly. The case of *Vinayak Anandrav v. Lakshmibai, 1 Bom., 117 : 9 Moore's I. A., 516,* decided that in the Presidency of Bombay the term "brothers" occurring in the Mitakshara (ch. II, s. 14, pl. i) should be taken to include sisters. As the term "brothrs," while including sisters, introduces them after brothers, so the term "half-brothers" must be regarded as including half-sisters and as bringing them in after half-brothers. KESSERBAI *v.* VALAB RAOJI [I. L. R., 4 Bom., 188

232. —— *Half-sister—Sapinda.*—In competition with a sapinda of the deceased, a half-sister cannot succeed according to the Mitakshara. KUMARAVELU *v.* VIRANA GOUNDAN [I. L. R., 5 Mad., 29

MOTHOORANATH MOZOOMDAR *v.* EUSUFF ALI KHAN . . . . . 14 W. R., 356

233. —— *Rule of inheritance affected by manner of life—Maraver prostitutes—Act XXI of 1850.*—A married Maraver woman deserted her husband and lived in adultery with another man, to whom she bore four children. Of these children, the two daughters associated together leading the life of prostitutes, and the two sons separated themselves from their sisters and observed caste usage. The elder daughter died leaving property in land. *Held* that the sister succeeded to the deceased in preference to the brother. SIVASANGU *v.* MINAL . . I. L. R., 12 Mad., 277

234. —— *Prostitute—Succession to property of degraded woman.*—In the absence of any local custom or usage to the contrary, a woman of the town is no heir to her deceased sister, who was also a woman of the town. *Sivasangu* v. *Minal, I. L. R., 12 Mad., 277,* distinguished. A woman of the town, who is a Hindu by birth, does not cease to be a Hindu by reason of her degradation, and succession to her property is governed by Hindu law. SARNA MOYEE BEWA *v.* SECRETARY OF STATE FOR INDIA . . . . I. L. R., 25 Calc., 254 [2 C. W. N., 97

235. Son's widow—*Property of father-in-law.*—Where a son predeceased his father, and the son's widow subsequently succeeds to her father-in-law's property as his heir, she takes the same estate in it as she does in property inherited by her from her husband. GADADHAR BHAT *v.* CHANDRABHAGABAI . . I. L. R., 17 Bom., 690

236. —— Step-mother—*"Mother"—Mitakshara—Law in Bombay.*—The step-mother is not included by the Mitakshara within the term "mother." But, although a step-mother cannot in the Presidency of Bombay be introduced as an heir under the term *"mother,"* yet, as the widow of a gotraja-sapinda of the propositus, and therefore, according to the doctrine of the Mitakshara and the Mayukha, a gotraja-sapinda herself, she cannot be regarded as altogether excluded from the succession to a step-son. *Quære*—At what points in the list of heirs the stepmother, the brother's wife, and the paternal uncle's wife succeed in the Presidency of Bombay. KESSERBAI *v.* VALAB RAOJI [I. L. R., 4 Bom., 188

237. —— *Step-mother preferable to widow of half-brother.*—As between the widows of specified heirs who are gotraja-sapindas, the step-mother, being the widow of the father who is higher on the list than the half-brother, is preferable to the widow of the half-brother. RAKHMABAI *v.* TUKARAM I. L. R., 11 Bom., 47

238. —— *Mitakshara law—Succession to step-son.*—According to the Mitakshara school of Hindu law, a step-mother, not being one of the females expressly named in the Mitakshara and not being included under the term "mother" in Ch. II, s. 3, v. 1, cannot inherit from her deceased step-son. *Gauri Sahai* v. *Rukko, I. L. R., 3 All., 45; Jajat Narain* v. *Sheo Das, I. L. R., 5 All., 311; Lala Joti Lal* v. *Durani Koer, B. L. R., Sup. Vol., 67; Kessarbai* v. *Balab Raoji, I. L. R., 4 Bom., 188;* and *Kumaravelu* v. *Virana Goundan, I. L. R., 5 Mad., 29,* referred to. RAMA NAND *v.* SURGIANI . . . I. L. R., 16 All., 221

239. —— *Right of step-mother to succeed to her step-son in preference to his paternal first cousin.*—A step-mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son. RUSSOOBAI *v.* ZULEKHABAI . . . I. L. R., 19 Bom., 707

240. —— *Paternal uncle.*—Under the Hindu law which obtains in the Presidency of Madras, a step-mother does not succeed to the estate of her step-son in preference to a paternal uncle. *Kumaravelu* v. *Virana Goundan, I. L. R., 5 Mad., 29,* and *Muttammal* v. *Venga Lukkshmi Ammal, I. L. R., 5 Mad., 32,* approved. MARI *v.* CHINNAMMAL . . I. L. R., 8 Mad., 107

241. —— *Sagotra-sapindas.*—According to Hindu law current in the Madras Presidency, a step-mother does not succeed to the estate of her step-son in preference to his grandfather's brother's grandson. RAMASAMI *v.* NARASSAMA [I. L. R., 8 Mad., 133

242. —— *Sapindas—Mitakshara law.*—In competition with a sapinda of the deceased, a step-mother cannot succeed according to the Mitakshara. KUMARAVELU *v.* VIRANA GOUNDAN . . . I. L. R., 5 Mad., 29

243. —— *Paternal grandmother.*—A Hindu step-mother is not entitled to succeed to a deceased step-son before a paternal grandmother. MUTTAMAL *v.* VENGA LAKSMIAMMAL [I. L. R., 5 Mad., 32

244. —— Step-mother and step-grandmother—*Mitakshara law.*—According to

HINDU LAW—INHERITANCE—*continued*

8 SPECIAL HEIRS—*continued*

221. ——— *Brother*—A sister cannot succeed her brother as heir by Hindu law. RUKKINI DASI v. KADERNATH GHOSE [5 B L R., Ap., 87

RAMDYAL DEB v. MAGNEE 1 W. R., 227

ANUND CHUNDER MOOKERJEE v. TEETORAM CHATTERJEA 5 W. R., 214

222 ——— *Law of Bombay*

[illegible]

ing to the law in the Bombay Presidency In a separated family sisters take as heirs to an unmarried and intestate brother in preference to relations of the father Marriage does not exclude them from the inheritance VINAYAK ANANDRAV v. LAKSHMIBAI [1 Bom, 117

On appeal to the Privy Council [3 W R, P. C., 41: 9 Moore's I A, 516

223. ——— *Law of Western India—Viramitrodaya*—Under the Hindu law prevailing in Western India, a sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased

[illegible]

next male heirs come in—has not been followed in this Presidency. DHONDU GURAV v. GANGABAI [I. L. R, 3 Bom, 369

224. ——— *Sisters take absolutely in severalty—Daughters*—In the Bombay Presidency sisters take by inheritance from a brother absolute estates in severalty On the death of a son without leaving wife or child his estate goes to his mother, and on her death to his sisters as his heirs The sisters take an absolute estate in severalty, and not as joint tenants RINDABAI v. ANACHARYA [I. L. R., 15 Bom., 206

225. ——— *Cousin on pater-*

[illegible]

226 ——— *Sister's right of succession in preference to step-mother or paternal first cousin*—Under the Hindu law as prevailing in the Presidency of Bombay, a full-sister is the heir of her deceased brother, in preference either to his step mother or paternal first cousin. *Vinayak Anandrav v Lakshmibai, 1 Bom, 117 3 W R, P C, 41 9 Moore's I. A, 516, Shakharam Sadashiv Adhikari v Sitabhai, I L R, 3 Bom, 353,* followed. LAKSHMI v. DADA NANAJI [I. L. R., 4 Bom, 210

227 ——— *Sisters endowed and unendowed, Equal right of*—Hindu sisters, when they succeed, take equally An unendowed sister has no prior right of succession over an endowed sister, such as an unendowed daughter has over an endowed daughter BHAGIRTHIBAI v. BAYA [I. L. R, 5 Bom, 264

228 ——— *Daughter of a predeceased son*—In the island of Bombay the sister's place as heir is to be determined by the text of Mayukha Both under the Mayukha and the Mitakshara, the sister comes in as a gotraja sapinda, and as such must be postponed to the brother's son, who is a sapinda MULJI PURSHOTUM v. CURSANDAS NATHA I. L. R., 24 Bom, 563

229. ——— *Right of sister to inherit in preference to half-brother—Estate taken by a mother in her son's immoveable property—Mitakshara and Mayukha, Authority of*—A Hindu died possessed of certain immoveable property situated in the district of Thana in the Northern

[illegible]

n t the half brother, was entitled to succeed as heir to the estate of her deceased brother *Held* also that the decision in *Vinayak Anandrav v. Lakshmibai, 1 Bom 117 9 Moore's I. A., 516,* must be regarded as of general authority in the Presidency of Bombay, except where an invariable and ancient special usage

[illegible]

property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property. SAKHARAM SADASHIV ADHIKARI v. SITABAI I. L. R., 3 Bom, 353

230 ——— A sister may succeed to her brother and sue for the recovery of property unlawfully alienated by their mother which the latter inherited on the death of her son KUTTI AMMAL v. RADAKRISTNA AIYAN, 8 Mad., 88

231. ——— *Priority of sister and half-sister.*—In the Presidency of Bombay the sister and half-sister inherit in priority to the step-mother as well as to the brother's wife and the

HINDU LAW—INHERITANCE —*continued.*

8. SPECIAL HEIRS—*continued.*

have interests which pass *inter se* by right of survivorship, and a widow's right as heir is excluded by the test when any of such collateral kinsmen survive her husband. The governing principle of the rule is co-parcenary survivorship, which precludes alike the right of the widow and every other member of the family, who has no right to the enjoyment of the estate before the death of the possessor. YENUMULA GAVURIDEVAMMA GARU *v.* YENUMULA RAMANDORA GARU . . . . . . 6 Mad., 93

259. ——————— *Sapindas—Law in Bombay.*—In the Presidency and Island of Bombay the wife is a sapinda as well as a gotraja of her husband, and, if he die (without leaving a son or grandson), she, on the subsequent death of his separated sapinda and in the absence of any specially designated heir entitled to preference, ranks in the same place in the order of succession to the property of such separated sapinda as her husband would have occupied if he were living. Thus the widow of first cousin *ex-parte paterna* of the deceased propositus was held prior in order of succession to a fifth male cousin *ex-parte paterna* of the same. Or, in other words, a wife becomes by her marriage a sagotra-sapinda of her husband and his gotraja-sapindas, and in that capacity succeeds as a widow to property which he would have taken as a sapinda before the male representative of a remoter branch. The Institutes of Manu, the Mitakshara, and the Mayukha, although of great authority in the Presidency of Bombay, are all subject to the control of law and usage. No one of them is, as a whole, in full force in any part of the Presidency. In all of them there are precepts which, if they ever were practical law, have, for a time beyond the memory of living men, been obsolete. LALLUBHAI BAPUBHAI *v.* MANKUVARBHAI

[I. L. R., 2 Bom., 388

In the same case on appeal it was held by the Privy Council,—By the Hindu law in force in Western India the widow of a collateral relation, although she is not specified in the texts amongst the heirs to members of her husband's family, may come into the succession as one of the classes of gotraja-sapindas of that family. According to the law of the Mitakshara as accepted in Western India, the right to inherit in the classes of gotraja-sapindas is to be determined by family relationship, or the community of corporal particles, and not only by the capacity of performing funeral rites. The High Court having affirmed as a right, according to the law actually prevalent in Western India, the claim of a widow of a first cousin, on the father's side, of the deceased to inherit his estate as a gotraja-sapinda, it was held that there was no reason for withholding from that doctrine the force of law; the right of the widow being mainly rested on the ground of positive acceptance and usage. In this case the widow of a first cousin of the deceased, on the father's side, was held to have become by her marriage gotraja-sapinda of her husband's cousin's family, and to have a title to succeed to the estate of that cousin on his decease, in priority to male collateral gotraja-sapindas, who were seventh in descent from an ancestor common to them and to the deceased, who was sixth from that common ancestor. LALLUBHAI BAPUBHAI *v.* CASSIBAI

[I. L. R., 5 Bom., 110: 7 C. L. R., 445
L. R., 7 I. A., 212

260. ——————— *Heirs after widow's death—Female heir—Widow of gotraja-sapinda—Stridhan.*—*N* and *H* were divided brothers. *H* died first, leaving a son named *T*. *N* afterwards died childless, leaving his widow *J*, who took possession of *N*'s property. *T* died childless, leaving only his widow *B M*, who succeeded to the property on *J*'s death. After the death of *B M*, the plaintiff, who was the son of *T*'s sister, sued to recover the property from the defendants, who were distant samanodaka relations of *N*. It was contended on the plaintiff's behalf that on *J*'s death *B M* took the property as her stridhan acquired by inheritance, and that the plaintiff, as bandhu of her husband *T*, was heir to *B M*, who died without issue. *Held* (confirming the decree dismissing the suit) that on *J*'s death (*N* and *H* being divided) *B M* succeeded to the property as a gotraja sapinda, being the widow of *T*, the nephew of *N*. As such, she took only a life-interest in the property, and had no absolute interest in it as in her stridhan proper. In the Presidency of Bombay female heirs who by marriage enter into the gotra of the male whom they succeed (including widow, mother, grandmother, the widow of a gotraja-sapinda, etc.) take only a widow's estate in property which they inherit from the last male owner. Whether the estate inherited by these female heirs is called their stridhan or not, their restricted rights over it are admitted by all schools. MADHAVRAM MUGATRAM *v.* DAVE TRAMBAKLAL BHAWANISHANKAR

[I. L. R., 21 Bom., 739

261. ——————— *Succession of co-widows.*—Where a Hindu dies intestate, leaving no issue and several widows, the widows succeed equally, and are entitled to equal shares in his estate, and the ordinary course would be to grant them a joint administration. RAMIA *v.* BHAGI . 1 Bom., 66

S. C. IN THE GOODS OF DADOO MANIA

[1 Ind. Jur., O. S., 59

262. ——————— *Right of co-widows—Right of senior widow.*—According to Hindu law current in Southern India, two or more lawfully married wives (patnis) take a joint estate for life in their husband's property with rights of survivorship and equal beneficial enjoyment. The position of senior widow gives her, as in the case of other co-parceners, a preferable claim to the care and management of the joint property. JIJOYIAMBA BAYI SAIBA *v.* KAMAKSHI BAYI SAIBA. BAYI SAIBA *v.* JIJOYIAMBA BAYI SAIBA . . 3 Mad., 424

263. ——————— *Survivor of joint widows—Grandson of deceased widow.*—A

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued.*

Mitakshara, in a divided family a step-mother cannot succeed to the estate of her step-son or a step-grand-mother to the estate of her step-grandson LALA JOTI LAL *v* DURANI KOWER LAL KOWER *v.* JAIKARAN LAL

[B. L. R., Sup. Vol., 67 : W. R., F. B , 173

245. ——— **Widow**—*Heir on exhaustion of all specified heirs* —The members of the "compact series" of heirs specifically enumerated take in the

HARAKCHAND *v* HEMCHAND I. L. R., 9 Bom., 31

246. ——— *Brother of husband* —According to the Dayabhaga, a Hindu widow is the heiress of her husband in preference to his brother. CHUNDER KANT SURMAH *v* BUNSHEE DEB SURMAH . . . 6 W. R., 61

247. ——— *Right to succeed to family property.*—A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir. A widow can

of her husband,—*Held* that the suit must be dismissed PEDDAMUTTU VIRAMANI *v.* APPU RAU

[2 Mad., 117

248 ——— *Daughters* —A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue

VENKATAMMAL . . . . 1 Mad , 223

249. ——— *Estate of husband's brother* —*Held* that under Hindu law a widow was not entitled to inherit the estate of her husband's

250 ——— *Estate of husband's uncle* —*Held* that a widow cannot, under

[1 Agra, 140

HINDU LAW—INHERITANCE
—*continued*

8 SPECIAL HEIRS—*continued.*

251. ——— *Sonless widow* —*Jain law* —A sonless widow of a Saraogi Agarwala takes, by the custom of the sect, an absolute interest in the self acquired property of her husband SHEO SINGH RAI *v.* DAKHO . 6 N. W., 382

Affirmed by Privy Council in S. C

[I. L. R., 1 All., 688

252. ——— *Khojas—Sister* —The widow of a Khoja Mahomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister RAHIMATBAI *v* HIRBAI . I. L. R., 3 Bom., 34

253. ——— *Husband's brother*—*Mitakshara law* —Where the Mitakshara law prevails, the widow of a member of a joint Hindu family cannot succeed to her husband in preference to the husband's brother, and is no heir to her brother-in-law, or to his widow after their death BANEE PERSHAD *v* MAHABOODHY 7 W. R., 292

254. ——— *Property acquired by funds derived from ancestral estate* —Where property is acquired by the members of a joint Hindu family from funds derived from the ancestral property and held by them in joint possession, on the death of one of them his share does not devolve on his widow. TEEKNOO *v* MOONIAH . 7 W R., 440

255. ——— *Separate estate*

SHIVAGUNGAH

[2 W. R., P. C , 31 : 9 Moore's I. A , 539

256. ——— *Right of, to*

joint property of an undivided family. RAMPERSHAD TEWARRY *v.* SHEO CHURN DOSS THOOKRA *v* RAMPERSHAD TEWARRY 10 Moore's I. A., 490

257. ——— *Wives of gotraja-sapindas*—*Law of Western India* —According to the Hindu law obtaining in Western India, the wives of all gotraja-sapindas and samanodakas have rights of inheritance co-extensive with those of their husbands immediately after whom they succeed LAKSHMIBAI *v* JAYRAM HARI 6 Bom., A. C., 152

258 ——— *Right of survivorship* —The canon of the Hindu law of Northern India in regard to the succession of widows is "that a wedded wife, being chaste, takes the whole estate of a man who, being separated from his co-heirs and not subsequently re-united with them, dies leaving no male issue" The limit of the "co-heirs" must be held to include undivided collateral relations, who are descendants in the male line of one who was a co-parcener with an ancestor of the last possessor Collateral kinsmen answering the above description

HINDU LAW—INHERITANCE —*continued.*

8. SPECIAL HEIRS—*concluded.*

named can inherit, and the widow of the paternal uncle of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. GAURI SAHAI *v.* RUKKO . . . . . I. L. R., 3 All., 45

274. ———— *Succession on death of adopted son.*—On the death of a son adopted by a Hindu as the son of one of his two wives, the property descends (the adoptive mother having died before the son) not to the other wife, but to the next legal heir. KASHEESHUREE DEBIA *v.* GREESH CHUNDER LAHOREE . . . . . . W. R., 1864, 71

275. ———— *Succession on death of adopted son.*—If the adoptive mother survives an adopted son before he attains majority, she has a life-interest in the property of her husband. SOONDER KOOMAREE DEBIA *v.* GUDADHUR PERSHAD TEWAREE

[4 W. R., P. C., 116: 7 Moore's I. A., 54

276. ———— *Son validly adopted.*—In a case where a valid adoption makes the adopted son the legal heir, the widow has no right but that of maintenance. RUTNA DOBANI *v.* PURLADH DOBEY . . . . . . 7 W. R., 450

277. ———— *Preference of the adoptive mother in inheriting the family estate through the adopted son over a senior co-wife.*—A Hindu, having two wives, adopted a son in conjunction with the co-wife who was the junior in marriage of the two, having chosen her to be present at the adoption with himself. The husband next died; and after him the adopted child, having inherited the impartible family estate, also died. The two widows survived them both. *Held,* affirming the decisions of the Courts below, that the junrio co-wife, having taken part in the adoption by her husband at his selection, inherited the impartible family estate upon the death of the adopted son in preference to the co-wife who was senior in marriage, but who had not been conjoined in the adoption *Kasheeshuree Debia* v. *Greesh Chunder Lahoree, W. R. (1864), 71,* referred to and approved. ANNAPURNI NACHIAR *v.* FORBES

[I. L. R., 23 Mad., 1
3 C. W. N., 730

9. CHILDREN BY DIFFERENT WIVES.

278. ———— **Children by different mothers of same caste.**—The Hindu law of inheritance makes no distinction between the legitimate children of mothers of the same caste. NUGENDUR NARAIN *v.* RUGHOONATH NARAIN DEY

[W. R., 1864, 20

279. ———— **Sons by different mothers** —*Priority in time of marriage—Primogeniture.*—As regards the rights of sons by different wives to inherit, whether in co-parcenary or as sole heir (except, perhaps, the son of the first wife), the priority in point of time of their mothers' marriages has never been regarded when the wives were equal in caste and rank, and the rule of primogeniture was and is the same in the case of sons of several wives of equal caste and rank as in the case of sons by one. SIVANANANJA PERUMAL SETHURAYER *v.* MUTTU RAMALINGA SETHURAYER. ATHILAKSHMI AMMAL *v.* SIVANANANJA PERUMAL SETHURAYER . . . . 3 Mad., 75

Affirmed by the Privy Council in RAMALAKSHMI AMMAL *v.* SIVANANANTHA PERUMAL SETHURAYER

[12 B. L. R., 396: 17 W. R., 553
14 Moore's I. A., 570

10. ILLEGITIMATE CHILDREN.

280. ———— **Illegitimate children**—*Issue of illegal intercourse.*—Illegitimate sons are excluded by the Hindu law from inheriting when the intercourse between their parents was in violation of, or forbidden by, law. VENCATACHELLA CHETTY *v.* PARVATHAM . . . . . 8 Mad., 134

281. ———— *Illegitimate son and daughters—Property of mother.*—A Hindu woman having daughters by one paramour and a son by another died leaving a house. The daughter sued the son and his assignee for possession of the house in succession to their mother. It was *inter alia* pleaded for the defence that the plaintiffs could not recover the house for the reason that it had been derived from the putative father of the first defendant, but this was not proved. *Held* that the plaintiffs were entitled to recover. *Semble*—That the decision would have been the same even if the allegation on which the above plea was based had been established. ARUNAGIRI MADALI *v.* RANGANAYAKI AMMAL I. L. R., 21 Mad., 40

282. ———— *Maintenance, Right to—Sudras—Issue of Pat marriage.*—The general result of the authorities, both juridical and forensic, is that among the three regenerate classes of Hindus (Brahmans, Kshatriyas, and Vaishyas) illegitimate children are entitled to maintenance, but cannot inherit, unless there be local usage to the contrary; and that, among the Sudra class, illegitimate children, in certain cases at least, do inherit. The extent to which this right exists considered, and the texts of Hindu law books bearing on the point referred to. According to Vijnyaneshvara, the author of the Mitakshara (Ch. I, s. 12), the father of an illegitimate son by a Dasi among Sudras may, in his (the father's) lifetime, allot to such son a share equal to that of a legitimate son, and, if the father die without making such allotment, the illegitimate son by the Dasi is entitled to half the share of a legitimate son, and, if there be no legitimate son and no legitimate daughter or son of such a daughter, the illegitimate son by the Dasi takes the whole estate. If, however, there be a legitimate daughter or legitimate son of such a daughter, the illegitimate son would take only half of the share of a legitimate son, and such daughter or daughter's son would take the residue of the property, subject to the charge of maintaining the widow of the deceased proprietor. The dictum of LORD CAIRNS in *Gajapathi Radhika* v. *Gajapathi Nilamani, 13 Moore's I. A., 497 : S. C., 6 B. L. R.,*

HINDU LAW—INHERITANCE—*continued.*

8 SPECIAL HEIRS—*continued.*

Hindu died leaving no son, but two widows, *K* and *R*. A dispute having arisen, *K* brought a suit against *R* and obtained a decree dividing equally between them the lands of the deceased husband *K* took possession of her moiety and held the same till her death, when *R* took possession. In a suit by the sons of the deceased daughter of *K* against *R* for the share formerly held by *K*,—*Held* that they were not entitled in preference to *R*, the surviving widow. RINDAMMA *v* VENKATARAMAPPA [3 Mad., 268

264. ———— *Co-widows*—

widow is taken by all the widows as a joint estate for life, with rights of equal beneficial enjoyment and of survivorship The view that, according to the custom prevailing in Southern India, the senior widow by date of marriage succeeds in the first instance, the others inheriting in their turn as they survive, but being only entitled in the meantime to be maintained by the first, is not supported by the decisions of the Courts, nor by the sanction of any text-writer of paramount authority in the Madras Presidency GAJAPATHI NILAMANI *v* GAJAPATHI RADHAMANI

[I. L. R., 1 Mad., 290: 1 C. L. R., 97
L. R., 4 I. A., 212

265 ———— By Hindu law two widows of one and the same husband take a joint interest in one undivided estate, and although the widows may arrange for the enjoyment of the estate in separate portions there can be no compulsory ... the joint estate into an estate in ... of two such ... *v Kamak-* ... *v Venkata-* ... *Radhamani,* ... *deen Doobey v Myna Baee, 11 Moore's I A*, 487, followed. KATHAPERUMAL *v.* VENKABAI

[I. L. R, 2 Mad., 194

266 ———— *Co-heirs*— ... Under the Mitakshara law, ...

Yenumula Ramandora Garu, 6 Mad, 93, and *Naragunty Lutchmee Daramah v Vengama Naidoo, 9 Moore's I A*, 66, cited. RATAN DABEE *v* MODHOOSOODUN MOHAPATOR . 2 C. L. R., 328

267. ———— *Mitakshara law—Estate inherited by two Hindu widows from deceased husband—Alienation by one widow.*—When their Lordships of the Privy Council have seen fit to place a definite construction upon any point of Hindu law, the High Court is bound by such construction until such time as their Lordships may think fit to vary the same According to the Mitakshara law, the estate which two Hindu widows take by inheritance from their deceased husband is not several but joint The senior of two such Hindu widows is not a manager of such estate and competent for purposes of legal necessity, to alienate it without the consent of the other *Bhugwandeen Doobey v Myna Baee, 11 Moore's I. A.*, 487 and *Gajapathi Nilamani v Gajapathi Radhamani, I. L. R., 1 Mad.*, 290, referred to. RAM PIYARI *v* MULCHAND . I. L. R., 7 All., 114

268 ———— *Brother's widow—Survivorship—Benares school of law*—According to the law and usage of the Benares school of Hindu law, a brother's widow has no place in the line of heirs, nor is she entitled to succeed by right of survivorship *Bhugnee Dasee v Gopaljee, 1 S D A, N-W P (1862)*, 306, not followed *Ananda Bibee v Nownit Lal, I L R., 9 Calc* 315, followed in principle JOGDAMBA KOER *v* SECRETARY OF STATE FOR INDIA I. L. R, 16 Calc, 367

269 ———— *Joint family—Widow's right—Maintenance—Gotraja-sapinda*—The widow of an undivided brother does not take a life-estate She is only entitled to maintenance. She may perhaps succeed her brother in law as a gotraja-sapinda MANJAPPA HEGADE *v* LAKSHMI

[I. L. R., 15 Bom., 234

270 ———— *Son's widow*— ... Hindu died leaving him surviving ... widow ... (also a minor) him surviving *Held* that the grandson's widow succeeded in preference to the son's widow, according to the rule of obstructed heritage, the latter being entitled to maintenance out of the family property BAI AMRIT *v* BAI MANIK 12 Bom, 79

271. ———— *Cousin's widow as heiress—Female gotraja sapinda*—In a suit on a mortgage executed by a Hindu, since deceased, to the plaintiff, it appeared that the mortgage premises had been the property of *A*, whose daughter, since deceased, was the mortgagor's wife and had executed a will purporting to devise the property to him The suit was defended by *B*, who was the widow of a great grandson of *A*'s great-grandfather, and she claimed title to the property against the plaintiff under the law of inheritance. *Held* that *B* had no title to the mortgage premises. BALAMMA *v* PULLAYYA

[I. L. R., 18 Mad., 168

272. ———— *Widow of paternal uncle—Nephew*—The widow of a paternal uncle is, according to Hindu law, no heir to her nephew. UPENDRA MOHAN TAGORE *v.* THANDA DASI

[3 B. L. R., A. C., 349

S C. WOOPENDRO MOHUN TAGORE *v* THANDA DOSSIA . 13 W. R., 263

273. ———— *Widow of paternal uncle—Mitakshara law—Females*—According to Mitakshara law, none but females expressly

HINDU LAW—INHERITANCE —*continued.*

10. ILLEGITIMATE CHILDREN—*continued.*

any such heirs, the son of a female slave will participate to the extent of half a share only. *Held* therefore that *M*, the illegitimate son of an Ahir by a continuous concubine of the same caste, took his father's estate in preference to the daughters of a legitimate son of his father who died in the father's lifetime. SARSUTI *v.* MANNU **I. L. R., 2 All., 134**

292. ———— *Sudras—Right of illegitimate sons.*—*V* and *S* were undivided Hindu brothers of the Sudra caste. *V* died before *S*, leaving two illegitimate sons by *A*, an unmarried Sudra woman kept as a continuous concubine. *S* left two widows. *Held* that, although the illegitimate sons of *A* would be entitled to inherit the estate of *V*, they could neither exclude the right of survivorship of *S* nor succeed to the estate of *S*. KRISHNAYYAN *v.* MUTTUSAMI . . **I. L. R., 7 Mad., 407**

293. ———— *Sudras—Sons born of a kept woman.*—Sons born of a woman continuously kept by their father as a concubine (and whose connection with their father is neither adulterous nor incestuous) are, in the case of a Sudra's estate, entitled to equal shares with legitimate sons in a suit for partition, if it is the wish of the father that they should so participate. Cl. 2 of s. XII, Ch. I, Part II of the Mitakshara, does not refer alone to the self-acquired property of the father. KARUPPANNAN CHETTI *v.* BULOKAM CHETTI **[I. L. R., 23 Mad., 16**

294. ———— *Mitakshara—Sudra family—Dasi-putra or son by a slave-girl—Right of survivorship—Illegitimate son.*—In a Sudra family of the Mitakshara school, a dasi-putra or illegitimate son by a slave-girl is a co-parcener with his legitimate brother in the ancestral estate and will take by survivorship. JOGENDRO BHUPUTI *v.* NITTYANUND MAN SINGH . **I. L. R., 11 Calc., 702**

295. ———— *Illegitimate son.*—The illegitimate son of a married woman by a Gosavi with whom she is living in adultery while undivorced from her lawful husband cannot inherit his father's property. NARAYAN BHARTHI *v.* LAVING BHARTI **[I. L. R., 2 Bom., 140**

296. ———— *Sudras—Illegitimate sons—Collateral succession—Mitakshara law.*—Amongst Sudras governed by the Mitakshara law an illegitimate son does not inherit collaterally to a legitimate son by the same father. *Sarasuti* v. *Mannu, I. L. R. 2 All., 134 ; Jogendra Bhuputi* v. *Nittyanand Man Singh, I. L. R., 11 Calc., 702 : I. L. R., 18 Calc., 151 ; Sadu* v. *Baiza Nissar, Murtojah* v. *Dhunmunt Roy, Marsh., 609 ;* and *Krishnayyan* v. *Muttusami, I. L. R., 7 Mad., 407.* SHOME SHANKAR RAJENDRA VARERE *v.* RAJESAR SWAMI JANGAM . . **I. L. R., 21 All., 99**

297. ———— *Rights of an illegitimate son of a Sudra Position of legitimate, adoptive, and illegitimate sons and daughter's sons compared.*—*A*, the son of a deceased zamindar, sued *B* and *C*, his widow and brother, for possession of the zamindari, which was impartible. *A* was found to be an illegitimate son of the late zamindar. *Held* that he could not exclude his father's co-parcener or widow from succession to the impartible zamindari. *Krishnayyan* v. *Muttusami, I. L. R., 7 Mad., 407,* and *Kulanthai Natcher* v. *Ramamani* (unreported), in which it was ruled that a widow's claim to inherit would exclude that of an illegitimate son, approved and followed. *Sadu* v. *Baiza, I. L. R., 4 Bom., 37,* and *Jogendro Bhuputi* v. *Nittyanund Man Singh, I. L. R., 11 Calc., 702,* distinguished. PARVATHI *v.* THIRUMALAI **[I. L. R., 10 Mad., 334**

298. ———— *Determination of caste—Children of mixed marriages—Status of son of Kshatriya by Sudra woman.*—Although the illegitimate children of members of the regenerate classes are excluded from inheritance by the Mitakshara, the absence of legal marriage is no bar to the determination of their caste with reference to the law applied to Anulomajas (children born of mixed marriage). The illegitimate son of a Kshatriya by a Sudra woman is not a Sudra, but of a higher caste called Ugra. BRINDAVANA *v.* RADHAMANI **[I. L. R., 12 Mad., 72**

299. ———— *Sudras—Illegitimate son.*—*Held* that an Ahir, who was the offspring of an adulterous intercourse, was incapable of inheriting his father's property, even as a Sudra. *Vencatachella Chetty* v. *Parvathammal, 8 Mad., 134 ; Parisi Nayudu* v. *Bangaru Nayudu, 4 Mad., 204 ; Viraramuthi Udayan* v. *Singaravelu, I. L. R., 1 Mad., 306 ; Rahi* v. *Govinda, I. L. R., 1 Bom., 97 ;* and *Narayan Bharthi* v. *Laving Bharthi, I. L. R., 2 Bom., 140,* referred to. DATIP *v.* GANPAT **[I. L. R., 8 All., 387**

300. ———— *Sudras—Succession—Illegitimate son's right to succeed to the whole estate.*—The plaintiff was one of three daughters of one *S*, a Lingayet, who died in 1870, leaving immoveable property. The defendants were his illegitimate sons. After his death, his widow, one of his daughters, and the defendants continued to live together in union, and managed the property jointly. The widow died in 1880, and the defendants took possession of all the property. In 1885 the plaintiff brought this suit claiming to recover it, alleging that one of her sisters was disentitled from inheriting by disease; that the other was rich, and that the defendant's illegitimacy excluded them. The Court of first instance rejected the plaintiff's claim. The District Judge in appeal held that she was entitled to one-sixth of the property only, and the defendants to one-half. The defendants appealed to the High Court, contending that, on the death of the widow, the entire property survived to them. *Held* that the defendants were not entitled to more than the half to which they succeeded immediately on the death of their father, *S*. The other half went either to the widow or to the daughters. If it went to the widow, she plainly took it as one

HINDU LAW—INHERITANCE—continued.

10 ILLEGITIMATE CHILDREN—continued

202 14 W R, P C, 33 reversing 2 Mad, 369 "Supposing the sons or either of them, to have been legitimate the widow (of Padmanabha) could have been entitled to maintenance only Had both the sons been illegitimate, their claims, unless some special custom governed the case, which is not in proof would have been to maintenance only In this last-named case the widow would have had the ordinary estat of a Hindu widow,"—commented upon and explained The terms Dasi and Dasiputra as defined by various writers on Hindu law, discussed and the rights by inheritance of a Dasiputra considered The condition that, in order to entitle the illegitimate offspring of a Sudra woman by a Sudra to inherit the property of the latter or share in it, she should, according to Jimuta Vahana and Nilkantha be an unmarried woman, has in practice been discarded in the Presidency of Bombay In this Presidency the illegitimate offspring of a kept woman, or continuous concubine amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra G, a Sudra woman, was married to T, also a Sudra, by Pat marriage, without having received a chhor chiti (release) from her first husband, who was then living, or obtained any other sanction of her Pat with T Held that the intercourse between G and T was adulterous and that therefore the plaintiff, their son, being the result of such intercourse, was not entitled to take as heir even to the extent of half a share, and was not a Dasiputra within the scope of Yajnyavalkya's text or recognized as such by other commentators He was however held entitled to maintenance as he had been recognized by T as his son RAHI v GOVINDA WALAD TEJA I. L. R., 1 Bom, 97

283 ——— *Sudras*—In the case of Sudras the law has been and still is that illegitimate sons succeed their fathers by right of inheritance PANDAIYA TELAVER v PULI TELAVER [1 Mad, 478

284 ——— *Illegitimate sons of Jain of Dassa Porwad class—Right to maintenance*—Under the ordinary Hindu law, illegitimate sons do not inherit, but are only entitled to maintenance *Held* that a Jain of the Dassa Porwad caste was governed by the general Hindu law applicable to the three regenerate castes, being though not a Brahmin, certainly not a Sudra but a Vaishya by origin, and having as such carried this law with him from Gujarat to the Belgaum District *Held*, therefore, that his widow was his sole heir, and that his illegitimate sons were only entitled to maintenance *Quære*—Whether even among Sudras the widow is altogether excluded from inheritance by illegitimate sons. *Rahi v Govinda Walad Teja, I L R, 1 Bom., 97*, doubted AMBABAI v GOVIND I. L. R, 23 Bom., 257

285 ——— *Sons of Sudras*—The illegitimate sons of a Sudra are as such entitled to one half of a son's share. KESHOREE v SAMARDHAN 5 N. W., 94

HINDU LAW—INHERITANCE—continued

10 ILLEGITIMATE CHILDREN—continued

286 ——— *Sons of Sudra* [illegible] to Hindu law *Semble*—To entitle the illegitimate sons of a Sudra by a Sudra woman to inherit a share in the family property, the intercourse between the parents must have been a continuous one, and the woman must have been an unmarried woman. Therefore the illegitimate son of a Sudra by a Sudra woman living with him in adultery is not entitled to a share in or to inherit the family property DATTI PARISI NAYUDU v DATTI BANGARU NAYUDU [4 Mad, 204

287. ——— *Sons of Sudra—Brother's son—Semble*—An illegitimate son of a Sudra by his concubine is his heir in preference to a brother's son KRISHNAMMA v PAPA [4 Mad., 234

288 ——— *Sons of Sudra.*—The son of a Sudra by a slave girl is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side NISSAR MURTOJAH v DHUNWUNT ROY Marsh, 609

289 ——— *Sons of Sudra*—According to the doctrines of the Bengal school of Hindu law, a certain description only of illegitimate sons of a Sudra by an unmarried Sudra woman is entitled to inherit the father's property in the [illegible]

290 ——— *Son of Sudra by concubine—Bengal school of law*—According to the Bengal school of Hindu law, the son of a Sudra by a kept woman or continuous concubine does not inherit his father's estate *Narain Dhara v Rakhal Gain, I L R, 1 Calc, 1*, followed *Inderan Valungypuly Taver v Ramaswamy Pandia Talaver, 3 B L R, P C, 1 13 Moore's I A, 141*, explained. *Rahi v Govinda Valad Teja, I L R., 1 Bom, 97, Sadu v. Baiza, I L R 4 Bom, 37; Datti Parisi Nayudu v Datti Bangaru Nayudu, 4 Mad H C, 204, Krishnayyan v Muttusami I. L. R, 7 Mad, 407 Saraswati v Mannu I L. R, 2 All, 134*, and *Hargobind Kuari v Dharam Singh, I. L R 6 All, 329* explained and distinguished KIRPAL NARAIN TEWARI v SUKURMONI [I. L R, 10 Calc., 91

291. ——— *Mitakshara law—Illegitimate daughters*—The illegitimate offspring of a kept woman or continuous concubine amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra Under the Mitakshara law the son of a female slave by a Sudra takes the whole of his father's estate if there be no sons by a wedded wife, or daughters by such a wife, or sons of such daughters. If there be

HINDU LAW—INHERITANCE —*continued.*

12. IMPARTIBLE PROPERTY—*continued.*

S. C. SECRETARY OF STATE FOR INDIA *v.* KAMACHEE BOYE SAHIBA . 7 Moore's I. A., 476

309. ———— *Mitakshara law—Rules governing succession.*—For determining who is to be heir to an impartible estate, the same rules apply which also govern the succession to partible estates, though the estates can be held by only one member of the family at a time. JOGENDRO BHUPATI HURROCHUNDRA MAHAPATRA *v.* NITYANAND MAN SINGH . . . I. L. R., 18 Calc., 151 [L. R., 17 I. A., 128

310. ———— *Rules for succession to impartible estate—Custom—Seniority—Mitakshara law—Nearness of kin—Brothers of whole and half-blood.*—In determining the right of succession to an impartible estate, the class of kindred from whom a single heir is to be selected should be first ascertained. Next, it should be seen whether family custom or kulachar discloses a special rule of selection, and, in default of such custom, seniority of age constitutes a title by descent to the impartible estate, by analogy to general Hindu law. Nearness of blood is no ground of preference under the Mitakshara law in case of disputed succession to co-parcenary property which is partible, and it is likewise no ground of preference when such property is impartible. Where therefore the family property is impartible and belongs to a co-parcenary family consisting of all the brothers of the deceased propositus, whether of the whole or half-blood, in the absence of a specification to the contrary, the brother that is entitled to succeed to the property is the eldest in years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI . I. L. R., 17 Mad., 316

311. ———— *Rule of selection as between an elder son by a wife of an inferior class of caste and a junior son by a wife equal in caste—Dagger wife—Meaning of the term "bhoga stress"—Custom showing preference in succession for the sons by a senior wife to those by a junior wife.*—In case of disputed succession to indivisible property between sons who are born of mothers of the same caste, but of different classes therein, the right of a junior son by a first married wife, if she be of higher class, is superior to that of an elder son of a wife of lower class. Thus, when a Sudra marries a woman of his caste, but of an inferior class, as a dagger wife, in addition to his wife equal in caste to him, the rule of selection is in favour of his son by the latter by reason of the mother being of a higher class. A valid custom prevails among the Kumbla zamindars, whereby the son by a senior wife has a prior right of succession to a son by a junior wife, although the latter may be the elder son, seniority referring to the date of the marriage and not the age of the wife. RAMASAMI KAMAYA NAIK *v.* SUNDARALINGASAMI KAMAYA NAIK . I. L. R., 17 Mad., 422

312. ———— *Primogeniture.*—Succession in consequence of primogeniture amongst Hindus in India seems to be the rule only in the case of large zamindaris and estates which partake of the nature of principalities. BHUJANGRAV BIN DAVALATRAV GHORPADE *v.* MALOJIRAV BIN DAVALATRAV GHORPADE . . . 5 Bom., A. C., 161

313. ———— *Son's right at birth—Right of co-parcenary—Custom.*—There is no such co-parcenary in an estate impartible by custom as, under the law of the Mitakshara governing the descent of ordinary property, attaches to a son on his birth. The son's right at birth, under the Mitakshara, is so connected with the right to share in, and to obtain partition of, the estate that it does not exist independently of the latter right. SARTAJ KUARI *v.* DEORAJ KUARI . I. L. R., 10 All., 272 [L. R., 15 I. A., 51

See VENKATA SURYA MAHIPATI KRISHNA RAO *v.* COURT OF WARDS . I. L. R., 22 Mad., 383 [L. R., 26 I. A., 83

and VENKATA NARSASINHA NAIDU *v.* BHASHYAKARLU NAIDU . . I. L. R., 22 Mad., 538

314. ———— *Succession to raj, Nature of.*—On the question of the extent to which property of the nature of an impartible raj is excepted from the general law by a special rule of succession entitling the eldest of the next of kin to take solely,—*Held* that such a usage does not interfere with the general rules of succession further than to vest the possession and enjoyment of the corpus of the whole estate in a single member of the family, subject to the legal incidents attached to it as the heritage of an undivided family. The unity of the family right to the heritage is not dissevered any more than by the succession of co-parceners to partible property; but the mode of its beneficial enjoyment is different. Instead of several members of the family holding the property in common, one takes it in its entirety, and the common law rights of the others, who would be co-parceners of partible property, are reduced to rights of survivorship to the whole, dependent upon the same contingency as the rights of survivorship of co-parceners *inter se* to the undivided share of each, and to a provision for maintenance in lieu of co-parcenary shares. YENUMULA GAVURIDEVAMMA GARU *v.* YENUMULA RAMANDORA GARU [6 Mad., 93

315. ———— *Mode of succession to—Priority of marriage—Priority of birth—Custom—Evidence.*—By the general Hindu law, where a subject of inheritance is from its nature indivisible, and can therefore descend to one only of several sons, the succession as between sons by different wives (other than the first wife) of equal caste is to be determined by the priority of birth of the sons, and not by the priority of marriage of their respective mothers; and therefore, with respect to the succession to an impartible zamindari in the district of Tinnevelly in the Presidency of Madras, the son of the third wife is, in the absence of proof of any special custom or family usage to the contrary, to be preferred as heir to a subsequently born son of the second

HINDU LAW—INHERITANCE—*continued.*

10. ILLEGITIMATE CHILDREN—*continued.*

of a class of persons who exclude the illegitimate son's right to more than half (Mayne's Hindu Law, para 466, 4th ed) If it went to the daughters on the father's death, there was no evidence to show that the defendants had had adverse possession of it as against the plaintiff before the widow's death in 1880 SHESGIRI *v* GIREWA I. L R, 14 Bom, 232

301. ——— *Succession to outcasted Brahmin—Brothers of deceased remaining in caste—Sons of deceased by Bania widow—Doctrine of justice, equity, and good conscience.*—*K*, a Brahmin, lived with a Bania widow, for which offence he was outcasted He left his family and his village and went to live elsewhere, taking the widow with him He had sons by her, and he and his family lived as cultivators and acquired property *K* died in his new home and left the widow and their sons in possession of the property which he had

for recovery of the property *Held* that the sons of *K* by the Bania widow with whom he had been living and their mother were entitled to remain in possession of the property acquired by *K* as against the brothers of deceased who had remained in caste RADHA KISHEN *v* RAJ KUAR [I. L. R., 13 All., 573

302. ——— *Illegitimate son—Estate of Rajpoot*—An illegitimate son of a Rajpoot is not entitled to succeed to the property left by the poot ... divided, the ... to the ... perty if ... author- ... MAN ... Agra, 313

303. ——— *Khatri class—Illegitimate son—Maintenance*—*Held* that the ap- ... arriage of ... sequently ... of Ram- ... not enti-tled to inheritance as the illegitimate son of the Rajah, because his father, who was a Rajpoot, was a Khatri, or one of the three regenerate or twice-born races whose illegitimate sons could not inherit; but that he was entitled to maintenance out of his father's estate CHUTURYA RUN MURDUN SYN *v* PURLUHAD SYN [4 W. R., P. C, 132: 7 Moore's I A, 18

See ROSHAN SINGH *v* BALWANT SINGH [I. L. R., 23 All., 191

304. ——— *Sygi marriage—Byahi marriage*—By the custom of a Hindu family, no distinction was made between the issue of ...

wife RADAIK GHASEBAIN *v* BUDAIK PERSHAD SINGH . . Marsh., 644

305 ——— *Joint family consisting of illegitimate sons of Christian father*— ... —Illegitimate sons of a ... women although ... themselves parceners in the enjoyment of ... property after the manner of a joint Hindu family, are not a joint Hindu family according to Hindu law On the death of each, his lineal heirs representing their parent would, by the effect of the agreement entered into that partnership, collaterals however, not so entering by succession, unless the Hindu law gave in such a case a right of inheritance to collaterals In a partition ...

sale, mortgage, lease, or security of any separate share *Held* (1 that these provisions of the deed did not extend to prevent alienation by devise nor affect the right of inheritance; and (2) that the arrangement between the parties included the right of survivorship, the claim of the State only arising on failure of heirs of the last survivor MYNA BOYEE *v*. OOTTORAM [2 W. R., P. C., 4: 8 Moore's I. A., 400

Varying decision of High Court in MAYNA BAI *v*. UTTARAM . . . 2 Mad., 196

11 DANCING-GIRLS

307 ——— *Property acquired by dancing-girls*—... —In a suit by a brother against his sister for a share of property, valued at a large sum, on the ground that it was ancestral property left by their mother, it was found that the parties belonged to the bogam or dancing-girl caste residing in the Godavari district, and that the property had been acquired by the defendant as a prostitute *Held* that the plaintiff was not entitled to any share in property so acquired He was, however, held entitled to a moiety of a small portion which had belonged to their mother CHANDRAREKA *v* SECRETARY OF STATE FOR INDIA [I. L. R., 14 Mad., 163

12. IMPARTIBLE PROPERTY.

... *Succession to* ... ndu Inherit- ... he case of a ... *v* KAMA- ... P. C., 42

HINDU LAW—INHERITANCE —*continued.*

12. IMPARTIBLE PROPERTY—*continued.*

to a zamindari which is admitted to be in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time, is governed (in the absence of a special custom of descent) by the general Hindu law prevalent in the part of India in which the zamindari is situated, with such qualifications only as flow from the impartible character of the subject. The succession to such a zamindari may be governed by a particular or customary canon of descent. The course of succession, according to the Hindu law of the south of India of such a zamindari, where the family was in other respects an undivided family, was held to be that the husband dying without male issue, his widow inherited it. In the case of property of which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow (in default of male issue) succeeds to his separate estate. KATTAMA NAUCHEAR *v.* RAJAH OF SHIVAGUNGA

[2 W. R., P. C., 31 : 9 Moore's I. A., 539

322. ———————— *Impartibility of zamindari shown by evidence—Grant by sanad in 1802 of zamindari without change of rule of succession by primogeniture—Mad. Reg. XXV of 1802.*—The question whether an estate is impartible and decends by the law of primogeniture, or is subject to the ordinary Hindu law of inheritance, must be decided in each case according to the evidence given in it. The result of the evidence in this suit was to show that before and in the year 1802, the zamindar was in possession of the Devarakota zamindari, by right of primogeniture, as an impartible estate; and that he was so regarded by the Government. On the passing of Madras Regulation XXV of 1802, and the issue to him of a sanad-i-milkiyat-i-istimrari in accordance with it, he acquired a permanent property in the zamindari lands at a fixed assessment, but they remained heritable as before; the estate remained entire; and there was no evidence of any intention on the part of the Government to alter the nature of the tenure. What was said in the judgment in the *Hansapur case, 12 Moore's I. A., 1,* was applicable here. The estate continued to be impartible, and the rule of succession to it was not altered. It descended by the rule of primogeniture. SRIMANTU RAJA YARLAGADDU MALLIKARJUNA *v.* SRIMANTU RAJA YARLAGADDU DURGA

[I. L. R., 13 Mad., 406
L. R., 17 I. A., 134

323. ———————— *Zamindari formerly held under raj—Zamindari originally existing before 1759—Grant by Government in 1802, and again in 1835, of the same zamindari—Absence of intention to grant it as impartible—Sanad-i-milkiyat-i-istimrari.*—Although it might be taken that the Mirangi zamindari was formerly held on a military tenure under a raj, and that it continued to be held on the same tenure after it had been incorporated in another zamindari, and subsequently when, by conquest, it became part of the Vizianagram mindari, which was dismembered in 1795, and even if impartibility was the rule then applicable to the estate, yet the subsequent dealings with the zamindari, the nature and terms of the grants under which it was held after 1802, and the absence of proof of its having been impartible during the present century, also the character of the estate, which was in no way distinguishable from that of an ordinary zamindari assessed to the revenue, all led to the conclusion that the zamindari was now partible. It was clear from the kabuliat, or instrument of assent to the sanad-i-milkiyat-i-istimrari of 25th April 1804, that the latter was in the ordinary form of such grants, and there was no ground for inferring that the Government intended to create an impartible zamindari, or to restore an old one with impartibility attached. In 1835 there was, for a second time, such a dealing with the estate by the Government, in granting it again by sanad, as showed that there was no intention to the effect above mentioned. The case of the *Hansapur Zamindari, 12 Moore's I. A., 1,* situate in Behar, as to which their Lordships in 1867 held that it must be taken to retain its previous old quality of impartibility after having been granted in 1790, was distinguished. SATRUCHARLA JAGANNADHA RAZU *v.* SATRUCHARLA RAMABHADRA RAZU

[I. L. R., 14 Mad., 237

ZAMINDAR OF MARANGI *v.* SATRUCHARLA RAMABHADRA RAZU . . L. R., 18 I. A., 45

Affirming the decision of the High Court in JAGANATHA *v.* RAMABHADRA

[I. L. R., 11 Mad., 380

324. ———————— *Impartible zamindari—Obstructed inheritance—Interest of holders of—Inheritance by daughter's sons.*—In a suit to recover possession of the impartible zamindari of Shivaganga, it appeared that the istimrar zamindar died in 1829, and that after an interval of wrongful possession by his brother and his descendants, his daughter established her title to succeed him and was placed in possession in 1864. She died in 1877, leaving the present plaintiff, her son and three daughters her surviving. A suit was then brought by the father of the present defendant, who was the son of her elder sister (deceased), against the present plaintiff and the daughter of the late Rani for possession of the zamindari to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zamindari and retained it until his death in 1883, when he was succeeded by the present defendant. The plaintiff now sued as above, claiming that the right to the zamindari had devolved on him, and not on the defendant, on the death of the plaintiff in the former suit. *Held* (1) that the defendant's father had not succeeded to a qualified heritage, nor to a mere right of management of joint family property in which the plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner, and had therefore become a fresh stock of descent; (2) that accordingly nearness or remoteness of relationship to the istimrar

HINDU LAW—INHERITANCE
—continued.

12 IMPARTIBLE PROPERTY—continued.

wife. RAMALAKHSHMI AMMAL v SIVANANANTHA PERUMAL SETHURAYER
[12 B. L. R., 396: 17 W. R., 553
14 Moore's I. A., 570

Affirming decision of High Court in SIVANANANJA PERUMAL SETHURAYER v MUTTU RAMALINGA SETHURAYER . . . . 3 Mad., 75

316. —— *Mode of succession—Priority of sons by different mothers* — Where there is a plurality of wives equal in caste, [illegible]

DAVALATRAV GHORPADE . 5 Bom., A. C., 181

317. —— *Undivided impartible ancestral property* —Plaintiff, claiming title by succession both as heir by the general Hindu law and according to family custom, sued to recover the Totapalli estate in the zillah of Rajahmundry Defendant, the widow of the person last in the enjoyment of the estate, pleaded that the plaintiff was not of the royal stock, but merely a dependent of the [illegible]

plaintiff should have become a party to an appeal pending before the Privy Council from the decree in suit No. 3 of 1860, under which the defendant's [illegible]

Pending this appeal, the Privy Council delivered [illegible]

HINDU LAW—INHERITANCE
—continued

12. IMPARTIBLE PROPERTY—continued.

of the last possessor The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, [illegible]

separately acquired property YENUMULA GAVURIDEVAMMA GARU v YENUMULA RAMANDORA GARU
[6 Mad., 93

318 —— *Joint Hindu family—Impartible raj—Power of Rajah to* [illegible]

is, according to Hindu law, not separate property, but joint family property *Shivagunga case*, 9 [illegible]

See PERIASAMI v. PERIASAMI L. R., 5 I. A., 61
[I. L. R., 1 Mad., 312

Reversing decision of the High Court in PAREYASAMI *alias* KOTTAI TEVAR v. SALUKAI TEVAR *alias* OYYA TEVAR.

319. —— *Zamindars—Personal property of zamindar* —The rule of impartibility applicable to zamindaris does not extend to personal property of a zamindar left at his death, and such property is divisible amongst his sons after his death. RAJESWARA GAJAPUTTY NARAINA DEO MAHARAJALUNGARU v. VIRAPRATAPAH RUDRA GUJAPUTTY NARAINA DEO MAHARAJALUNGARU
[5 Mad., 31

320. —— *Separate estate.* —The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate *Shivagunga case, 9 Moore's I A, 539: 2 W. R, P C, 31,* explained. YANUMULA VENKAYAMAH v YANUMULA BOOCHIA VANKONDORA . . . 13 W. R., P. C., 21
[13 Moore's I. A., 333

321. —— *Impartible zamindaris, Succession to—Custom.*—The succession

HINDU LAW—INHERITANCE —*continued.*

12. IMPARTIBLE PROPERTY—*continued.*

true successor was the heir of the last owner of the originally unobstructed estate, though this did not apply to a partible estate. But for such a distinction no authority was cited, nor any principle suggested; and it was not upheld. The parties to this suit, first cousins once removed, contested the right to inherit an impartible zamindari, which had been acquired by their common ancestor, who had left two daughters by two different wives. The plaintiff was the son of the younger daughter; the defendant's father was the son of the elder. The younger half-sister survived the elder, and in 1863 was judicially declared to have inherited alone the impartible zamindari. On her death, the elder daughter's son, in litigation ending in 1881, made good his title to the impartible zamindari, being the descendant in the elder line. *Held* that this son of the elder daughter became, as the last male owner, the stock from which descent had now to be traced, and that the ancestor was no longer that stock. And *held* that the son of this last male owner had a title to the zamindari on his father's death in consequence of the full and complete ownership of the latter, who had himself become a fresh root of title. This decision disposed of the only question that was argued on this appeal. But the decision of the Courts below that the plaintiff could not claim the inheritance in virtue of survivorship was also affirmed. The judgment below, on this part of the case, was based on this, that no family coparcenary had existed to give rise to survivorship, as the sons of daughters could not form a family coparcenary, which could only consist of the descendants of a paternal ancestor. MUTTUVADUGANADHA TEVAR *v.* PERIASAMI TEVAR . **I. L. R., 19 Mad., 451**
[L. R., 23 I. A., 128

329. ———— *Succession to raj—Grant by Government—Beng. Reg. XI of 1793—Rights of junior members of family.*—The land sued for was originally an impartible raj, and by family custom descended on the death of each successive Rajah to his eldest male heir. It was confiscated by Government, and in 1790, when the decennial settlement was made, was permanently conferred on *A*, a Hindu. *A* in his lifetime, by his acts and otherwise, showed that he wanted the estate to descend to a single heir, and shortly before his death he made *B*, the son of his eldest grandson, such heir, and left a testamentary paper in furtherance of that object. The present suit was brought by some of the grandsons of *A*, who claimed to be co-heirs with *B* under the ordinary Hindu law of inheritance, and contended that the will was a forgery; that *A* had no power to make it; and that the special law of inheritance ceased when the first proprietor was expelled. It was found from the acts of the Government, and its dealings with the property, that *A* derived his title by grant from the Government, who had full dominion over the estate. The estate consequently must be taken to have been the separate and self-acquired property of *A*, and the nature of the estate granted was held to be a fresh grant of the family raj, as it had existed before the confiscation, with its customary rule of descent, the omission of the title of raj in the grant (there being no sanad in this case) not affecting the case, the title of Rajah not being absolutely essential to the tenure of the estate as a raj. Regulation XI of 1793 did not apply to this case, in which the grant was made before the passing of that Regulation, which, moreover, does not affect the descent of large zamindaris held as raj, or subject to family custom. The grant being of the nature found, it was further held that the question as to whether *A* had by law power to make a will did not really arise in this case, the only person who could impeach the will being the eldest grandson of *A*, who had waived his right in favour of his son *B*, there being no inchoate rights of inheritance in the junior members of the family. BEERPERTAB SAHEE *v.* RAJENDAR PERTAB SAHEE
[9 W. R., P. C., 15: 12 Moore's I. A., 1

330. ———— *Power of Rajah holding impartible raj—Relinquishment—Position of son on relinquishment.*—There is no difference between the position of a Rajah holding an impartible raj and that of an ordinary zamindar in respect of his power to relinquish the property in favour of his next legal heir. Such a relinquishment is not forbidden by the Hindu law. Where the effect of such a relinquishment is to give the property entirely into the hands of the son, he can during his father's lifetime question and challenge any acts done, and any acts that are alleged to have been done, by his father, and which are denied by the father. LUCHMEE NARAIN SINGH *v.* GIBBON
[14 W. R., 197

331. ———— *Effect of, on nature of property—Joint and separate property.*—The impartibility of property does not *per se* destroy its nature as joint family property, or render it the separate estate of the last holder, so as to destroy the right of another member of the joint family to succeed to it upon his death, in preference to those who would be his heirs if the property were separate. DOORGA PERSHAD SINGH *v.* DOORGA KONWARI **I. L. R., 4 Calc., 190: 3 C. L. R., 31**
[L. R., 5 I. A., 149

S. C. in the High Court. DOORGA PERSHAD *v.* DOORGA KOOEREE . . **20 W. R., 154**

332. ———— *Impartible estate—Primogeniture—Custom.*—The principles on which is founded the judgment in *Ramalakshmi Ammal* v. *Sivanantha Perumal Ammal, 14 Moore's I. A., 570,* as to the succession to an impartible inheritance, apply with equal force, whether the first-born son is born of a first married wife or of a wife afterwards married. The text of Manu, Ch. IX, v. 125, distinctly shows that among sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mother. In v. 122 of the same chapter the words "but of a lower class" added by the gloss of Cullnea Bhatta are to be read as correctly

HINDU LAW—INHERITANCE—*continued.*

12 IMPARTIBLE PROPERTY—*continued*

zamindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the istimrar zamindar's daughter's sons had not been exhausted MUTTUVADUGANATHA TEVAR *v* PERIASAMI [I. L. R , 16 Mad , 11

325. ——————— *Impartible poliem—Evidence of impartibility—Pannai lands attached to the poliem—Maintenance and marriage expenses of junior member of the family of poligar.*—The step brother of the holder of a poliem in the Madura district, of which the gross income was about R15 000 a year, sued him for a partition of the estate and in the alternative for maintenance It appeared that the poliem had been held on military tenure from the sixteenth century, that it had never been partitioned, and that the custom of impartibility obtained in a large number of similar poliems in the same district In 1821 and in 1842 enquiries were made of members of the zamindar's family and other persons connected with the zamindari as to the nature of the estate, and their recorded answers showed that they understood the estate to be impartible, and that it descended to a single heir *Held* (1) that the poliem was impartible, (2) that the plaintiff was entitled to decree for a monthly payment to him of R60 for his maintenance The plaintiff's claim extended to certain pannai lands within the limits of the zamindari some of which had been handed down from zamindar to zamindar since 1831, others having been purchased by the plaintiff's father The High Court found that they had been recognized and dealt with as part and parcel of the zamindari *Held* that the pannai lands were impartible, and the plaintiff was not entitled to a share in them or in the cattle, etc , used for cultivating them The plaintiff further claimed a sum of R4 000, the amount of a loan alleged to have been contracted by him for the purposes of his marriage It appeared that the cost of the marriage had been defrayed by the bride's brother *Held* that the plaintiff was not entitled to a decree on this account, although if he had incurred debts for the purposes of his marriage, the defendant would have been liable. LAKSHMIPATHI *v* KANDASAMI . I. L. R., 16 Mad , 54

326. ——————— *Adoption by a zamindar in conjunction with one of his two wives—Right to succeed to adoptive son*—The holder of [illegible]

COLLECTOR OF TINNEVELLY I. L. R , 18 Mad., 277

327. ——————— *Evidence proving title by inheritance to raj estates—Estate held as separate under the Hindu law—Widow's interest therein—Act XI of 1857 (Offences against the State)—Confiscation of property*—A raj estate was claimed by the appellant as the nearest agnatic kinsman of the last Rajah in possession who had died without male issue, but leaving a widow and a [illegible]

as the father's property had been confiscated on his conviction of an offence against the State, and sentence under Act XI of 1857 *Held* that, as the widow had [illegible]

could have been confiscated by the sentence which was passed in 1862 Nor had the father any right of inheritance that could be enforced during the life of the widow, who outlived him The separation of the estate, as held by the late Rajah, negatived both the confiscation and limitation The claimant, to prove his title, relied upon a pedigree not stated in any document produced that had existed in the family [illegible]

[illegible] [L. R., 22 I. A., 139

328 ——————— *Succession to impartible zamindari—Survivorship*—Heritage to [illegible]

[illegible] once the heritage to an impartible estate had become obstructed, on the death of each successive owner, the

HINDU LAW—INHERITANCE—*continued.*

13. JOINT PROPERTY AND SURVIVORSHIP—*continued.*

RUTTUN KRISTO BOSOO *v.* BHUGOBAN CHUNDER BOSOO . . . . . . 18 W. R., 32

338. ———————— *Mitakshara law—Joint and self-acquired property.*—A Hindu subject to the Mitakshara dying possessed of a share in joint family property and also of separately acquired property, the two will not necessarily devolve on the same heir; but they may either descend to different persons, or, if descending to the same persons, may descend in a different way and with different consequences. PITUM KOONWAR *alias* MUNAR BIBEE *v.* JOY KISHEN DASS . 6 W. R., 101

339. ———————— *Separate enjoyment of self-acquired property—Succession to self-acquired immoveable property.*—By the law current in the Madras Presidency, an undivided Hindu is entitled during his lifetime to the separate enjoyment of his self-acquired immoveable property; but on his death without male issue such property, unless it has been previously disposed of, devolves on his surviving co-parceners, and his widow is only entitled to maintenance. VARADIPERUMAL UDAIYAN *v.* ARDANARI UDAIYAN . . . 1 Mad., 412

340. ———— Survivorship—*Joint undivided family.*—There being a community of interest and unity of possession between all the members of a united family having common property, it follows that on the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and common possession. But the law of partition shows that, as to the separately acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation therefore of a right to take such property by survivorship fails. KATTAMA NAUCHEAR *v.* RAJAH OF SHIVAGUNGA [2 W. R., P. C., 31: 9 Moore's I. A., 539

SHIB NARAIN BOSE *v.* RAM NIDHEE BOSE [9 W. R., 87

341. ———————— *Mitakshara law.*—The principle of survivorship under Mitakshara law is limited to two descriptions of property, *viz.*, (1) That which is taken as unobstructed heritage, and property acquired by means of it; and (2) that which forms the joint property of re-united co-parceners. Property inherited by brothers from their maternal grandfather is not of those descriptions. JASODA KOER *v.* SHEO PERSHAD SINGH [I. L. R., 17 Calc., 33

342. ———————— *Mitakshara law—Succession.*—When, in an undivided Hindu family living under the Mitakshara law, a brother dies without having issue, but leaving brothers and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers, but on partition the whole estate, including the interest of the brother so dying, is divisible, and the right of representation secures to the sons or grandsons of a deceased brother the share which their father or grandfather would have taken had he survived the period of distribution. DEBI PARSHAD *v.* THAKUR DIAL . . . . . I. L. R., 1 All., 105

343. ———————— *Property, ancestral and self-acquired—Joint tenancy.*—When property is held in co-parcenary, the share of an undivided co-parcener who leaves no issue goes, according to Hindu law, to his undivided co-parceners, whether the property is ancestral or acquired by the co-parceners as joint tenants. RADHABAI *v.* NANARAV . . . . I. L. R., 3 Bom., 151

344. ———————— *Inheritance of illegitimate son among Sudras—Co-parceners.*—A Hindu of the Sudra caste died in 1850 leaving two widows, *B* and *S*, a son Mahadu and daughter Darya, the children, respectively, of *B* and *S*, and an illegitimate son Sadu. Sadu and Mahadu continued to live together for some time after their father's death; but subsequently, owing to domestic quarrels they lived separately, and Sadu was allowed by Mahadu a portion of the family property under an agreement in writing. They were, however, joint and undivided in estate, and continued to be so until the death of Mahadu in 1865. In a suit by Sadu as heir of his father and brother for the whole of the ancestral property,—*Held* by a Full Bench (WESTROPP, *C.J.*, KEMBALL and PINHEY, *JJ.*) that after the death of their father, Mahadu and Sadu succeeded as co-parceners to the whole property, subject to the maintenance of *B*, *S*, and Darya, if she were then unmarried, and in that event also to her reasonable marriage expenses,—Sadu, however, as an illegitimate son, taking only half a share. *Held* also that inequality of shares did not prevent co-parcenary and succession by survivorship, and that, as Mahadu and Sadu were co-parceners from the death of their father until the death of Mahadu, the usual result of co-parcenary followed on the occurrence of the latter event, *viz.*, the surviving co-parcener (*i.e.*, the plaintiff Sadu) took the whole property. *Rahi* v. *Govinda walad Teja, I. L. R., 1 Bom., 97*, followed. SADU *v.* BAIZA . . I. L. R., 4 Bom., 37

345. ———————— *Mitakshara law—Sudras—Illegitimate son—Impartible property.*—Under the Mitakshara, among Sudras, where a father left a son by a wedded wife, and an illegitimate son, the ordinary rule of survivorship incidental to a family co-parcenary was held to apply; and the illegitimate son, having survived the legitimate, was held entitled by survivorship to succeed to the family estate, which was impartible and appertained to a raj, on the death of his brother without male issue. *Sadu* v. *Baiza, I. L. R., 4 Bom., 37*, referred to and approved. JOGENDRO BHUPATI HURROCHUNDRA MAHAPATRA *v.* NITYANAND MAN SING [I. L. R., 18 Calc., 151
L. R., 17 I. A., 128

HINDU LAW—INHERITANCE —*continued*

12 IMPARTIBLE PROPERTY—*continued*

inserted in the text Two wives of a Palayagar of an impartible poliem having died before his marriage with a third and fourth wife, it was contended that the third being in the position of a first married or "royal" wife, her son was entitled to succeed

PEDDA RAMAPPA v BANGARI SESHAMMA
[I L R., 2 Mad., 286 8 C L. R., 315 L R., 8 I A, 1

333 ——— *Impartible po-*

polliagar, the right of exclusive possession passes from one line of descent to another, it devolves in the absence of proof of special custom of descent, upon the nearest co parcener in the senior line, and not necessarily on the co parcener nearest in blood

334. ——— *Impartible raj —Succession in joint family to ancestral impartible estate—Right of nearest male collateral—Exclusion of widow where the family is joint, and the estate not separate—Custom—Right of females to inherit* —Impartible ancestral estate is not, merely by ... estate of ... upon wh ... tinues join ... *I L R, 1 Calc, 153* *L R., 2 I A, 263*, referred to and followed A female cannot inherit impartible ancestral estate, belonging to a joint family, under the Mitakshara, when there are any male members of the family who are qualified to succeed as heirs—a rule of law not dependent on custom; and a custom modifying the law in this respect must be a custom to admit females, not a custom to exclude them. *Hiranath Koer v Ram Narayan Singh, 9 B L R, 274*, approved. Where a raj estate ancestral and impartible was not separate property and the family was undivided and where no special custom existed modifying the Mitakshara law of succession —*Held* that the nearest male collateral relation of the last Rajah, who died without male issue, was entitled to succeed in preference to the Rajah's widow This relation *viz* a brother of the late Rajah's deceased father at one time received an allowance for maintenance out of the family estate What amounted to an attachment of this according to a subsequent judicial decision, occurred in 1857 *Held* that he had not thereby been deprived of his right of succeeding as a member of the joint family The raj estate in question originated in the partition of a more ancient one with others out of which minor estates were formed. If in the latter there had been descents to widows no inference hence, to support the widow's claim to inherit in this family, could be drawn Such minor estates might have been separate (which estates granted for maintenance probably would be) and in that case the widows of the last holders would have succeeded them in due course of law Unless connection is shown between families evidence of a special family custom in one is not evidence of a similar family custom in another RUP SINGH v BAISNI
[I. L R, 7 All., 1: L. R., 11 I. A., 149

335. ——— *Mitakshara law—Exclusion of females from succession—Impartible joint ancestral property—Custom* —A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family governed by the Mitakshara, where there are any male members of the family who are qualified to succeed as heirs This is a rule of law, and not dependent on custom. A custom modifying the law must be a custom to admit females not a custom to exclude them. HIRANATH KOER v RAM NARAIN SINGH
[9 B L R., 274 17 W R., 316

Upholding on appeal S C. 15 W R., 375

But *see* DURGA PRASAD SINGH v DURGA KUNWARI 9 B L. R., 306 note: 13 W R., 10

where to a ghatwali estate which descended from the father to the eldest son, the younger sons having allowances made to them, a widow was held entitled to succeed as heir to her son.

336 ——— *Succession to raj—Tributary Mehals of Cuttack—Beng Reg XI of 1816, s 3* —According to the Pachees Sawal,

13. JOINT PROPERTY AND SURVIVORSHIP.

337. ——— Joint property—*Succession per capita and per stirpes* —Where property is acquired while a Hindu family is joint according to the Bengal law, the inheritance goes *per capita* and not *per stirpes* RAMGUTTY DOSS v NUNDO COOMAR DOSS . . . 3 W. R., 11

HINDU LAW—INHERITANCE —*continued.*

15. RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS, ETC.)—*continued.*

stranger, though of the same order, is excluded. KHUGGENDER NARAIN CHOWDHRY *v.* SHARUPGIR OGHORENATH . . **I. L. R., 4 Calc., 543**

355. ——— *Property left by ascetic—Rules relating to ascetic persons of the Sudra caste.*—It being clearly implied by all the authorities that a Sudra cannot enter the order of yathi or saniasi, the devolution of property left by a deceased person of the caste referred to, who has become an ascetic and renounced the world, is regulated by the ordinary law of inheritance, in the absence of proof of any general or special usage to the contrary. DHARMAPURAM PANDARA SANNADHI *v.* VIRAPANDIYAM PILLAI **I. L. R., 22 Mad., 302**

356. ——— **Guru**—*Disciple leaving master and going to distant country.*—The disciple of a guru who leaves his spiritual master without permission, and goes to a distant country and breaks off all intercourse with his preceptor, manifesting at the same time an intention to absent himself permanently, is not entitled, on his preceptor's death, to share in the succession to the preceptor's estate. SOOGUN CHUND *v.* GOPAL GIR . . . **4 N. W., 101**

357. ——— *Chela.*—Amongst saniasis generally no chela has a right as such to succeed to the property of his deceased guru. His right of succession depends upon his nomination by the deceased in his lifetime as his successor, which nomination is generally confirmed by the mohunts of the neighbourhood assembled together to perform the funeral obsequies of the deceased. Where a guru does not nominate his successor from among his chelas, such successor is elected and installed by the mohunts and principal persons of the sect in the neighbourhood upon the occasion of the funeral obsequies of the deceased. *Nirunjun Barthee* v. *Padaruth Barthee, S. D. A., N.-W. P., 1864, p. 512,* followed. Where, therefore, a chela sued for possession of a village belonging to his deceased guru, founding such suit on his right of succession as chela without alleging that he had been nominated by the deceased as his successor and confirmed, or that he had been elected as successor to the deceased, such suit was held to be unmaintainable. MADHO DAS *v.* KAMTA DAS . . . **I. L. R., 1 All., 539**

358. ——— *Priest—Disciple.*—In certain cases a priest may, according to Hindu law, be the heir of a deceased disciple. JUGDANUND GOSSAMEE *v.* KESSUB NUND GOSSAMEE **[W. R., 1864, 146**

359. ——— *Gosavi—Succession to the estate of a Gosavi in the Dekkan—A Gosavi's right to nominate his successor by a written instrument.*—A guru in the Dekkan has a right to nominate his successor from amongst his chelas (disciples) by a written declaration. TRIMBAKPURI GURU SITALPURI *v.* GANGABAI **[I. L. R., 11 Bom., 514**

HINDU LAW—INHERITANCE —*continued.*

15. RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS, ETC.)—*concluded.*

360. ——— **Mohunt**—*Chela—Heir of deceased mohunt.*—According to Hindu law, a chela is the heir of a deceased mohunt, and as such entitled to a certificate to enable him to collect his debts. SHEOPROKASH DOSS *v.* JOYRAM DOSS **[5 W. R., Mis., 57**

361. ——— *Chela—Heirs of deceased mohunt.*—Where the mohunt of a byragee muth died without having any chela,—*Held* that ordinarily his successor was appointed by the mohunts of other byragee muths, and that enquiry should be made as to the existence of a particular custom by which it was alleged that the property of the deceased passed to the brother of his spiritual preceptor. RAMDOSS BYRAGEE *v.* GUNGA DOSS **[3 Agra, 295**

362. ——— *Succession to the office and property of a deceased mohunt—Custom of the muth or institution.*—In determining the right of succession to the property left by the deceased head of a religious institution, the only law to be observed is to be found in custom and practice, which must be proved by evidence. On the death of a mohunt, the right to succeed to his landed and other property was contested between two goshains. *Held* that the claimant, in order to succeed, must prove the custom of the muth entitling him to recover the office and the property appertaining to it. The evidence showed the custom to be that the title to succeed to the office and property was dependent on the successor's having been the chela, approved and nominated as such by the late mohunt, and also, after the death of the latter, installed or confirmed as mohunt by the other goshains of the sect. *Held* that a claimant who failed to prove his installation or confirmation was not entitled to a decree for the office and property against a person alleging himself to have been a chela, who, whether with or without title, was in possession. GENDA PURI *v.* CHATAR PURI **[I. L. R., 9 All., 1**
L. R., 13 I. A., 100

16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

(*a*) GENERAL CASES.

363. ——— **Sapratibandha property.**—Sapratibandha (liable to obstruction) property vests in the heirs in existence at the time the inheritance opens, and is not subject to variation by the subsequent birth of any co-heir. NARASIMHA RAZU *v.* VEERABHADRA RAZU **I. L. R., 17 Mad., 287**

364. ——— **Suspension of inheritance**—*Unborn sons—Child in the womb, Right of.*—Proprietary right is created by birth, and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance remains in abeyance until the result of the conception

HINDU LAW—INHERITANCE —*continued*

13 JOINT PROPERTY AND SURVIVORSHIP —*continued*

346 ——— *Inheritance—Daughter's sons, Nature of estate taken by—Inheritance treated as joint property*—The estate of *V*, a Hindu, having descended to *D* and *R*, sons of the daughter of *V*, was held by them as joint tenants *D* having died *R* by will devised the estate to the plaintiff *Held that, although the shares which* devolve on the two sons of a daughter may not come to them as co parcenary property, yet inasmuch as *D* and *R* had treated the estate as co parcenary property, the survivor, *R*, was competent to dispose of the estate by will GOPALASAMI *v* CHINNASAMI

[I L. R., 7 Mad., 458

347 ——— *Co parceners—Liability of property for debts*—According to the rulings of the High Courts of Madras and Bombay, the undivided interest of a co-parcener is not liable for his separate simple debts after his death, but lapses to the survivors on his death KOTTA RAMASAMI CHETTI *v* BANGARI SESHAMA NAYANIVARU

[I L R., 3 Mad., 145

348. ——— *Joint family estate Succession to—Title of member by survivorship—Effect of award and record at settlement of widow's estate for life—Land Revenue Act, C P (XVIII of 1881), s 87*—Where a Hindu and his widow had successively held the estate in suit as joint family estate in co-parcenary with the appellant or his predecessor,—*Held* that the appellant succeeded at the widow's death Though the widow was recorded under an award by the Collector in the settlement records as owner of an 8 anna share of the estate for her [illegible] tion in title [illegible] the Land Re[illegible] of 1881) did n[illegible] award related solely to the widow's interest [illegible] PRASAD SUKAL *v* DEO DUTT RAM SUKAL

[I L R., 27 Calc., 515
L R., 27 I A, 39

349 ——— *Obstructed heritage—Succession per capita—Succession on extinction of a divided branch of a family*—On the death, without issue, of a Hindu who was divided from the rest of his family, his property passed in succession to his widow and mother On the death of the latter the nearest surviving reversioners were the plaintiff's husband and the first defendant's father, both since deceased, and their first cousin The plaintiff now claimed a one-third share of the property abovementioned as the heiress of her husband who left no issue It appeared that the plaintiff's husband and his co-reversioners were divided *Held* that the plaintiff was entitled to recover *Semble*—That she would have been entitled to recover even if her husband had not been divided from his co-reversioners SAMINADHA PILLAI *v* THANGATHANNI I. L. R, 19 Mad., 70

350 ——— *Obstructed inheritance—Inheritance passing to daughter's son—Presumption of joint property*—The daughter's sons of a deceased Hindu take the property of their maternal grandfather as an inheritance liable to [illegible] *Sivaganga Zamindar* v *Lakshmana, I L R, 9 Mad, 188*, doubted CHELIKANI VENKATARAMANAYAMMA GARU *v* APPA RAU BAHADUR GARU

[I. L. R., 20 Mad, 207

14 OCCUPANCY RIGHTS

351. ——— Right of occupancy—*Remote heirs*—The strict Hindu law of inheritance does not universally apply to the descent of occupancy rights Mere title by the law of inherit[illegible] [illegible] JATEE RAM SURMAH *v* MUNGLOO SURMAH

[8 W R., 60

352 ——— *Remote heirs—Occupancy raiyat*—Remote heirs are not allowed to succeed to a right of occupancy Sons or immediate heirs residing with the raiyat in the village succeed on his death PEM KOOER *v* UPTEE BALEE SING

[2 N. W., 66

15 RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS ETC)

353 ——— Ascetics—*Succession to property of ascetics—Right of occupancy*—Although the High Court has, under the Hindu law admitted the right of a disciple to succeed to the effects of an [illegible] Court does [illegible] disciple to [illegible] who leaves a large property, or any property which if he conformed to the spirit of his religion he could not have acquired But however this may be, a tenant right of occupancy is on a different footing from property which is exclusively the estate of a deceased ascetic, and the principles which govern the hereditary right of succession to a tenant right of occupancy are such as an ascetic if he conform to the spirit of his religion cannot carry out. SOORUJ KOMAR PERSHAD *v* MAHADEO DUTT . 5 N. W., 50

354. ——— *Succession to* [illegible] *of succession* [illegible] *ascetics suc*[illegible] [illegible] fellowship and personal association with [illegible] other, and a

HINDU LAW—INHERITANCE —*continued.*

16. DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF, INHERITANCE —*continued.*

375. ———————— *Congenital blindness—Person not born blind.*—According to the Hindu law as prevailing in the Bombay Presidency, blindness to cause exclusion from inheritance must be congenital. Therefore, where the widow of a childless intestate, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind,—*Held* that such blindness did not prevent her from inheriting the property of her husband on his decease. MURARJI GOKULDAS *v.* PARVATIBAI [I. L. R., 1 Bom., 177

376. ———————— *Incurable blindness.*—Incurable blindness, if not congenital, is not such an affliction as, under the Hindu law, excludes a person from inheritance. UMABAI *v.* BHAVU PADMANJI . . . I. L. R., 1 Bom., 557

(*d*) DEAFNESS AND DUMBNESS.

377. ———————— *Deaf and dumb person.*—According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his grandfather. *A* died leaving four sons. One, *B*, was born deaf and dumb. *B* lived in commensality with his brothers. Some time after *A*'s death a son was born to *B*. *Held* that *B*'s son was not entitled to succeed as heir to a share of the property descended from *A*. PARESHMANI DASI *v.* DINANATH DAS [1 B. L. R., A. C., 117
11 W. R., O. C., 19 note

378. ———————— *Deafness and dumbness from birth—Divesting of estate—son of excluded person.*—One *B*, a Hindu, died leaving him surviving *L*, his undivided son, born deaf and dumb, and the defendant, *P*, his (*B*'s) brother's son. *L* being disqualified from inheriting, the defendant *P*, at *B*'s death, succeeded to the entire family estate, and subsequently sold a part of it. *L* subsequently married and had a son, the plaintiff, who sued to recover his half share in a certain village. *Held* that, according to Hindu law obtaining in Western India, the family estate vested in the defendant, *P*, at the death of *B*, to the exclusion of his deaf and dumb son, and the subsequent birth of the plaintiff did not divest the defendant of the inheritance which had solely vested in him. BAPUJI *v.* PANDURANG [I. L. R., 6 Bom., 616

379. ———————— *Sons of deaf and dumb person—Partition—Disqualified heirs—Birth of qualified heir.*—Under the Hindu law of inheritance which obtains in Southern India, the sons of a deaf and dumb member of an undivided Hindu family are entitled to a share of the family estate in the lifetime of their father, notwithstanding that they were born after the death of their grandfather. In such a case the estate vests on the death of the grandfather in the qualified heirs, subject to the contingency of its being divested on the recovery of the disqualified, or the birth of a qualified, heir. KRISHNA *v.* SAMI . . I. L. R., 9 Mad., 64

380. ———————— *Inheritance—Exclusion from inheritance—Dumbness.*—Dumbness, if from birth, is a cause of disinherison in females as well as in males. A Hindu widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband. Such widow is, however, entitled to her stridhan and to maintenance out of the property of her deceased husband. Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and, if so, that the amount of her stridhan and of her maintenance might be ascertained. VALLABHRAM SHIBNARAYAN *v.* BAI HARIGANGA [4 Bom., A. C., 135

(*e*) INCONTINENCE.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

381. ———————— *Daughter's right of succession.*—Under the Hindu law prevailing in the Presidency of Bombay, a daughter is not debarred by incontinence from succession to the estate of her father. Smriti writers and commentators on Hindu law and judicial decisions on the question of a daughter's right of succession referred to and discussed. ADVYAPA *v.* RUDRAVA [I. L. R., 4 Bom., 104

(*f*) INSANITY.

382. ———————— *Mental incapacity—Idiotcy.*—The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiotcy is not necessarily utter mental darkness. A person of unsound mind, who has been so from his birth, is in point of law an idiot. The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. TIRUMAMAGAL AMMAL *v.* RAMASVAMI AYYANGAR . . 1 Mad., 214

383. ———————— *Idiotcy—Madness.*—The rule of Hindu law which disqualifies "idiots" and "madmen" from inheritance should be enforced only upon the most clear and satisfactory proof that its requirements are satisfied. The rule does not contemplate the disqualification of persons who are merely of weak intellect in the sense that they are not up to the average standard of human intelligence or endued with the business capacity to manage their affairs properly. *Tirumamagal Ammal v. Ramasvami Ayyangar, 1 Mad., 214,* distinguished. SUBTI *v.* NARAIN DAS [I. L. R., 12 All., 530

384. ———————— *Mitakshara family—Suit by lunatic father to recover family property—Disability to sue.*—A lunatic, a [illegible]

HINDU LAW—INHERITANCE
—*continued*

16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE
—*continued*

is ascertained If the child be still born, the estate

ercised in favour of an unborn son GOURA CHOWDHRAIN *v* CHUMMUN CHOWDHRY
[W. R., 1864, 340

365. ———— *Unborn son—Pregnancy—Adoption*—According to Hindu law, the right of inheritance is not suspended by pregnancy or until adoption DUKHINA DOSSEE *v* RASH BEHAREE MOZOOMDAR 6 W. R., 221

366. ———— *Son not born when succession opened out*—A sister's son, in order to have a preferential title over his paternal uncle, must have been born or conceived when the succession opened out If is contrary to Hindu law that a mother should be a trustee for a son who may hereafter be conceived. RASH BEHAREE ROY *v* NIMAYE CHURN . . W R., 1864, 223

367 ———— *Unbegotten heir*—An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son) The succession must vest in the heirs existing at the time of the death of the person whose inheritance descends. KOYLASNATH DOSS *v* GYAMONEE DOSSEE
[W. R., 1864, 314

368. ———— Divesting of estate—*Heir born after death of ancestor*—By Hindu law an

See also BAPUJI *v* PANDURANG
[I. L. R., 6 Bom., 616

369. ———— Exclusion from inheritance—*Proof of ground for exclusion*—The party who seeks to exclude one of the heirs to property from a share of the inheritance is bound to prove the cause of the exclusion. FUTTICK CHUNDER CHATTERJEE *v* JUGGUT MOHINEE DABI
[22 W. R., 348

370. ———— *Disqualification—Onus probandi—Presumption*—K. K. died leaving a widow (A), three sons (R, K, and P), and a daughter (W) R and K died unmarried, and P, who survived them left a widow (C M) W's son, K C, sued C M for 5 annas 15 gundas of the joint family estate One of the pleas raised for the defence was that the sons, R and K, were disqualified from inheriting, and 1 anna 15 gundas was claimed as the exclusive property of defendant's husband under an alleged gift. *Held* that the presumption

HINDU LAW—INHERITANCE
—*continued*

16 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE
—*continued*

(*b*) ADDICTION TO VICE

371 ———— *Addiction to vice as unfitting son for inheritance*—Vague and general evidence of plaintiff's gambling and licentious propensities is not sufficient to justify a finding that he has disqualified himself by "addiction to vice" for

hostility, to authorize a Court to pronounce the plaintiff "a professed enemy of his father" for the purpose of declaring him to have forfeited his right of inheritance by misconduct KALKA PERSHAD *v*. BUDREE SAH . . 3 N. W., 267

(*c*) BLINDNESS.

372 ———— *Son of blind man*.—A Hindu died in 1832, leaving an only son, who had been blind from his birth, and two widows, the ... th of the ... heir, the ... inherit-

in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting KALIDAS DAS *v* KRISHNA CHANDRA DAS
[2 B. L. R., F. B., 103
11 W. R., O C., 11

373. ———— *Incurable blindness*—*Semble*—A daughter who becomes incurably blind in her infancy has no right to inheritance, but only to maintenance BAKUBAI *v* MANCHHABAI . . . . . . 2 Bom., 5

374. ———— *Congenital blindness—Blindness after birth*—The blindness which under the Hindu law as recognized in Bengal excludes an afflicted person from inheritance, refers to congenital blindness, and not to loss of sight which has supervened after birth MOHESH CHUNDER ROY *v* CHUNDER MOHUN ROY
[14 B. L. R., 273: 23 W. R., 78

HINDU LAW—INHERITANCE —*continued.*

16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE —*continued.*

afflicted with it from a share in the ancestral estate. ANANTA *v.* RAMABAI . **I. L. R., 1 Bom., 554**

395. ——— *Virulent and aggravated form of leprosy.*—It is only when leprosy assumes a virulent and aggravated type that it is by Hindu law made a ground for disqualification for inheritance. JANARDHAN PANDURUNG *v.* GOPAL PANDURUNG . . . **5 Bom., A. C., 145**

396. ——— *Disease of a mild and not virulent form.*—Leprosy of a mild type was held not to affect the co-parcenary rights of a member of a Hindu family. It is only where the disease is of a virulent type that it effects a disqualification to inheritance. RANGAYYA CHETTY *v.* THANIKACHALLA MUDALI . **I. L. R., 19 Mad., 74**

397. ——— *Expiation—Onus of proof.*—Where a party who claimed to be heir-at-law to the estate of a deceased Hindu was opposed on the ground that he was disqualified from inheriting by leprosy, but volunteered to state that he had performed the penance required by the shastras for the expiation of the disease, he was held to have admitted thereby that the leprosy was of that grievous nature which demanded expiation before he could succeed to the inheritance, and to lie under the onus of proving the fact that expiation had been performed. BHOOBUNESSUREE DABEA *v.* GOUREE DOSS TURKOPUNCHANUN . . . **11 W. R., 535**

398. ——— *Evidence of incurable disease.*—When it is contended that a Hindu is incapable of inheriting by reason of an incurable disease, as leprosy, the strictest proof of the disease will be required. ISSUR CHUNDER SEIN *v.* RANEE DOSSEE . . . . . . **2 W. R., 125**

NULLIT CHUNDER GOHOO *v.* BAGOLA SOONDUREE DOSSEE . . . . . **21 W. R., 249**

399. ——— *Leprosy after vesting of estate—Divesting of property.*—A leper's property to which he has succeeded by inheritance before the disease is not divested from him; he can make a valid gift of it. SHAMA CHURN ADHICAREE BYRAGEE *v.* ROOP DOSS BYRAGEE . **6 W. R., 68**

(*h*) MARRIAGE.

400. ——— *Forfeiture of mohuntship by marriage.*—Among the Gossains of the Deccan and certain other places, marriage does not work a forfeiture of the office of mohunt and the rights and property appendant to it. GOSAIN RAMBHARTI JAGRUPBHARTI *v.* SURAJBHARTI HARIBHARTI . . . **I. L. R., 5 Bom., 682**

401. ——— *Hindu widow, Custom of marriage of—Forfeiture of estate.*—A Hindu widow, on remarriage, forfeits the estate inherited from her former husband, although, according to custom prevailing in her caste, a remarriage is permissible. *Murugayi* v. *Viramakali, I. L. R., 1 Mad., 226,* followed. *Matungini Gupta* v. *Ram Rutton Roy, I. L. R., 19 Calc., 289,* referred to. *Har Saran Dass* v. *Nandi, I. L. R., 11 All., 330,* dissented from. RASUL JEHAN BEGUM *v.* RAM SURUN SINGH . . . . **I. L. R., 22 Calc., 589**

402. ——— *Marriage of Hindu widow after conversion—Marriage Act (III of 1882), s. 2—Hindu Widows Marriage Act (XV of 1856), s. 2—Forfeiture of property of first husband—Act XXI of 1850.*—A Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by s. 10 of that Act, that she was not a Hindu. *Held* by the majority of the Full Bench (PRINSEP, *J.*, dissenting) that by her second marriage she forfeited her interest in her first husband's estate in favour of the next heir, all rights which any widow may have in her deceased husband's property by inheritance of her husband being expressly determined by s. 2 of the Hindu Widows Marriage Act (XV of 1856) upon her re-marriage. *Gopal Singh* v. *Dongazee, 3 W. R., 206,* overruled. PRINSEP, *J.*—S. 2 of Act XV of 1856 does not apply to all Hindu widows re-marrying, but only to Hindu widows remarrying as Hindus under Hindu law as provided by the Act. MATUNGINI GUPTA *v.* RAM RUTTON ROY **[I. L. R., 19 Calc., 289**

403. ——— *Remarriage—Widow Remarriage Act (XV of 1856), ss. 2, 3, and 4—Castes in which remarriage is allowed—Forfeiture of property inherited from son.*—Under s. 2 of the Widow Remarriage Act (XV of 1856), a Hindu widow belonging to a caste in which remarriage has been always allowed, who has inherited property from her son, forfeits by remarriage her interest in such property in favour of the next heir of the son. VITHU *v.* GOVINDA **[I. L. R., 22 Bom., 321**

(*i*) OUTCASTS.

404. ——— *Act XXI of 1850—Exclusion from caste.*—Since the passing of Act XXI of 1850, exclusion from caste, whether by renunciation of religion or from any other cause, is no longer a ground for exclusion from inheritance. BHUJJUN LALL *v.* GYA PERSHAD **[2 N. W., 446**

405. ——— *Convert—Act XXI of 1850.*—Before the passing of Act XXI of 1850, the property possessed or acquired by a Hindu convert to Mahomedanism prior to his conversion passed to his nearest heir professing the Hindu religion. MEWA KOONWER *v.* LALLA OUDH BEHAREE LALL . . . . **2 Agra, 311**

406. ——— *Marriage with Mahomedan—Forfeiture of property—Act XXI of*

HINDU LAW—INHERITANCE —*continued*

16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE —*continued*

of a joint Mitakshara family, cannot sue to recover property belonging to the joint family, he being, under the Mitakshara law, disqualified from inheritance, and therefore entitled to no share or partition in the property, but only to maintenance. RAM SOONDER ROY *v.* RAM SAHYE BHUGUT

[I. L. R., 8 Calc, 919

385.

386. ——— *Incurable insanity* —In order to exclude a person from inherit-

MAHENDRANATH BYSAK

[9 B L.R., 198 : 18 W. R, 305

387. ——— *Condition of mind at time succession opens out* —The condition of a minor's mind at the time the succession opens out to him is to be looked to, therefore, where a party obtained a decree declaratory of his right to succeed to certain property as reversioner on the death of the widows, and on their death he had become insane,—*Held* he was not entitled to execute the decree. BRAJA BHUKAN LAL AHUSTI *v* BICHAN DOBI

[9 B. L. R, 204 note : 14 W. R., 330

388 ——— *Condition of mind at time succession opens out* —In order to exclude a person from inheritance under the Hindu law on the ground of insanity, it is sufficient to prove insanity at the time when succession to the property opens out WOOMA PERSHAD ROY *v* GRISH CHUNDER PROCHUNDO . I. L. R., 10 Calc., 639

389. ——— *Condition of mind at time succession opens out—Incurable insanity* —A person is disqualified under Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable Under the same law, when property has once vested by succession in a person, his subsequent in-

v BUDH PRAKASH . I. L. R., 5 All., 509

390. ——— *Lunatic* —Although, according to Hindu law, a lunatic has no rights of inheritance, he is not debarred from taking an estate duly conveyed to him GOUREENATH *v.*

HINDU LAW—INHERITANCE —*continued*

16 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE —*continued*

COLLECTOR OF MONGHYR COURT OF WARDS *v.* RUGHOOBUR DYAL. SHEOPERSHAD NARAIN *v* COLLECTOR OF MONGHYR . . . 7 W. R., 5

391. ——— *Possession of property by lunatic* —A Hindu lunatic may be possessed of property, though he cannot take it by inheritance COURT OF WARDS *v* KUPULMUN SINGH

[10 B. L. R., 364 19 W. R., 164

392. ——— *Insanity subsequent to inheriting of property—Committee in lunacy under Act XXXV of 1858—Mortgage of joint family property by Mitakshara law* —Under

149, *Ram Soonder Roy* v *Ram Sahye Bhugut, I L R, 8 Calc, 919,* distinguished. *Balgobinda* v. *Lal Bahadur, S. D A, 1854, p 244, Deokishen* v *Budhprakash, I L R, 5 All, 509, Banku* v. *Pattamma, I L R, 14 Mad, 289,* and *Mosiram Kolita* v *Kery Kolitani, I. L R, 5 Calc, 776*

393. ——— *Proof of insanity—Appointment of guardian under Act XXXV of 1858—Disability to sue* —Exclusion, under the

1858 Although he might be incompetent to commence the suit or to proceed with it except by a guardian, this did not establish that he was excluded when the succession opened RAN BIJAI BAHADUR SINGH *v* JAGATPAL SINGH. JAGATPAL SINGH *v.* RAN BIJAI BAHADUR SINGH BISHESHAR BAKSH SINGH *v.* RAN BIJAI BAHADUR SINGH

[I. L. R., 18 Calc., 111
L. R., 17 I. A., 173

(*g*) LEPROSY.

394. ——— *Incurable leprosy* —Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes the person

HINDU LAW—INHERITANCE —*concluded.*

16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE —*concluded.*

418. ——————— *Mother's unchastity—Inheritance to property of son.*—A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property. RAMNATH TOLAPATTRO *v.* DURGA SUNDARI DEBI . . . **I. L. R., 4 Calc., 550**

419. ——————— *Daughter—Bengal school of Hindu law.*—According to the Bengal school of Hindu law, a daughter who is unchaste is precluded from inheriting the property of her father. RAMANANDA *alias* HARIS CHANDRA CHOWDHRY *v.* RAIKISHORI BARMANI
[I. L. R., 22 Calc., 347

420. ——————— *Prostitutes—Law governing succession to her property.*—A woman of the town who is a Hindu by birth does not cease to be a Hindu by reason of her degradation, and succession to her property is governed by Hindu law. SARNA MOYEE BEWA *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 25 Calc., 254
2 C. W. N., 97

HINDU LAW—JOINT FAMILY.

See CASES UNDER EXECUTION OF DECREE —MODE OF EXECUTION—JOINT PROPERTY.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER PARTIES—PARTIES TO SUITS—JOINT FAMILY.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

(*a*) GENERALLY.

1. ——————— Presumption—*Parties not Hindus residing in Hindu country—Presumption governing family.*—*Per* MITTER, *J.*—When parties who are not Hindus reside in a Hindu country, and, adopting the customs of Hindus, have lived as Hindu families do, joint in food and estate, they will be governed by a Hindu law of co-parcenary, and the legal presumptions applicable to the position of a joint Hindu family will be applied to them. *Abraham* v. *Abraham, 9 Moore's I. A., 195,* and *Vellai Mira Ravuttan* v. *Mira Moidin Ravuttan, 2 Mad., 414,* followed. *Suddurtonnessa* v. *Majada Khatoon, I. L. R., 3 Calc., 694 : 2 C. L. R., 308,* explained. *Achina Bibee* v. *Ajeejoonissa Bibee, 11 W. R., 45,* and *Moonshee Sirdar* v. *Molungo Sirdar, 24 W. R., 1,* followed as to manner of dealing with evidence of joint ownership. RUP CHAND CHOWDHRY *v.* LATU CHOWDHRY . . **3 C. L. R., 97**

2. ——————— *Status of Hindu family—Onus probandi.*—The original status of all Hindu families must be presumed to be joint and undivided. The onus probandi is on those who put forward claims upon the basis of separation and self-acquisition. BILASH KOONWAR *v.* BHAWANEE BUKSH NARAIN . . . . **W. R., 1864, 1**

PRANNATH CHOWDHRY *v.* KASHINATH ROY CHOWDHRY . . . . **W. R., 1864, 169**

BEER NARAIN SIRCAR *v.* TEENCOWRIE NUNDEE
[1 W. R., 316

NILMONEY BHOOYA *v.* GUNGA NARAIN SHAHUR ROY . . . . **1 W. R., 334**

MOONYE SURMAH *v.* LOMUN SURMAH
[2 W. R., 288

KATTAMA NAUCHEAR *v.* RAJAH OF SHIVAGUNGAH
[2 W. R., P. C., 31 : 9 Moore's I. A., 539

BIPRO PERSHAD MYTEE *v.* KENA DEYEE
[5 W. R., 82

DHURM CHUND SHATEA *v.* RAJMOHISHEE DEBEE . . . . . **5 W. R., 145**

LUKHUN CHUNDER *v.* MODHOO MOOKHEE DOSSEE . . . . . **5 W. R., 278**

SREENATH NAG MOZOOMDAR *v.* MON MOHINEE DOSSIA . . . . . . **6 W. R., 35**

NUND RAM *v.* CHOOTOO . . **1 Agra, 255**

GANE BHIVE PARAB *v.* KANE BHIVE
[4 Bom., A. C., 169

BAI MANCHA *v.* NAROTAMDAS KASHIDAS
[6 Bom., A. C., 1

SHEO RUTTUN KOONWUR *v.* GOUR BEHARY BHUKUT . . . . . . **7 W. R., 449**

RADHA RUMON KOONDOO *v.* PHOOL KOOMAREE BIBEE . . . . . . **10 W. R., 28**

GOBINDNATH SEIN *v.* GOBIND CHUNDER SEIN
[10 W. R., 393

HINDU LAW—INHERITANCE
—*continued*

16 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE
—*continued*

1850 —The Hindu law disentitling a widow to inherit on re-marriage and marriage with a Mahomedan does not apply to a widow who became a Mahomedan before her marriage with a Mahomedan According to s 3, Act XXI of 1850, and s 9 Bengal Regulation VII of 1832, conversion does not involve forfeiture of inheritance GOPAL SINGH *v* DHUNGAZEE
[3 W. R., 206

407. ———————— *Change of religion—Degradation—Death of husband while out cast—Dissolution of marriage—Suit by widow to recover husband's estate* —In 1850 *K* married *S*, both being Brahmans *K* subsequently became a convert to Christianity In 1881 *K* died and *S* claimed his estate *Held* that according to Hindu law, *K* died an outcast and degraded, and that, as his degradation was unatoned for, the marriage became absolutely dissolved and no right of inheritance remained to *S* SINAMMAL *v* ADMINISTRATOR GENERAL OF MADRAS I. L. R., 8 Mad, 169

408 ———————— *Exclusion from caste—Act XXI of 1850.*—Exclusion from caste of a Hindu for an alleged intrigue does not involve deprivation of his civil rights to hold deal with and inherit his property (Act XXI of 1850) KARU THEDATTA *alias* PULLAKATT NEELAKADAN NAMBOODRI *v* *MELE PULLAKATT VASSA DEVAN NAMBOODRI* . 1 Ind. Jur, N S., 236

409 ———————— *Exclusion from caste—Act XXI of 1850* —*Held* that the mere fact that the plaintiffs (whose right by near relationship to maintain the suit was established) are out of caste, and that the men of pure blood of their tribe do not eat with them is of itself no ground of exclusion from inheritance, s 1, Act XXI of 1850 having annulled any such disqualification TAIJ SINGH *v* KOUSILLA . . . 1 Agra, 90

410 ———————— *Persons descended from outcasts* —The doctrine of Hindu law that outcasts are incapable of inheritance has no
families
TARA
''ad., 50

411. ———————— *Divesting of property—Exclusion from caste* —It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an *outcast* *An estate* which a mother has inherited from her son is not divested by reason of her subsequent unchastity DEOKEE *v* SOOKHDEO 2 N W., 361

412. ———————— *Hindu becoming a byragee* —A Hindu becoming a byragee if he chooses to retain possession of, or to assert his right to, property to which he is entitled may be doing an act which is morally wrong but in which he will not be restrained by the Court, inasmuch as such an act does not exclude him from any rights he may have in such property JAGANNATH PAL *v* BIDYANAND
[1 B L. R, A C., 114: 10 W R., 172

TEELUCK CHUNDER *v* SHAMA CHURN PROKASH
[1 W R., 209

413 ———————— *Hindu becoming a byragee* —A Hindu by becoming a byragee, does not divest himself of all title in his family estate which on his death devolves on his heirs and not on a kept mistress although she may have performed his funeral rites on account of his being an outcast. KHOODERAM CHATTERJEE *v* ROOKHINEE BOISTOBEE
[15 W R., 197

414. ———————— *Act XXI of 1850—Suit by person born a Mahomedan as reversioner in a Hindu family* —Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste The latter part of s 1 protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste This applies to a case where a person born a Mahomedan his father having renounced the Hindu religion claims by right of inheritance under the Hindu law a share in his father's family BHAGWANT SING *v* KALLU
[I. L. R., 11 All., 100

(*j*) REFUSAL TO ADOPT

415. ———————— *Widow's refusal to adopt* —A widow's refusal to comply with a direction to adopt is no ground of forfeiture as regards her rights of inheritance UMA SUNDARI DABEE *v*. SOUROBINEE DABEE
[I. L. R., 7 Calc, 288 . 9 C L. R., 83

(*k*) UNCHASTITY

See CASES UNDER HINDU LAW—WIDOW —DISQUALIFICATION—UNCHASTITY

416. ———————— *Mother, Unchastity of* —The texts which pronounce that Hindu females are debarred from inheriting by unchastity are confined in their application to the widow as such, and do not impose a condition on the succession of the mother KOJIYADU *v* LAKSHMI
[I. L. R., 5 Mad., 149

417. ———————— *Mother's unchastity* —An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity It is a general rule of Hindu law that, when the descent of an estate has taken place
[illegible]

HINDU LAW—JOINT FAMILY—*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

the produce of part of the joint property, the separate possession by any member of a specific portion of the joint property ought not to be treated as an exclusive or adverse possession against the other members. HEERA LALL ROY *v.* BIDYADHUR ROY [21 W. R., 343

11. ———— *Presumption as to property being joint.*—As a result of litigation, a decree was passed establishing the title of *R* as a brother by adoption to *L* and a co-sharer of his family property; but no possession was actually directed to be given to *R* except of the zamindari which was the principal family estate. Subsequently an execution-creditor of *R* took possession of two lots, which were no part of the zamindari proper, the one having been acquired as a separate inheritance by an ancestor and the other having been purchased by *L* in the name of the priest of the family. *Held* that *R*'s title to the two lots was the same as his title to the zamindari, and that the burden of proof lay upon those who insisted that the two lots did not form part of the joint family estate. CHAND HURREE MAITEE *v.* NORENDRO NARAIN ROY . 19 W. R., 231

12. ———— *Waste land—Self-acquisition.*—When waste land was taken up and cultivated by the father of an undivided Hindu family, and the question was whether it was family property or self-acquired,—*Held* that the burden of proof lay on those who asserted that it was self-acquired. SUBBAYYA *v.* CHELLAMMA [I. L. R., 9 Mad., 477

13. ———— *Presumption—Raj—Separate estate.*—In the case of an ordinary joint undivided family the presumption would be that the property is joint, but where a plaintiff, though admitting the family is undivided, contends that the family estate is a raj and has always been held by one member separate and distinct from the others, who are only entitled to maintenance, the undivided nature of the family alone on this contention can raise no presumption as to the joint nature of the estate so as to shift the burden of proof from the plaintiff to the defendant,—a presumption inconsistent with the contention itself. But if under such circumstances the head of the family alleges that he has made purchases in the name of a single member, and that allegation is traversed, the onus will be on the party making the allegation to prove his case. RAJENDER PERTAB SAHA *v.* BEER PERTAB SAHA [W. R., 1864, 111

14. ———— *Property originally separate enjoyed in common.*—Where property enjoyed in common by persons capable of forming a joint Hindu family was in its origin separate property, there is no presumption that such property has subsequently become joint property. *Muttayan Chetti* v. *Sivagiri Zamindar, I. L. R., 3 Mad., 370,* and *Sivaganga Zamindar* v. *Lakshmana, I. L. R., 9 Mad., 188,* doubted. CHELIKANI VENKATARAMANAYAMMA GARU *v.* APPE RAU BAHADUR GARU [I. L. R., 20 Mad., 207

15. ———— *Presumption—Purchase of property with joint funds.*—*Held* by the majority of the Court (JACKSON, *J.*, dissenting) that the existence of joint family property being admitted, the presumption was that all acquired property belonged to the family, and that the onus was on the defendant in this case, who set up a plea of self-acquisition, to prove that the joint estate was so small that, after providing for the maintenance of the family, nothing remained to form a fund for the purchase of other properties for the benefit of the joint family. TARACHURN MOOKERJEE *v.* JOY NARAIN MOOKERJEE . . . 8 W. R., 226

16. ———— *Presumption as to house built by member of joint family—Claim to exclusive possession.*—Where a member of a family claims an exclusive right to a house which he has built, the presumption of Hindu law against his claim arises only if the family is joint, having possession of joint property. GUNGADHUR CHATTERJEE *v.* SOORJO NAUTH CHATTERJEE . 15 W. R., 446

17. ———— *Loan contracted by manager of joint family—Presumption.*—There is no presumption that a loan contracted by the manager of a joint Hindu family has been contracted for a family purpose. SOIRU PADMANABH RANGAPPA *v.* NARAYANRAO BIN VITHALRAO [I. L. R., 18 Bom., 520

18. ———— *Proof of separate acquisition—Adverse possession.*—Where both parties are descendants of the same common ancestor, and plaintiff proves that the property belonged to that common ancestor, and separation between the parties has taken place within statutable limit, it lies on the opposite party asserting it to be divided to show exclusive title by separate acquisition by some ancestor, apart from the right of succession by inheritance from the common ancestor, or a distinct severalty of interest and a clear adverse possession for more than twelve years. BAINEE SING *v.* BHURTH SINGH . . . . 1 Agra, 162

19. ———— *Evidence as to the continuance of the joint holding of property—Inheritance and survivorship under the Mitakshara law.*—A daughter in the absence of sons claimed to inherit, after the deaths of her father's widows, estate which she alleged to have belonged to him separately. This estate had been at one time in his possession jointly with his only brother, they having been members of a joint family under the Mitakshara. On the death of one of the brothers, who died before the claimant's father leaving sons, the latter became entitled thereto jointly with the survivor. In order to establish this claim to inherit her father's share on his subsequent death, it was *held* that it was for her to adduce evidence that there had been

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

DHAROO SOOKLAIN *v.* COURT OF WARDS [11 W. R., 336

KOONJ BEHAREE PATTUCK *v.* GYADEEN PATTUCK [11 W. R., 361

PEAREE LALL *v.* BUKHOREE LALL [12 W. R., 124

BROJONATH PAUL CHOWDHRY *v.* SREEGOPAL PAUL CHOWDHRY 12 W. R., 468

SHUSHEE MOHUN PAUL CHOWDHRY *v.* AUKIL CHUNDER BANERJEE 25 W. R., 232

INDER COOMAR DOSS *v.* DOOLAL CHUNDER DOSS [18 W. R., 258

DRORO MOYEE *v.* TARACHAND PAL [18 W. R., 459

BABOOLALL JHA *v.* JUMA BUKSH [22 W. R., 116

BHUGOBUTTY MISRAIN *v.* DOMUN MISSER [24 W. R., 365

3. —— *Onus probandi* —The presumption of the Hindu law in a joint undivided family is that the whole property of the family is joint estate, and the onus lies upon a party claiming any part of such property as his separate estate to establish that fact. GOOPEE KRIST GOSAIN *v.* GUNGAPERSAUD GOSAIN 6 Moore's I. A., 53

4. ———— *Presumption as to property acquired while family is joint* —The presumption is that all acquisitions made while a family is joint are made from the joint funds, and the burden is upon the person who alleges that any property is self acquired to prove that allegation. RAMPHUL SINGH *v.* DEO NARAIN SINGH [I. L. R., 8 Calc., 517: 10 C. L. R., 489

SHIB PERSHAD CHUCKERBUTTY *v.* GUNGA MONEE DEBEE 16 W. R., 291

5. ———— *Joint nucleus* —Where a family is joint and there is a nucleus from which property may be acquired, the presumption is that property acquired by any member is joint property, and the onus is with those who allege that it is self acquired. PRAN KRISTO MOZOOMDAR *v.* BHAGEERUTEE GOOPTIA . 20 W. R., 158

JUGODUMBA DEBIA *v.* ROHINEE DEBIA ROHINEE DEBIA *v.* DIGAMBUR CHATTERJEE . 23 W. R., 522

6. ———— Onus of proof—*Suit for share of ancestral property* —In a suit for a share of ancestral property, the onus is on the defendants to prove their allegation of separation at a certain time, they having admitted that the family was joint up to that time, and claiming the property as separately acquired subsequent to that date BISSUMBHUR SIRCAR *v.* SOORODHUNY DOSSEE [3 W. R., 21

TREELOCHUN ROY *v.* RAJKISHEN ROY [5 W. R., 214

7. ———— *Evidence of partition of joint family—Presumption—Concurrent decision on fact—Practice of Privy Council—Ground of appeal* —In a suit to enforce an alleged right of one brother against another to separate proprietary possession of a share in joint family estate, the concurrent findings of the Court below were definitely to the effect that a partition had taken place, after which the brothers had been no longer joint as to their interests The Courts had fully gone into the case on either side, receiving the evidence offered by either party, and they had considered the whole of it Therefore, it could not be effectively urged, as a ground of appeal, that the Courts below, in coming to the above conclusion, had erred in putting the burden of proof unduly upon the plaintiff, or disregarded the presumption arising from the original state of the family. RAM CHARAN *v.* DEBI DIN [I. L. R., 13 All., 165

8 ———— *Suit for share of joint property—Allegation of separation and exclusion* —In a suit for partition of joint family property, the defendants pleaded that the plaintiff's branch of the family had been separated more than thirty years ago. The plaintiff proved that the family property was joint and that he had a share in it. *Held* that under the circumstances it lay on the defendants to prove plaintiff's exclusion from the joint estate for more than twelve years and an exclusion known to the plaintiff. JIVANBHAT *v.* ANIBHAT I. L. R., 22 Bom., 259

9 ———— *Presumption —Evidence of separation* —The father and the son under the Mitakshara law are in the position of a joint Hindu family, and where ancestral estates are admitted to exist, the presumption of law is that all the property they are in possession of is joint pro- [illegible]

This case went to the Privy Council, but it was decided on a point which made the decision of this point unnecessary

See SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER 12 B. L. R., 304 [20 W. R., 377: L. R., I. A., Sup. Vol., 212

10 ———— *Presumption —Suit for share in joint property.*—In a suit to establish the plaintiff's right to a share in joint properties belonging to a family subject to the Mitakshara law, where a part of the property sued for was admitted to be joint,—*Held* that the presumption of Hindu law was that the residue of the property was also joint, and that the onus lay with the defendants to prove separate acquisition without the aid of joint funds. Where the members of a Hindu family are living in a joint family house, enjoying in common

HINDU LAW—JOINT FAMILY
—*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

said with joint funds and for the joint family, which consisted of *I* and his two brothers, fathers of the plaintiffs. The defence was that the lease was granted to *I* after the dissolution of commensality. The existence of any nucleus of joint property was not proved. *Held* that, where one member of a joint family is found to be in possession of any property, the family being presumed to be joint in estate, the presumption is, not that he was in possession of it as separate property acquired by him, but as a member of a joint family. Therefore, the burden of proof was on the defendant to show that *I* had acquired the property separately, and that it was property which could by law be treated as a separate acquisition. TARUCK CHUNDER PODDAR *v.* JODESHUR CHUNDER KOONDOO . **11 B. L. R., 193 : 19 W. R., 178**

29. ——— *Purchase by son —Joint funds—Presumption.*—In the case of a purchase by a son undivided in interest from his father, the legal presumption, in the absence of evidence to the contrary, would be that the purchase was made with the joint funds. NARAYAN DESHPANDE *v.* ANAJA DESHAPANDE . **I. L. R., 5 Bom., 130**

30. ——— *Purchase with joint funds—Execution of decree.*—A purchase by a member of a Hindu joint family with the joint funds is a purchase on account of the joint family, and property so bought may be taken in execution for a joint family debt. BISSESSUR LALL SAHOO *v.* LUCHMESSUR SINGH . . **L. R., 6 I. A., 233**

31. ——— *Joint property—Presumption that family is joint.*—The presumption of Hindu law is that every family is joint, and that all property possessed by the family is joint. A member of an undivided family may, however, acquire separate property, but the burden of proof lies upon him to prove the independent character of the acquisition. The essence of his exclusive title is that the separate property was acquired by his sole agency without employing what is common to the family. MOOLJI LILLA *v.* GOKULDAS VULLA **[I. L. R., 8 Bom., 154**

32. ——— *Presumption as to family being joint—Joint enjoyment of property.* —The normal condition of a Hindu family being joint, it must be presumed to remain joint, unless some proof of a subsequent separation is given; and where property is shown to have been once joint family property, it is presumed to remain joint until the contrary is shown; but the mere fact of a family being joint is not enough to raise a presumption in law that property acquired by one member of that family is joint property. Where *A*, as purchaser, claimed a share in property as being joint family property,—*Held* that *A* was not only bound to show that the family was joint, but that the property in question became joint property when acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. SHIU GOLAM SINGH *v.* BARAN SINGH **[1 B. L. R., A. C., 164 : 10 W. R., 19**

33. ——— *Separate acquisition.*—In a suit by a purchaser to recover a share in certain property of one of three brothers, who were admittedly living in commensality, the plaintiff alleged the property was purchased by his vendor and the other brothers with joint funds, the defendants alleging that it was bought by one of them other than the plaintiff's vendor with his separate funds. *Held* the onus was on the plaintiff to show that there was a joint fund from which the property could have been purchased. KHILUT CHUNDER GHOSE *v.* KOONJ LALL DHUR **[11 B. L. R., 194 note : 10 W. R., 333**

34. ——— *Separate acquisition Presumption—Nucleus.—Semble*—When property has been purchased by an individual member of a joint Hindu family, the burden of proof is on those who claim it to be joint property to show that there was a nucleus of joint property out of which it could have been purchased. DENONATH SHAW *v.* HURRYNARAIN SHAW . . **12 B. L. R., 349**

35. ——— *Acquiescence in property being considered joint.*—Certain Hindus descended from a common ancestor, after having lived in commensality and joint estate, separated, no deed of separation being executed or reservation expressed of any kind. About eleven years after, one of the parties to the separation sued the others, alleging that certain immoveable property, which stood in the name of the defendants or their ancestor, had remained in the possession of the defendants on the allegation of exclusive purchase; but that it could be proved to have been acquired by joint ancestral income during the time the family was joint. *Held* that the common presumption of Hindu law in favour of members of a joint family did not apply to such a case, and it lay on the plaintiffs to show why they were silent so long. Where other property was proved to have been separately acquired by the members of the family, it was held that there was no more presumption of joint than of separate acquisition. BADUL SINGH *v.* CHUTTURDHAREE SINGH **[9 W. R., 558**

36. ——— *Purchase by Hindu widow in husband's lifetime—Presumption.* —Where the widow of one of three brothers claimed two-thirds of a dwelling-house which had been the joint family property of the three brothers, on the ground that one-third fell to her as widow of the deceased and mother and guardian of his son, and that she had purchased the other third share from one of the brothers out of her own stridhan during the lifetime of her husband,—*Held* that, though it was equally difficult to prove that the purchase-money was stridhan, or that it was the joint property of the three brothers, yet, in the absence of evidence that the brothers had other joint property from which they derived joint profits, of which the purchase money could be treated as a part, the sale of the second third share to plaintiff under a genuine and

HINDU LAW—JOINT FAMILY
—*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

a separation between her father and his co sharer or co sharers. As the evidence stood, the inference was that the previous joint holding had continued till her father's death PRIT KOER *v* MAHADEO PERSHAD SINGH . I. L R, 22 Calc, 85
L R, 21 I. A, 134

20 ———— *Evidence—Person claiming a share, Onus of proof as to—Pre-*

[illegible] being the son [illegible] The plaintiff [illegible] e joint and had [illegible] died childless [illegible]

on whose death it had come to the defendant *Held* that there was no evidence to prove that the property left by *L* at his death was joint property It might be that *L* was joint with his brother *J*, but it did not follow that they possessed joint property [illegible]

had failed to do TOOLSEYDAS LUDHA *v* PREMJI TRICUMDAS I L. R, 13 Bom, 61

21. ———— *Presumption as to joint character of all property*—When a family is joint, it cannot be presumed that all the property in the hands of any member is joint SADABURTH PERSHAD SAHOO *v* LOTF ALI KHAN PHOOLBAS KOOER *v* LALL JUGGESSUR SAHI. BIKRAMJEET LALL *v* PHOOLBAS KOOER RAMDHYAN KOONWAR *v* PHOOLBAS KOER . . 14 W. R., 339

Upheld on review . 18 W. R., 48

22 ———— *Purchase from one member Notice of joint character of property*—Presumably every Hindu family is joint in food worship and estate, and this presumption applies in the absence of any evidence of a nucleus of joint property, and even without evidence that the family is undivided A purchaser, therefore from one member of a Hindu family *is affected with notice of the*

HINDU LAW—JOINT FAMILY
—*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

claims of the other members. GOBIND CHUNDER MOOKERJEE *v* DOORGAPERSAD BABOO
[14 B L. R., 337 23 W R, 248

BEER NARAIN SIRCAR *v* TEENCOWRIE NUNDEE
[1 W R, 316

23 ———— *Sale and subsequent re purchase by member of joint family* The rule of Hindu law in cases of joint family property (*i e*, that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the property has passed by sale into the hands of third parties and has been redeemed by private purchase by one of the former shareholders GOROO PERSAUD ROY *v* DABEE PERSAUD TEWAREE 6 W R., 58

24. ———— *Suit for joint property—Presumption*—In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion where [illegible]

25 ———— *Presumption as to purchase of property*—When a property is pur- [illegible]

MADHUB BOSE . 2 Hay, 333

26. ———— *Presumption as to purchase of property*—The presumption being that an estate purchased by one of several Hindu brothers living in commensality is the joint estate of all if a plaintiff seeks to dispossess the other brothers under a *title acquired from the brother in whose* name the estate was purchased, the onus of proving that it was the sole property of such brother lies upon him ANUND MOHUN ROY *v* LAMB
[Marsh., 169. 1 Hay, 374

NUBONATH DAS ROY *v* GODA KOLITA
[20 W R., 342

27. ———— *Purchase made when family is joint*—Purchases made when a family is joint by individual members thereof are presumably made out of the common funds and for the common benefit And it is incumbent on any member of the family alleging that a purchase made whilst such family was [illegible] was made out of his separate funds to establish his allegation by proof. HARI SINGH *v* DABEE SINGH 2 N. W., 303

28 ———— *Separate acquisition—Presumption*—The plaintiffs sued to have their rights declared under a mokurari maurasi lease obtained by *J* father of the defendant but it was

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

49. ———————— *Suit for possession of property alleged to be joint.*—In a suit to establish the right of the plaintiff's judgment-debtor in certain lands in regard to which a claim was set up in the execution stage on the ground of their being self-acquired property, it was held that the plaintiff having proved commensality and joint trade, and the existence of some property in the family before separation, the onus was on the defendant to rebut the *primâ facie* case made out. CHUNDRO TARA DEBIA *v.* BUKSH ALI . . . . **11 W. R., 305**

50. ———————— *Son-in-law merely living in house of father-in-law.*—The presumption of Hindu law as to joint property cannot apply in a case where the property is claimed through a son-in-law merely living in the house of his father-in-law and not shown to be joint in family or funds in any legal sense. DOSSEE MONEE DOSSEE *v.* RAM CHAND MOHUR . . . . **7 W. R., 249**

51. **Business with joint funds carried on by members of family**—*Establishment of business—Self-acquired property—Partnership—Onus probandi.*—D, one of five brothers, constituting an undivided Hindu family, but having no ancestral estate, acquired personal property with which, with the aid of his brothers, he established and carried on a banking business at five different places. Such circumstances, under the general principles of Hindu law, *held* to constitute a joint family property in which the brothers were entitled to share. The burden of proof that such was only an ordinary partnership and not a jointly-acquired family property lies on the party claiming it to have been separately acquired. RAMPERSHAD TEWARRY *v.* SHEO CHURN DASS. SHEO CHURN DOSS *v.* RAMPERSHAD TEWARRY. THOOKRA *v.* RAMPERSHAD TEWARRY

[10 Moore's I. A., 490

52. ———— **Use of names of all members in deed of purchase**—*Presumption as to joint property.*—Where it was admitted that in the title-deed, by which certain property in dispute was held, the names of all the brothers in a Hindu family were used as purchasers, and that in subsequent proceedings (mutation and partition) before the Collector the names of all the other members were similarly used as owners,—*Held* that there was sufficient ground for presuming joint property until the contrary was established. LALLA KALEE SAHOY *v.* LALLA KUMLA SAHOY . . . **24 W. R., 351**

53. ———— **Payment of a joint jumma**—*Possession—Joint possession, Evidence of.*—The mere fact that a joint jumma is payable to Government is not evidence of joint possession. SURBESHUR MUSTOFEE *v.* RAMLOCHUN CHUCKERBUTTY

[2 Hay, 81

54. ———— **Payment by one brother to another without receipt**—*Presumption of joint property—Onus probandi.*—The fact of one brother (plaintiff's husband) remitting certain sums of money to another brother (defendant) and no receipts being taken for them, and no accountability being stated, leads to the conclusion of the brothers being joint in property and in mess. *Per* MARKBY, *J.*—So also the fact of the two brothers being sued jointly upon a bond given by both, and of defendant discharging the debt alone, raises the presumption that the defendant discharged the debt out of the joint funds. HURISH CHUNDER MOOKERJEE *v.* MOKHODA DEBIA . . . **17 W. R., 565**

55. ——— **Separate debts contracted by manager**—*Presumption that debt is joint.*—The condition of a Hindu family is *primâ facie* joint, and therefore property held by the managing member of a Hindu family is *primâ facie* joint; but as there is nothing to prevent the individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. SUNKUR PERSHAD *v.* GOURY PERSHAD . . . **I. L. R., 5 Calc., 321**

56. ———— **Presumption as to nature of property where the family is joint.**—Where a plaintiff's family is admitted or proved to be a joint Hindu family, but there is no direct evidence as to the nature of the debt claimed by the plaintiff, the presumption is that it is a family debt. JAGMOHANDAS KILABHAI *v.* ALLU MARIA LUSKAL

[I. L. R., 19 Bom., 338

57. ———— **Presumption as to nature of debt where the family is joint.**—Where a debt advance from the funds of a joint Hindu family and due to that family is a bond-debt, it is not necessary that it should appear in the bond that the funds were those of a joint family. *Jagmohandas Kilabhai* v. *Allu Maria Duskal, I. L. R., 19 Bom., 338,* followed. PATESHURI PARTAP NARAIN SINGH *v.* BHAGWATI PRASAD . **I. L. R., 17 All., 578**

58. ———— **Possession of tank**—*Presumption from previous possession.*—In a suit to recover a share of a tank, on the allegation of its being joint family property,—*Held* that the mere fact of plaintiff's having at some previous time been in possession could be no proof of his title or shift the onus on defendant. HURISH CHUNDER BHUTTACHARJEE *v.* NUFUR CHUNDER KOOER

[9 W. R., 461

59. ———— **Onus probandi**—*Suit for possession of joint property.*—Where a party sues for a moiety of certain property on the ground that it is joint property, the onus is on him to prove that the property is joint, failing which his suit is liable to be dismissed. SOOBHUDRA DOSSEE *v.* BOLORAM DEWAN

[W. R., F. B., 57 : 1 Ind. Jur., O. S., 82

60. ———————— *Suit for property acquired from proceeds of alleged joint trade*—In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the onus lies in the first

HINDU LAW—JOINT FAMILY—*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

valid instrument duly conveyed it to her and made it her property GONESH JUNONE DEBIA *v* BIRE SHUR DHUL 25 W R., 178

37. ——— *Proof of separate acquisition in joint family*—Where the members of a joint Hindu family derived considerable property from an ancestor after whose death these members of the family lived long together the purchases of the property in dispute by the plaintiff could not be treated as his separate acquisitions made from the money which had come to him with his wife, and by means of funds arising from that money KRISTNAPPA CHETTY *v* RAMASAWMY IYER [8 Mad., 25

38 ——— *Separate acquisition—Purchase in name of son*—Where the ancestor of a joint Hindu family purchased a property in the name of his youngest son, the onus was held to be on those claiming under the youngest son to prove that the property was his separate possession JOY NARAIN ROY *v* PUNCHANUND W R., 1864, 10

39 ——— *Purchase in name of son—Presumption*—When a father and son lived as a joint family, and property was purchased in the name of the son the presumption is that the property was joint estate and purchased in the name of the son with a resulting trust in favour of the father The burden of proving that it was separate estate is on those who claim it as such POORNIMAH CHOWDHRAIN *v* DROPODEE DOSSEE [W. R., 1864, 103

40 ——— *Presumption of* [illegible]

that an acquisition made in the name of an individual son of the family was made by the head of the family and as part of the family estate, and that, though a cesser of commensality had taken place, the property claimed was joint family property ANUNDEE KOONWAR *v* KHEDOO LALL [14 Moore's I. A., 412 : 18 W. R., 69

41. ——— *Ancestral property—Burden of proof where property alleged to be ancestral—Property derived by a son from his mother where it originally formed part of his father's estate*—Where a Hindu by will leaves property to another which is afterwards alleged to be ancestral by members of the testator's family, the burden of proving it to be ancestral rests on the plaintiffs There is no presumption of Hindu law as to its character NANABHAI GANPATRAV DHAIRYAVAN *v* ACHRATBAI I. L. R., 12 Bom., 122

HINDU LAW—JOINT FAMILY—*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

(*b*) EVIDENCE OF JOINTNESS

42 ——— Presumption of union—*Near and remote relationship of members*—Presumption of union in a Hindu family is stronger as between brothers than as between cousins and the presumption is weaker the further from the common ancestor the descent has proceeded MORO VISHVANATH *v* GANESH VITHAL 10 Bom., 444

43 ——— Commensality—"*Ijmalee,*" *Meaning of*—The word "ijmalee" expresses joint tenancy, even where commensality is not implied PEAREE MONEE BIBEE *v* MADHUB SINGH [15 W. R., 93

44. ——— *Evidence of joint occupation*—Where part of the family property is proved to be joint and the members live in commensality there is a very warrantable presumption, according to Hindu law, that the family is joint. GOLAM MUSTAFA KHAN *v* SHEO SOONDUREE BUBMONEE 15 W. R., 304

45 ——— *Onus probandi—Presumption*—The mere fact of a Hindu family living in commensality is not sufficient to raise a presumption of their property being joint The existence of joint funds out of which the property [illegible] must also be proved to [illegible] oint [illegible] 499

46 ——— *Possession as between brothers and sisters in native families—Evidence of enjoyment of income*—In dealing with the question of possession as between brothers and sisters in native families regard must be had to the conditions of life under which such families live, and to the fact that in such families the management of the property of the family is, by reason of the seclusion of the female members, ordinarily left in the hands of the male members. In the case of such families slight evidence of enjoyment of income arising from the property is sufficient *primâ facie* proof of possession *Fazal Karim* v *Umda Bibi, All., Weekly Notes, 1894, 171,* referred to. INAYAT HUSEN *v* ALI HUSEN . I. L. R., 20 All., 182

47. ——— *Presumption of joint ownership*.—There can be no presumption of joint ownership from the mere fact of commensality KHILUT CHUNDER GHOSH *v* KOONJLALL DHUR [11 B. L. R., 194 note : 10 W. R., 333

48 ——— *Purchase—Presumption arising from commensality*.—The mere fact of one person living jointly or in commensality with others affords no presumption that property purchased by that person was purchased with the joint funds. KRISTO CHUNDER KURMOKAR *v* RUGHOONATH KURMOKAR [13 B. L. R., 353 note : 10 W. R., 328

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

state of re-union between the father and the minor, but is evidentiary matter only to prove the re-union. KUTA BULLY VIRAYA *v.* KUTA CHUDAPPA VUTHAMULU . . . . . . 2 Mad., 235

66. ——— *Separation and partition as far as one member is concerned.*—Where the partition of a family property is made simply for the purpose of determining what the share of one member is, and after his secession the other members continue to live together and mess together, remaining to all intents and purposes as they were before, these others must be presumed to have re-united. PETAMBUR DUTT *v.* HURRISH CHUNDER DUTT [15 W. R., 200

See JADUB CHUNDER GHOSE *v.* MOTEE LALL GHOSE . . . . . . 1 Hyde, 214

67. ——— Branch of family remaining joint after separation—*Onus of proof—Presumption as to branch of family remaining joint when separation has taken place between it and other branches of joint family.*—Each branch of a family, whose original stock has been divided, may continue to be a joint family within the meaning of the Hindu law, subject to all the presumptions arising from that state, and when such a state of facts exists, the onus of proving a separation is on those who allege it, the presumption still being, in the absence of such proof, that the branch of the family remained joint amongst themselves. BATA KRISHNA NAIK *v.* CHINTAMANI NAIK . . . I. L. R., 12 Calc., 262

68. ——— *Sole possession by one member of portion of joint property by consent.*—Although the members of a joint Hindu family have all, in strict law, a right to participate in every portion of the joint property, that right may be modified by the conduct of the parties, *e.g.*, when a particular member is allowed to retain sole possession of a garden and to improve and beautify it and to adapt it to his own purposes. COLLECTOR OF 24-PERGUNNAHS *v.* DEBNATH ROY CHOWDHRY [21 W. R., 222

69. ——— Purchase of property by one member benami—*Presumption.*—Property purchased by a member of an undivided family with money belonging exclusively to himself is his separate acquisition in which the other members are not entitled to share. BOONIADI LALL *v.* DEWKEE NUNDON LALL . . . . 19 W. R., 223

70. ——— Support of relatives and payment of marriage expenses—*Presumption.*—If the property is separate, the presumption operates no longer, and each member is separate owner of what he possesses. Even in the case of a separate family blood relationship within certain degrees imposes a moral duty, though not a legal duty, towards dependent relatives. The support on a liberal scale of poor relatives and even payment of their marriage expenses are not in themselves without other evidence proof of a joint family. MOOLJI LILLA *v.* GOKULDAS VULLA I. L. R., 8 Bom., 154

71. ——— Evidence rebutting presumption—*Exception to rule of onus in Hindu joint family—Admitted partition or non-acquisition with joint funds.*—Although Hindu law presumes joint tenancy to be the primary state of a Hindu family, and the general rule is that the burden of proof that partition has taken place lies upon him who asserts it, there are exceptions to this general rule, *e.g.*, when it is admitted or proved that property in dispute was not acquired by the use of patrimonial funds, the party alleging such property to be joint must prove his averment. So, too, when it is admitted or proved that partition has already taken place, the presumption is that it has been a complete partition, and it lies upon a person alleging that family property, in the exclusive possession of one of the members of the family after such partition, is liable to be partitioned, to make good his allegation by proof. NARAYAN BABAJI *v.* NANA MANOHUR . . . 7 Bom., A. C., 155

72. ——— *Suit for property after separation.*—After a general separation in food and a partition of estate, and after the brothers have commenced to live separately, if any one of them comes into Court alleging that a particular portion of property originally joint continues to remain so, the onus of proof lies on him. RAM GOBIND KOOND *v.* HOSSEIN ALI . 7 W. R., 90
PREM CHUND DAN *v.* DARIMBA DEBIA [15 W. R., 238

73. ——— *Evidence to rebut.*—When the presumption or joint property in a joint Hindu family is rebutted by production of an exclusive and separate title, the party against whom such a title is produced is bound to show that the title is not really exclusive and separate. LOKENATH SURMA *v.* OOMA MOYEE DEBEE [1 W. R., 107

74. ——— *Allegation of separation—Suit for possession.*—Plaintiff alleged that she and her deceased husband's minor brother had, with his other three surviving brothers, held joint possession, but that these three had wrongfully sold the land to the other defendants, and she prayed for possession by reversal of the sale. The purchasers appeared and filed a written statement to the effect that the vendors had separated from their father in his lifetime, and that they (the purchasers) had been in succession to the vendors for more than twelve years in possession. *Held* that the onus lay on the plaintiff, who would have to show not only that she represented one of the heirs of her husband's father, but also that the land in dispute was part of the estate left by the father at his death. PHOOKUN PANDEY *v.* SOOKKIA . . 10 W. R., 436

75. ——— *Partial separation.*—The presumption of Hindu law that a family

HINDU LAW—JOINT FAMILY —*continued*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

instance on the plaintiff, who is not entitled under the circumstances to the ordinary presumption of Hindu law arising from the existence of joint family estate HURISH CHUNDER DASS *v* GOUREE PERSHAD CHATTERJEE 16 W. R, 163

61. ——— *Evidence of separate acquisition* —The plaintiff sued for partition of certain property, alleging it to be joint family property It consisted of a house in Bombay and certain fields at Vavla in the Thana District, outside the jurisdiction of the Court As to the house in Bombay, the first defendant alleged that it was his self acquired property, that he had purchased it in his own name in 1863 out of his private funds, that there were no family funds, and that neither his father nor his brothers (the latter of whom were then very young) were in a position to contribute anything towards the purchase, that by his invitation his father and brother had lived with him in the ... that one of ... house and ... where, that ... f the first ... room in the house by the first defendant's permission up to the date of suit The plaintiff, on the other land, relied ...

The facts, however, proved by him or admitted by the first defendant raised a strong presumption that the house was family property, and against it there was only the first defendant's statement that the house was bought with his own money But there was nothing to show that he kept a private fund apart from the family funds He was the manager of the family and he kept no separate accounts BALARAM BHASKARJI *v* RAMCHANDRA BHASKARJI [I. L. R., 22 Bom, 922

62. ——— *Suit for partition—Plea by defendants that some of the property in suit was their self acquired property* —In a suit for partition of property alleged to be the property of a joint Hindu family, of which the ...

property in suit, of which they were in possession, was their own self-acquired property. *Held* that the burden of proof was on the defendants to show that ...

v *Doorgapersaud Baboo*, *14 B L R*, *337* *22 W R*, *248*, referred to KANHIA LAL *v* DEBI DAS I. L. R., 23 All, 141

63. ——— *Joint property, Suit to recover—Onus of proof—Limitation Act, 1877, arts 127, 144* —The plaintiff sued for a share in certain property on the allegation that his ancestor *K* and the defendant's ancestor *R* were uterine brothers who while they were living in commensality, purchased the property in question with their joint funds in the name of *R*, and that subsequently *K* left his home, and then his daughter the ...

bought the property in question with his own funds after he and his brother *K* had separated, that *R*, and afterwards the defendants, had been in exclusive possession for more than twelve years, and that the suit was barred by limitation *Held* (reversing the judgment of FIELD, *J.*) that the onus was on the plaintiff to prove that the property was joint property Before a plaintiff can bring his case within art 127 of Sch II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is joint property" OBHOY CHURN GHOSE *v* GOBIND CHUNDER DEY I. L. R., 9 Calc, 237

64. ——— *Suit for possession of property alleged to have been joint family property—Separation—Burden of proof* —Three brothers, *M*, *P*, and *H*, once constituted a joint Hindu family After the death of all of them, the descendants of *M* sued the descendants of *H*, in effect to obtain their share of the property which had been of *P* in his lifetime In their plaint they alleged that the family was still joint By their evidence, however, they set up a separation between themselves and *H* shortly after the death of *P*. The defendants, on the other hand alleged that some twenty or twenty five years before suit, after the death of *M*, there had been a separation between the plaintiffs on the one side and *P* and *H* on the other *Held* that, the plaintiffs having set up a case which was inconsistent with the presumption of the family remaining joint, it was for them to prove that the separation took place as they alleged. *Obhoy Churn Ghose* v *Gobind Chunder Dey*, *I L R*, *9 Calc*, *237*, referred to. RAM GHULAM SINGH *v* RAM BEHARY SINGH [I L. R., 18 All, 90

65. ——— Evidence of re-union after separation—*Presumption of re-union after division* —Where a division has taken place amongst the members of a Hindu family, one of whom is a minor, the circumstance that the father and minor continue to live together, and that their shares become mixed, does not conclusively constitute a

HINDU LAW—JOINT FAMILY—*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

caste-men to documents by which a Hindu affects to deal with his property as though he were separate in estate is a circumstance which throws suspicion on the truth of an alleged separation, as the presence of such would be satisfactory evidence of a state of things generally believed to be true at the time. CHHABILA MANCHAND *v.* JADAVBHAI [3 Bom., O. C., 87

88. ———— Separation in food and habitation—*Separation of joint family, Evidence of.*—Although a family may be separate in food and habitation, it may still be joint under Hindu law, if the family property be joint. In this case there was held to be not sufficient evidence of separation. PARBUTTY COOMAR *v.* SUDABUT PERSAD [2 Hay, 315

89. ———— Separation in residence and transaction of affairs—*Evidence of partition.*—Evidence of some separation in residence, separate transaction of affairs in certain instances, and acquisition of the property in dispute by plaintiff, all occurring in recent years, are not sufficient to prove division. KRISTNAPPA CHETTY *v.* RAMASWAMY IYER [8 Mad., 25

90. ———— Separate appropriation of profits—*Evidence of partition.*—Separate appropriation of profits would in some cases be very good evidence of a tacit agreement amongst the members of a joint Hindu family, to hold their property according to their separate shares. CHYET NARAIN SINGH *v.* BUNWAREE SINGH . 23 W. R., 395

91. ———— Alienation of share of one member—*Proof of separation in estate.*—The mere fact of one of several co-sharers alienating his share of the property is no proof of separation in estate. TREELOCHUN ROY *v.* RAJKISHEN ROY [5 W. R., 214

92. Portion of estate separately held—*Long separate possession.*—The acts of different members of a family in allowing separate portions of the banks of a tank to be held severally for so long a time that no one can tell when such possession began, constitute a separation of the land which cannot be disturbed at the instance of one member without proof that he has jointly or otherwise held possession of the lands in question within twelve years. SURBESSUR METHOOR *v.* GOSSAIN DOSS METHOOR . . . 17 W. R., 210

93. ———— Incomplete separation—*Absence of separate enjoyment through opposition of co-sharer.*—Where the surviving sharer in an estate sought to be put in possession of his co-sharer's portion, as manager on behalf of the latter's widow, on the ground that, though the deceased co-sharer had made efforts to reduce his share to distinct possession, those efforts had not been completely successful when he died, and he could not therefore be said to have had a separate enjoyment of the said share,—*Held* that, as the deceased co-sharer had done all that was possible to obtain separate possession, and it was only the opposition of the plaintiff that had obstructed him, it would be allowing plaintiff to benefit by the wrong he had done to give him possession; that the co-sharers must be held to have separated, and that the share of the deceased co-sharer must be held to have passed to those to whom, though not his immediate heirs, he had been taking steps, when he died, to devise the possession of it. JOY NARAIN GIRI *v.* GOLUCK CHUNDER MYTEE 25 W. R., 355

94. ———— Management by one brother—*Presumption of property being joint.*—Where property is not expressly shown to be separate, the presumption of Hindu law is that it is joint, and when one brother has managed the property and made collections and acquired property out of such collection, he is accountable to his other brothers who are entitled to share in the property so acquired. PRANKISHEN PAUL CHOWDHRY *v.* MOTHOORA MOHUN PAUL CHOWDHRY [1 Ind. Jur., N. S., 73: 5 W. R., P. C., 11 10 Moore's I. A., 403

95. ———— Record of proprietorship in one name—*Purchase from one member of family.*—The mere fact of the name of the managing member of a joint Hindu family standing as the recorded proprietor of an estate is not *per se* sufficient to give title to a purchaser for valuable consideration from him, unless at the time of the purchase the purchaser was ignorant of the real state of the family, and was really led by that circumstance to believe that the recorded proprietor was the sole owner. GOUR CHUNDER BISWAS *v.* GREESH CHUNDER BISWAS . . . . 7 W. R., 120

96. ———— Property standing in name of one member—*Separate possession and acquisition.*—The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is the existence of a separate possession any evidence as to separate acquisitions, unless such separate possessor can prove consent of the other sharers to his keeping a separate account. LALLA BEHAREE LALL *v.* LALLA MODHO PERSAUD . . . . . 6 W. R., 69

RUNJEET SINGH *v.* MADUD ALI . 3 Agra, 222

97. ———— Entry in revenue records of one name—*Presumption as to property being joint.*—*D*, claiming as a widow of *A*, brought a suit of ejectment against the sons of *A*'s brother, deceased. *D* admitted that the property had originally been the joint ancestral property of *A* and his brother. *Held* that the mere appearance on the face of the revenue records that *A* was sole owner was not sufficient to rebut the presumption of Hindu law that the property remained joint. JUSSOONDAH *v.* AJODHIA PERSHAD . 2 Ind. Jur., N. S., 261

SHIBOSOONDERY DOSSEE *v.* RAKHAL DOSS SIRKAR [1 W. R., 38

MUN MOHINEE DABEE *v.* SOODAMONEE DABEE [3 W. R., 31

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

remains joint until a separation is proved is not applicable where it is admitted that a disruption of the unity of such family has already taken place, a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate RADHA CHURN DASS *v* KRIPA SINDHU DASS

[I. L. R., 5 Calc., 474 : 4 C. L. R., 428

76. ———— *Onus probandi* —*Division of property* —In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that everything in the possession of any one member of the family belongs to the common stock The onus of establishing the contrary rests on him who alleges separate property But this presumption does not arise where it appears that there has been a division of the family property and a separation in the family, all the members of which are living separately BANNOO *v* KASHEE RAM

[I. L. R., 3 Calc., 315

77. ———— *Onus probandi* —Where plaintiff, a member of a Hindu family, suing for a division of the family estate, admitted on the

. . .

his statement that the family remained undivided. SOMANGOUDA BIN DAJAMANGOUDA *v* BHARMANGOUDA . . 1 Bom., 43

(*c*) EVIDENCE OF SEPARATION

78. ———— Character of proof—*Evidence to rebut presumption of joint property* —Character of "strict proofs" which an auction-purchaser of the rights of one member of a joint Hindu family can be expected to give, in order to rebut the presumption in favour of joint estate in a joint Hindu family LALLA SREEDHUR NARAIN *v* LALLA MODHO PERSHAD . . . 8 W. R., 294

79. ———— Portions of estate held in severalty—*Evidence to rebut presumption of joint property* —So long as no partition of a joint estate is proved, the presumption is that the property is joint. The fact that certain parcels are admittedly held in severalty does not rebut the presumption as regards the rest of the joint estate. SREERAM GHOSE *v* SREE NATH DUTT CHOWDHRY

[7 W. R., 451

80. ———— Separate occupation of portions of dwelling house—*Evidence to rebut presumption of joint property* —Where there is joint occupation of some portions of a joint family dwelling-house, and the separate occupation of other portions of the same property appears to be merely permissive, such separate occupation does not necessarily imply that the properties occupied are separate

HINDU LAW—JOINT FAMILY —*continued*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

properties GOUR LALL SINGH *v* MOHESH NARAIN GHOSE 14 W. R., 484

81. ———— Occupation of separate house—*Presumption as to commensality* —The mere circumstance that one of several brothers of a Hindu family occupied a separate dwelling house does not rebut the presumption of the family being joint, if it appear that they dealt with the family property as joint property BELAS KOER *v*. BHOWANEE BUKSH . . Marsh., 641

82. ———— Separation in mess—*Presumption of joint property* —Mere separation in mess is not sufficient to rebut the presumption of joint property arising out of nucleus of joint property BANEE MADHUB MOOKERJEE *v* BHAGOBUTTY CHURN BANERJEE 8 W. R., 270

83. ———— Separation in food and residence—*Presumption of separation in estate* —Separation in dwelling and food would give rise in Hindu law to a presumption of separation in estate The evidence of members of the family would be the best evidence as to whether the parties were joint or separate; the account books would be simply corroborative JAGUN KOOER *v* RUGHOONUNDUN LALL SAHOO . 10 W. R., 148

84. ———— Separation in dwelling, food, and business—*Presumption of separation in* . . .

[illegible] W. R., [illegible]

85. ———— Separation of shares—*Presumption of joint family* Proof of separation of . . .

86. ———— Use of one name in documents—*Presumption of sole proprietorship* —In a Hindu family where commensality is admitted the mere use of one brother's name in documents relating to the property affords no presumption whatever of such brother being the sole proprietor KISHEN KOMUL SINGH *v*. JANOKEE DASSEE

[1 Ind. Jur., O. S., 23 : W. R., F. B., 3

JANOKEE DOSSEE *v* KISTO KOMUL SINGH

[Marsh., 1 : 1 Hay, 20

DEELA SINGH *v* TOOFANEE SINGH

[1 W. R., 307

87. ———— Deed providing separate accommodation—*Evidence of partition* —The fact of the members of two branches of a Hindu family being separate in food and worship is quite compatible with their never having been separate in estate A document providing separate house accommodation for the members of each of the two branches points rather to a division of enjoyment than to a division of ownership or estate The absence of attestation by

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

the presumption of joint acquisition arising in such cases cannot be rebutted by the mere fact that her name was used in making the purchase or entered in the Collector's books as the purchaser. CHUNDER NATH MOITRO *v.* KRISTO KOMUL SINGH [15 W. R., 357

105. ——— *Presumption—Property purchased in names of wife and daughter-in-law.*—In a suit for partition of joint family property, it was found that certain property stood partly in the name of the wife of the original proprietor and partly in that of a daughter-in-law. *Held* that a wife, a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property acquired in his name, and subject to the same presumption in favour of the joint family. *Chunder Nath Moitro* v. *Kristo Komul Singh, 15 W. R., 357,* followed. *Chowdhrain* v. *Tarini Kant Lahiri Chowdhry, 15 C. L. R., 41,* distinguished. NOBIN CHUNDER CHOWDHRY *v.* DOKHOBALA DASI . I. L. R., 10 Calc., 686

106. ——— *Presumption of joint property.*—When property stands in the name of a female member of a joint Hindu family, there is no presumption that such property is the common property of the family. NARAYANA *v.* KRISHNA [I. L. R., 8 Mad., 214

107. ——— **Purchase and possession of portion of property by one member**—*Source of purchase-money.*—Where a Hindu family lives joint in food and estate, the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property. The purchase of a portion of the property in the name of one member of the family, and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase-money comes. DHURM DASS PANDEY *v.* SHAMA SOONDERY DEBIA [6 W. R., P. C., 43: 3 Moore's I. A., 229

108. ——— **Purchase by one member**—*Evidence of want of sufficient funds.*—Where the plaintiff, a member of a joint Hindu family, claimed a share in certain property as having been purchased with the joint funds, and the defendant alleged that it was purchased by him with his own funds, and it was proved that the joint family property was not at the time of the purchase sufficient, after supporting the family, to leave any surplus funds from which the property in suit could have been purchased,—*Held* that the presumption of joint ownership was rebutted, and it was for the plaintiff to show the acquisition of the property with joint funds. The party alleging self-acquisition is not in every case bound to show the source from which the purchase-money was derived. DHUNOOKDHAREE LALL *v.* GUNPUT LALL [11 B. L. R., 201 note: 10 W. R., 122

109. ——— *Separate acquisition—Presumption—Onus probandi.*—The presumption of Hindu law that any property acquired during the time a Hindu family remains joint belongs to all the members of the joint family does not take away the onus which lies on the plaintiff in a suit to recover a share of the property of proving his case; it merely aids him in proving it. Such presumption is liable to be rebutted by means other than enquiring as to the source from which the purchase-money of the property was derived. That criterion, though the most satisfactory, is not indispensable. Evidence that the property claimed to be joint was purchased in the name of one member only, that after the purchase the members separated, and each member carried on business separately, and that the property was thenceforward in the exclusive possession, and used for the business, of the member in whose name it had been purchased, is evidence sufficient to rebut the presumption that the property was joint. BHOLANATH MAHTA *v.* AJOODHIA PERSAD SOOKUL [12 B. L. R., 336: 20 W. R., 65

110. ——— **Receipt of purchase-money by one member**—*Source of consideration-money for purchase.*—The mere fact of the consideration-money for property sold by a member of a joint Hindu family having passed through his hands does not relieve him of the onus of proving the source from which the money came or to rebut the presumption of joint ownership. KOONJ BEHAREE DUTT *v.* KHETTURNATH DUTT . 8 W. R., 270

111. ——— **Separate dealing by one of several partners**—*Onus probandi.*—The onus of proving separation according to Hindu law is on the party setting it up. According to Hindu law, a separate dealing is no proof of a separation of partners. KHEEROODHUR LALL *v.* SEETULRAM 2 Hay, 353

112. ——— **Separate acquisition**—*Onus probandi—Purchase by one member of family in his own name, but with joint funds.*—In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of *R*, one member of the family, for his separate debt, the defendants sought to rebut the presumption that the property in dispute was part of the joint estate by showing that, though the members of the family were joint in food, and at particular seasons of the year lived together in the family dwelling-house, they also had separate dealings and funds of their own; and that, while the family had some ancestral estate, several members of the family had acquired separate property from their own funds, and dealt with it as their own without reference to the other members of the family. They also relied on the following facts as showing that the property in dispute was the separate property of *R*, *viz.*, that during *R*'s lifetime the other members of the family

HINDU LAW—JOINT FAMILY
—*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

98 ———— **Definement of shares in ancestral property**—A four-anna ancestral share in a zamindari village was owned by two brothers, in which the share of *H*, son of one of the brothers, was one-half, the remaining half being the share of the plaintiffs, the descendants of the other brother In the village records there had been a definement of shares followed by entries of separate interests in the revenue records, and since 1264 Fasli the two plaintiffs had each been recorded as the owner of a one-anna share and *H* of a two-anna share thereof. The entire four-anna share had been in the possession of mortgagees from the year 1844 excepting the sir lands of which *H* held separately his own share *viz.*, 10 bighas. On the 7th July 1883 *H* executed a deed of gift of his two-anna share in favour of the defendants, and caused mutation of names to be made in their favour, surrendering to them at the same time possession of the sir land. *H* died on 31st January 1884, leaving neither son, widow, nor daughter, and the plaintiffs were his heirs-at-law They brought this suit to set aside the deed of gift and for possession of the sir land from the defendants. The suit was dismissed by the Court of first instance, and on appeal the District Judge affirmed the decree, holding that the four-anna share was not joint and undivided property between the co-sharers, and that *H* was in separate [illegible] of the mortgagees [illegible] definement of shares followed by entries of separate interests in the revenue records, if there be nothing [illegible]

99 ———— **Evidence of separation**—*Shares separately recorded in village papers—Separate purchases by individual members of* [illegible] of immoveable property have been made from time to time in the names of individuals members of the family, and that the property as purchased was recorded in each case in the name of the nominal assignee. GAJENDAR SINGH *v.* SARDAR SINGH

[I. L. R., 18 All., 176

100. ———— **Deed of sale and mutation of names**—*Evidence of separation in estate*—Deeds of sale and mortgage and mutation of names in the Collector's register as amongst members of a Hindu family are evidence of separation PEARY LALL *v.* BHAWOOT KOER W. R., F. B., 16

[1 Ind. Jur., O. S., 100

101. ———— **Registration of name of widow after husband's death**—*Partition—Evidence of partition*—Where property is joint and ancestral, the mere registration of the widow's name after her husband's death, and sole possession by her, is not sufficient proof that the property has been divided in the absence of any evidence of regular partition LUCHMUN PERSHAD *v.* MOONEE KOONWER

[1 Agra, 220

102. ———— **Registration of name as lumberdar**—*Presumption—Onus probandi*—Where an estate was originally ancestral belonging to a joint and undivided Hindu family, the presumption of law being that a family once joint retains that status can only be rebutted by evidence of partition or acts of separation, and the *onus probandi* lies on [illegible] registry, being for fiscal purposes is not *per se* sufficient evidence to establish the exclusive proprietary right of the party whose name is so registered, and the rights of co-partners *inter se* are not affected by such registration. CHEETHA *v.* MIHEEN LALL . . 11 Moore's I. A., 369

103. ———— **Registration of name of one member as proprietor** *Ancestral property—Onus probandi*—Where property is proved to be ancestral, the mere registration of one brother as proprietor is of little value as supporting a case of the property not being joint, and the burden of proving that the property is not joint rests on him who alleges that to be the case. AMRIT NATH CHOWDHRY *v.* GAURI NATH CHOWDHRY

[6 B. L. R., 232

UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY

[15 W. R., P. C., 10 : 13 Moore's I. A., 542

104. ———— **Registration in name of female member** *Property purchased in name of female members of family*—The wives and mothers of the members of a joint undivided Hindu family, so long as they continue to live in the family and are supported out of its income are just as much members of that family as their husbands and sons; and where property is purchased in the name of one such female member during the life of her minor son,

HINDU LAW—JOINT FAMILY —*continued.*

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*concluded.*

of proving separate acquisition was upon the defendants, and declared the properties claimed to be joint. On appeal,—*Held* (1) that the principal defendant was not the kurta, and that the plaintiffs were bound to look to the managers first, and (2) that, although the members of the family had certain properties joint. yet the ordinary presumption applicable to a simple case of co-parcenary did not apply. UDOY CHAND BISWAS *v.* PANCHOO RAM BISWAS. HUROMONI DASI *v.* PANCHOO RAM BISWAS [11 C. L. R., 514

116. ——— Long possession as proprietor—*Proof of separation.*—In a suit brought to recover a share of land alleged to be joint family property where the defendants pleaded possession as proprietors for more than thirty years,—*Held* it was not necessary to prove actual separation, but it was enough to show that the defendants had been in possession as they alleged. GURAVI *v.* GURAVI [3 Bom., A. C., 170

RANE *v.* RANE . . 3 Bom., A. C., 173

117. ——— Settlement with one member of joint family—*Separate acquisition, Proof of.*—The fact of a settlement being made with one member of a joint Hindu family does not negative the rights of other members to a participation in the property so settled; nor is it necessary for such other members, if living in commensality with the former as joint proprietors, to prove that they actually contributed money towards the acquisition of the property. HURO SOONDUREE DEBIA *v.* DOORGA DOSS BHUTTACHARJEE . . . 16 W. R., 215

118. ——— Distribution of land and tenants—*Partition of khoti estate—Proof of partition.*—Where the plaintiffs sued for the partition of a khoti estate, alleging that they and the defendants were joint proprietors thereof, and where the defendants admitted that the estate was originally joint, but set up that a partition had taken place more than a hundred and fifty years ago,—*Held* that the burden of proving that a partition had been made lay on the defendants, and that the mere distribution of land and tenants, such as is usual in the South Konkan, while a khoti estate continues to be held in co-parcenary, in no way established a formal partition. BABASHET BIN GOBINDSHET *v.* JIRSHET BIN YESSHET . 5 Bom., A. C., 71

2. NATURE OF, AND INTEREST IN, PROPERTY.

(*a*) ANCESTRAL PROPERTY.

119. ——— Ancestral property, Meaning of—*Immoveable property of father.*—Ancestral property is not confined to such property as the father derives from his father or any ancestor, but means at least immoveable property derived from the father, however acquired by him. RAJMOHUN GOSSAIN *v.* GOURMOHUN GOSSAIN [4 W. R., P. C., 47: 8 Moore's I. A., 91

HINDU LAW—JOINT FAMILY —*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

120. ——— Property purchased by father as manager for himself and sons—*Purchase from profits of ancestral family.*—Property purchased by a father in possession of ancestral property, as manager for himself and his sons, from the profits of such ancestral property is itself ancestral property. SHUDANUND MOHAPATTUR *v.* BONOMALEE DOSS . . 6 W. R., 256

121. ——— Joint ancestral property after distribution—*Character of shares of heirs.*—Where the heirs of a deceased Hindu, by an arrangement with a third party who claimed to be an heir, distributed the property between them, such property after its distribution retained its character as ancestral property, and shares taken under the arrangement are not to be regarded as the self-acquired property of the heirs who took them. MEWA KOONWER *v.* LALLA OUDH BEHAREE LALL [2 Agra, 311

122. ——— Ancestral property inherited from brothers—*Interest of sons in ancestral property.*—*S* died, leaving three sons and ancestral property, of which *K*, one of *S*'s sons, took a third share. On the death of another of *S*'s sons without issue, *K*'s original share was increased by his deceased brother's share. *Held* that, according to the Mitakshara law, one of *K*'s sons was entitled, during *K*'s lifetime, to bring a suit to assert his right in the share of *K*, inherited from his deceased brother, such share being ancestral property. GUNGOO MULL *v.* BUNSEEDHUR [1 N. W., Part 6, p. 79: Ed. 1873, 170

123. ——— Moveable converted into immoveable property—*Mitakshara law.*—*Quære*—Whether ancestral property which was moveable when it descended, but has been converted into immoveable property, is not immoveable ancestral property for the purposes of the Mitakshara law. SHAM NARAIN SINGH *v.* RUGHOOBURDYAL [I. L. R., 3 Calc., 508: 1 C. L. R., 343

124. ——— *Interest of sons in ancestral property—Mitakshara law—Adopted sons.*—Where money derived from ancestral estates is invested, before the adoption of a son, in the purchase of immoveable property which continues to exist at the time of the adoption, the adopted son has equally a vested right in that property as he has in any other similar immoveable property which the father had it in his power before the adoption to alienate, but which he did not alienate. SUDANUND MOHAPATTUR *v.* SOORJOOMONEE DAYEE [11 W. R., 436

This case went on appeal to the Privy Council, but it was decided on a point which made the decision of this point unnecessary.

See SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER . . . . 12 B. L. R., 304
[20 W. R., 377
L. R., I. A., Sup. Vol., 212

HINDU LAW—JOINT FAMILY —*continued.*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued.*

allowed him to appear to the world as the sole owner thereof, and on one occasion when *R*, *B* the kurta, and

ties, each of them described the property pledged by

of *R* alone, filed the family account books the private account books of *R* for the same purpose, as well as certain letters which passed between *B*

the name of *one member of a joint family*, and to throw upon the plaintiff the onus of establishing the joint nature of the property claimed by clear and cogent evidence *Held* also that the mere fact that *R*, while trading on his separate account, was permitted by the other members of the joint family to appear to the world as the sole owner of family estates did not disentitle those members to recover from the defendant, the purchaser at a sale in execution of a decree against *R*, their own share of such estates BODH SING DOODHARIA *v* GONESH CHUNDER SEN

[12 B. L. R., P. C., 317; 19 W. R., 356

113 ———— *Joint funds—Separate trading*—Suit between a widow claiming administration to the estate and effects of her deceased husband as his only legal personal representa-

the whole family pro-

the deceased

The widow

property of the

father The

division and

then of proof

asserting the

the appellant

was suffi-

HINDU LAW—JOINT FAMILY —*continued*

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*continued*

114. ———— Self-acquisition—*Partibility of property given by father to sons—Arrangements made as to enjoyment of joint property, Effect of, on members*—Whilst the members of a Hindu

as his separate property to prove his sole title to it Separate property may be acquired by a member of

partition Separate property may be acquired by the exertions of a member of the family without detriment to the family funds It may be acquired with money borrowed on the sole credit of the borrower, and it may be acquired by the mutual agreement of the members of the family It is not necessary for the preservation of the joint nature of family property that the members of the family should live in commensality; they may dwell and mess apart, and yet remain joint in property Parties who allege that the acquisitions of the several members of a Hindu family are not to be brought into hotchpot and divided *per stirpes* must show that they were acquired in such a manner as to constitute them separate property and impartible And it is incumbent on those parties who admit that a partition has been made of certain portions of the

DASS

Affirmed by Privy Council in 26 W. R., 17

115. ———— Separate acquisition—*Members carrying on separate dealings—Manager of joint family*—In a suit for partition and for an account from the principal defendant, who was alleged to have been the kurta of a joint Hindu family since the death of a former kurta, it appeared that the former kurta by his will directed that his wife and daughter in law should manage his property during the minority of the plaintiffs who were his son and grandson. These ladies applied for a certificate under Act XXVII of 1860, and thereupon as guardians for the plaintiffs granted an am mukhtarnamah to the principal defendant In the suit the defendants variously claimed the properties alleged to be joint as their separate acquisitions and there was evidence of the different members of the family having carried on separate dealings. The lower Court found that the principal defendant was not under the circumstances kurta of the family, but held that the burden

HINDU LAW—JOINT FAMILY—*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

Moreover, the loans in question and the extension of business, to which they led, might have produced heavy losses instead of great profits, and the family property would have been liable to debts so incurred. The family property, being thus subject to liabilities arising from the loans, was entitled to participate in any benefits resulting from them. MAHOMED SIDICK *v.* AHMED. ABDULA HAJI ABDSATAR *v.* AHMED . . . . I. L. R., 10 Bom., 1

129. ——— Wealth amassed in trade —*Proof of ancestral quality of property.*—Where wealth amassed by an individual in trade is said to be ancestral in the hands of that individual, it is not enough to show that he inherited some property; it must be shown that the property inherited contributed in a material degree to the wealth so amassed. AHMEDBHOY HUBIBBHOY *v.* CASSUMBHOY AHMEDBHOY . . . . I. L. R., 13 Bom., 534

130. ——— Property bonâ fide disposed of before birth of son—*Rights of sons—After-born son—Son born subsequently to adoption by father and partition.*—According to Hindu law, sons acquire rights only in the property which belonged to their father at the time of their birth, and have no legal claim to property of which a *bonâ fide* disposition, effectual as against their father, had been made long before they were born. The right of an after-born son to share as a co-parcener divided property depends upon his mother being pregnant with him at the time of a partition. The father of the plaintiffs adopted the third defendant. After the adoption, the wife of the father gave birth to a son. Thereupon the father effected a division of the property with the adopted son, and gave the latter a larger share than he was entitled to receive by law. The father married a second wife, and the plaintiffs were the issue of the marriage. *Held* that the plaintiffs were not entitled to a partition of any portion of the property which fell to the share of the adopted son. YEKEYAMIAN *v.* AGNISWARIAN . 4 Mad., 307

131. ——— Interest of son in ancestral property—*Mitakshara law.*—According to the Mitakshara law, sons have a vested interest in ancestral property, which interest is saleable at any time in satisfaction of claims against them. GOOR SURUN DOSS *v.* RAM SURUN BHUKUT . 5 W. R., 54

And also to the profits of ancestral property. SUDANUND MOHAPATTUR *v.* SOORJOO MONEE DAYEE [11 W. R., 436

132. ——— *Ancestral immoveable property—Rights of father and son—Suit by father to eject son.*—The sons in an undivided Hindu family, although they have a proprietary right in the paternal and ancestral estate, have not independent dominion. Where therefore the plaintiff sued to eject the defendant, his son, from a portion of a house, partly self-acquired by the plaintiff and partly ancestral property, in which the defendant was living against the plaintiff's will, the Court decreed the claim. BALDEO DAS *v.* SHAM LAL [I. L. R., 1 All., 77

133. ——— Burden of proof where property alleged to be ancestral—*Property derived by a son from his mother where it originally formed part of his father's estate.*—Where a Hindu by will leaves property to another which is afterwards alleged to be ancestral by members of the testator's family, the burden of proving it to be ancestral rests on the plaintiffs. There is no presumption of Hindu law as to its character. *P M*, a Hindu, died in 1831, having by his will bequeathed all his estate to his wife *P* and his three minor sons, *A*, *B*, and *C*, and directed as follows: "In the event of my wife's demise previous to my sons' attaining their full age of twenty-one years to entitle them to claim their respective shares of whatever may be left after marrying, etc., then I direct my surviving executors will secure my property and divide the whole among such sons or the survivors of them." Subsequently to the testator's death, his widow *P* managed his estate, and probate of his will was granted to her alone in January 1832. In 1836 she bought the V property for R2,801. There was no evidence to show out of what funds this property was bought, but the deed of sale stated that it was assigned to "*P*, widow and administratrix of the late *P M*, her heirs, executors, administrators, and assigns." In 1845 the eldest son *A* separated from the family, and gave a release to his mother *P*. In 1854 she purchased the X property for R8,452, the conveyance being to "*P*, her heirs, executors, administrators, and assigns." In this deed also she was described as "the widow and administratrix of *P M*, deceased." In the same year, *viz.*, 1854, the second son *B* separated and gave *P* a release. The third son *C* (the third defendant) continued to live with his mother *P* until 1871, in which year she died intestate. *C* then entered into possession of all the property which she had or managed in her lifetime, including the V and X properties. In 1879 he mortgaged these properties to the first two defendants for R12,500. His sons (the plaintiffs) now alleged those properties to be ancestral, and complained that he and the mortgagees were acting in collusion, that he had charged the properties unnecessarily, and that he and the mortgagees were about to sell them at an undervalue for the purpose of defeating their (the plaintiffs') rights. They therefore filed this suit, and prayed (*inter aliâ*) that the claims of the mortgagees, after being ascertained, might be paid off. The defendants denied that the properties in question were ancestral property in the hands of *C* (the third defendant) or that the plaintiffs, as his sons, had any interest therein. *Held* that the interest which the third defendant *C* derived from his mother *P* in the mortgaged premises was ancestral property, in respect of which the plaintiff had no present right of interference. The Court ordered that on payment

HINDU LAW—JOINT FAMILY —*continued*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued*

125 ——— Property once ancestral but alienated and re purchased with separate funds—*Recovered ancestral property*—The principle of the Mitakshara law that if a father recover ancestral property which had been taken away

of his self acquired property BOLAKEE SAHOO *v* COURT OF WARDS . 14 W. R, 34

126. ——— Interest of son in joint family property—*Co-parcenary rights—Limitation*—A son during the life of his father has, as co-parcener, a present proprietary interest in the ancestral property to the extent of his proper share

property *from that of any other relation who is an* heir-apparent of the owner of property Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as co parcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share of the property RAYACHARLU *v* VENKATARAMANIAH . 4 Mad, 60

127. ——— Property acquired by litigation—*Self-acquired property devised by a father to his son—Earnings of father as mill manager—Property left by testator to be held moveable or immoveable according to its condition at his death*—Defendant's great-grandfather (*M*) died in 1792, leaving a will, dated 1789, whereby he directed his property to be equally divided among his five sons, of whom *R* (the grandfather of defendant) was one. The property became the subject of litigation, and was not divided until 1852, long after the death of

having regard to ... of the testator to convert into ... ands and ... that the ... according ... d at the testator's death ... at of the income of ancestral property is itself ancestral, whether acquired before or after the birth of a son In order to entitle a co parcener to hold as property self acquired by him property which has been recovered by his exertions (*e g*, by litigation), such property must have been recovered from usurpers

HINDU LAW—JOINT FAMILY —*continued*

2 NATURE OF AND INTEREST IN, PROPERTY—*continued.*

holding it adversely to the family; the co-parceners must have abandoned *their rights; and where such* abandonment is a matter of inference, the co parceners to whom it has been imputed, must have been in a position to sue A son to whom his father leaves his sel acquired property by will takes the property under the will, and not by inheritance; and as *property received by will is held by Hindu law to* be received by gift, such property is self-acquired in the hands of the son, and is not subject to partition. The first defendant was sued by his son for partition. Some of the property in the defendant's hands con-

ation His management ... good dividends were declared every year from 1863. In 1870 he declined to work any longer without remuneration, and at a meeting of the shareholders he was appointed managing director, and was granted a commission on all sales effected by the company *Held that the commission so received by the defen-* ... Under the cir-

brought by a son against his father, *Held* that the plaintiff was entitled to partition of the ancestral ... at the date of the suit A

I. L. R., 10 Bom., 528

128 ——— Profits in business where capital is ancestral property—*Profits earned* ... —Four brothers of the ... on trade with ... Large profits ... It was alleged ... means of ... of a commission ... was not used ... such profits could ... It appeared, ... was carried on by ... books, common expenses and a common staff ... borrowed money was put into the general cash with the original capital *Held* that the whole property was ancestral. Augmentations, which blend, as they accrue, with the original estate, partake of the character of that estate.

HINDU LAW—JOINT FAMILY —*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

Part I of the schedule to the agreement being ancestral under the agreement and will, they (the plaintiffs) were entitled not only to them, but to all the accumulations and accretions thereof, which amounted in value to about ten lakhs of rupees. The University, on the other hand, contended that the accumulations and accretions formed part of the self-acquired property of the testator, and went to the University under the residuary clause of the will. *Held* (TYABJI, *J.*) (1) that the effect of the agreement was to make the property specified in Part I of the schedule thereto ancestral property as between the parties to the agreement. (2) That the agreement was confirmed by the will and was binding on the executors. (3) That, although the corpus of the said property became ancestral under the agreement, the accumulations and accretions thereof did not: they were the self-acquired property of the testator, and passed to the trustees under the residuary clause of the will. The plaintiffs had subsequently to the death of *M* taken possession of the properties in question, and had paid probate duty on them. The plaintiffs had taken conveyances from the executors and had given releases to the executors, and in a previous suit (No. 670 of 1892) the first plaintiff had in his evidence stated that he did not wish to dispute the will, and that he had elected to take under it. *Held* that by their conduct the plaintiffs had elected to take the properties in question under the will, and could not maintain a suit for an account of the rents and profits either under or in opposition to the will. *Held* also that the sons of the plaintiffs (the minor defendants) were bound by the acts of the plaintiffs. The property in question was not really ancestral. It was only such for the purpose and by virtue of the agreement of 28th July 1881, and the plaintiffs were entitled to waive it or rescind it if they pleased, and their sons could not prevent them from doing so. TRIBHOVANDAS MANGALDAS *v.* YORKE-SMITH

[I. L. R., 20 Bom., 316

Held on appeal (FARRAN, *C.J.*, and STRACHEY, *J.*), reversing the above decree, that all accumulations and accretions to the properties in question subsequent to the agreement of 28th June 1881 were ancestral property, and passed as such to the sons of *M* at his death. TRIBHOVANDAS MANGALDAS *v.* YORKE-SMITH

[I. L. R., 21 Bom., 349

(*b*) ACQUIRED PROPERTY.

136. ———— **Property inherited through mother**—*Succession of female to impartible zamindari.*—Property inherited through a mother is not "self-acquired" as between her son and grandson. MUTTAYAN CHETTI *v.* SANGILI VIRA PANDIA CHINNA TAMBIAR . I. L. R., 3 Mad., 370

137. ———— **Property acquired from father-in-law on marriage**—*Liability to partition.*—Property acquired from a father-in-law is self-acquired property, and therefore not liable to be shared in by a brother. BEHAREE LAL ROY *v.* LALL CHAND ROY . . . . 25 W. R., 307

HINDU LAW—JOINT FAMILY —*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

138. ———— **Father's interest in self-acquired property of son**—*Separation.*—The doctrine of Hindu law that a father takes a share in his son's self-acquired property applies only to cases of families in joint estate, but not where separation in estate has taken place. ANUND MOHUN PAUL CHOWDHRY *v.* SHAMASOONDURI

[W. R., 1864, 352

139. ———— **Property acquired by member while drawing income from family.**—Property acquired by a Hindu while drawing an income from his family is liable to partition. RAMASHESHAIAYA PANDAY *v.* BHAGAVAT PANDAY

[4 Mad., 5

140. ———— **Property acquired by one member in trading**—*Education at expense of joint family.*—*Quære*—Where a member of a joint Hindu family subject to the Mitakshara law has received a general education at the expense of the joint family funds, but is shown to have derived no material wealth from those funds, does property which he afterwards acquires by the exercise of his industry and intelligence in successful trading become joint in the contemplation of the Hindu law? Decisions of the Indian Courts bearing on this question observed on. PAULIEM VALOO CHETTY *v.* PAULIEM SOORYAH CHETTY . . I. L. R., 1 Mad., 252

[L. R., 4 I. A., 109

141. ———— **Onus of proof.**—*A*, a Hindu, took up some abandoned waste land and brought it into cultivation. *Held* that the true test as to whether the land was his self-acquired property or not is whether it was brought under cultivation by family or self-acquired funds, and the *onus probandi* lay upon those who alleged the latter. SUBBAYYA *v.* SURAYYA . . . I. L. R., 10 Mad., 251

142. ———— **Gains of science**—*Educational family expense.*—Gains of science acquired at the family expense, and whilst the acquirer is receiving a family maintenance, are liable to partition, and upon the death of the acquirer form part of the family property, and do not pass to his widow. BAI MANCHA *v.* NAROTAMDAS KASHIDAS

[6 Bom., A. C., 54

143. ———— *Self-acquired property—Partition.*—The acquisition of a distinct property by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition; but the improvement or augmentation of the family property by the exertions of one of the members is subject to division. Hindu law texts regarding gains of science establish it as a rule of Hindu law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance; but that it is otherwise when the science has been imparted at the expense of persons who are not members of the acquirer's family. When the Hindu texts

HINDU LAW—JOINT FAMILY
—continued.

2 NATURE OF, AND INTEREST IN, PROPERTY—*continued*

of the mortgage debt the properties should be reconveyed to the third defendant and in the event of their being sold, that the whole of the surplus proceeds should be paid to him The original property was to be regarded as in 1831 the self-acquired property of *P M* and as having passed under his will In the absence of any evidence with regard to it, there was no presumption as to its character, and the plaintiffs who alleged it to be ancestral, were bound to prove that fact On *P M's* death, his sons *A, B,* and *C,* took whatever they became entitled to under their father's will as their self acquired property, but in co parcenary according to Hindu law and not as joint tenants according to English law *As to P, she took* under the will an equal interest with her sons in the testator's estate liable to be defeated in the event of her death before the sons attained the age of twenty one years when they might claim their shares On the sons claiming their shares, one share would be left with *P* and that share, subject to her incapacity as a Hindu widow to deal with immoveable property given her by her husband, would then become hers absolutely *A* and *B* having separated *P* and *C* continued to treat themselves as a joint family, and when *P* died in

hands NANABHAI GANPATRAV DHAIRYAVAN *v* ACHRATBAI I. L. R., 12 Bom , 122

and living joint in food and worship there was no joint or ancestral property, but the father possessed certain separate and self acquired property He had two sons one of whom predeceased him leaving a widow *He died intestate, leaving a son and a widow* The widow of the son who had predeceased his father was at the time of her husband's death a minor she had never cohabited with him or resided with his family or received from them any mainte-

Held (MAHMOOD, *J*, expressing no opinion on this point) that the property in suit though inherited by the defendants could not, so far as the plaintiff's rights were concerned be correctly described as "ancestral property" in the defendants' hands from which *she would be entitled to maintenance*; inasmuch as during the father's lifetime it was not in any sense ancestral and the sons had no co-parcenary interest in it but merely the contingent interest of taking it on their father's death intestate, and, in the case of the plaintiff's husband, such interest by reason of his predeceasing his father, never became vested *Adhibai v Cursandas Nathu, I L R 11 Bom, 199,* dissented from on this point *Savitribai v Luximibai I L R 2 Bom, 573,* referred to. JANKI *v* NAND RAM

I. L. R., 11 All, 194

135 ———— **Ancestral property**—*Self acquired property made ancestral by agreement—Effect of such agreement on accumulations and accretions of the property—Election—Estoppel—Interest of minor members of family in property made ancestral by agreement M* and his three sons *T, P* and *J,* lived together as an undivided Hindu family In 1881 the youngest son *J* filed a suit for partition against his father and his two brothers Being apprehensive that his other sons (the plaintiffs) might make a similar claim *M* on the 28th June 1881, entered into an agreement with them (the plaintiffs) which recited (*inter alia*) that he *M,* alleged that the only ancestral immoveable property belonging to him was the property specified in Part I of the schedule annexed to the agreement, but that

were duly observed by the plaintiffs during their

was not ancestral property but was the self-acquired property of *M* On the 9th March 1890 *M* died, leaving a will dated 27th January 1888. By this

testator's property including the property in Part I of the said schedule This last named property was subsequently, *viz*, in December 1890 conveyed by the executors to the plaintiffs. The plaintiffs now sued the executors, contending that the properties in

HINDU LAW—JOINT FAMILY—*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued.*

(two brothers) was not strictly that of members of a joint undivided Hindu family, since although they were joint as to their general concerns, and in some sense joint as members of a family, yet that relation was qualified by the provision contained in a family arrangement whereby each member of the family might take out and use assets derived from a partnership firm for the benefit of his sole and separate speculations.—*Held* that the plaintiff was not entitled to throw his own and his brother's acquisitions into hotchpot and to claim an equal division of them. The arrangement being of such an extraordinary character as to leave it in the power of each member to draw to an unlimited extent upon the assets of the firm, the Privy Council declined to extend the operation of such an agreement one iota beyond its terms, and were therefore of opinion that the High Court was right in drawing a distinction between pledging the credit of the firm and drawing out money actually belonging to the firm. NURSINGH DOSS *v.* NARAIN DOSS . . . . . . 26 W. R., 17

Affirming decision of High Court in S. C.
[3 N. W., 217

150. ———— Self-acquired immoveables—*Construction of words of a sanad granting an absolute estate of inheritance—Change of ancestral character of immoveables—Mortgage and foreclosure—Boná fide re-acquisition for value by mortgagor's descendant.*—A father, being a member of an undivided family subject to the Mitakshara, can exercise full power of disposition at his own discretion over immoveables which he has himself acquired, as distinguished from ancestral property. The immoveables alienated by a father's gift, disputed by his son, partly consisted of zamindari rights in villages which had been at one time ancestral in the family, but had been transferred to satisfy the debts of an ancestor, and had been acquired back by his descendant, the donor. As to one of these villages, the Courts below had differed whether it was self-acquired property in the donor's hands. It had been mortgaged by the ancestors; and the mortgage had been foreclosed under Regulation XVII of 1806, before having been re-acquired by the donor. That the foreclosure and re-acquisition were genuine were facts found upon evidence, including that of prior, concurrent decrees maintaining the foreclosure, as between other parties. *Held* that the re-acquisition was not a redemption of an estate inherited from an ancestor, and merely encumbered; but that the once ancestral character of this village had been destroyed by the foreclosure. Like the other villages alienated by the father's gift, it was self-acquired by the donor. Other immoveable property comprised in the gift consisted of a malikana payable out of other villages conferred upon the donor by a Government sanad granting a muafi on seven villages to him for life, and declaring that "the zamindars who now pay the revenue will pay it to him, and after him they shall ever pay ten per cent. as malikana allowance to his heir after the deduction of Government revenue for generation after generation." *Held* that the grant of the malikana was absolute to the one grantee: that there were not two gifts, one for life to the grantee, and the other a distinct gift after his death, to the person who should then be his heir. The malikana formed part of the grantee's heritable property and was self-acquired. BALWANT SINGH *v.* RANIKISHORI
[I. L. R., 20 All., 267
L. R., 25 I. A., 54

RAO BALWANT SINGH *v.* RANIKISHORI
[2 C. W. N., 273

HINDU LAW—JOINT FAMILY—*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*concluded.*

3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER.

151. ———— Position of manager—*Agent.*—The managing member of a Hindu joint family holds a position in relation to the other members of the family and the family property peculiar to himself and not precisely analogous to anything known to English law. He is not the agent of the other members of the family. MUHAMMAD ASKARI *v.* RADHE RAM SINGH
[I. L. R., 22 All., 307

152. ———— Rights of members of family—*Position of manager—Agent—Trustee.*—Members of a Hindu family, with vested interests in their joint property, choosing to continue in a state of commensality and joint fruition, do not possess individually any several proprietary right other than an alienable right to call for partition. The karta of a joint Hindu family in general is the mere mouthpiece of the family, and not an agent with delegated authority in a fiduciary and accountable relation to the rest of the family. As long as a member of such a family is a minor, the karta is in the position of a trustee for him of the joint property to the extent of his share in it, and is liable to account for it to him when the trusteeship ceases. CHUCKUN LALL SINGH *v.* PORAN CHUNDER SINGH . . 9 W. R., 483

153. ———— Agreement between members of a Hindu family—*Their estate managed by one in the relation of ordinary agent to principal—Liability to account.*—Three brothers of a joint Hindu family agreed that their estate should remain joint, excepting the share of a separated fourth brother, which was excluded. It was in the agreement that the eldest of the three should manage the family estate, and that after twelve years, and after an account rendered by him of the profit and loss, a division among them should be made; any one of them to obtain his share on giving up his portion of the profits. In a suit for partition commenced by one of the brothers and carried on by his representatives, the term having expired,—*Held* that the true construction was that the above was not a mere agreement to postpone partition, leaving the family status of the brothers uninterrupted, but was an agreement which put them on a new footing. Upon

HINDU LAW—JOINT FAMILY
—*continued.*

2. NATURE OF, AND INTEREST IN, PROPERTY—*continued*

speak of the gains of science, they intend the special training for a particular profession which is the immediate source of the gains, and not the general elementary education which is the stepping-stone to the acquisition of all science Consequently, the property [illegible] he [illegible] ex [illegible] wi [illegible] Privy Council in *Luximon Rao Sudaseo* v *Mulhar Rao Bajee, 2 Knapp, 60,* interpreted to mean no more than the law as now settled, *viz*, that when there is ancestral property by means of which other property may have been acquired, then it is for the party alleging self-acquisition to prove that it was acquired without any aid from the family estate. *Bai Manchha* v *Narotamdas, 6 Bom, 1,* distinguished Dictum of MITTER, *J.*, in *Dhunookdharee* v. *Gumput Lal, 11 B L. R, 201: 10 W. R, 122*—that the Hindu law nowhere sanctions the contention that the acquisition of a member of a Hindu family who has received education from the joint estate is liable to partition—commented on as not strictly correct LAKSHMAN MAYARAM *v.* JAMNABAI

[I. L. R., 6 Bom, 225

144. ———— *Fruits of elementary education impartible—Earnings of different co-sharers thrown into the joint-stock—Estoppel*— [illegible] *of family.*- [illegible] members of [illegible] *M* and *N* [illegible] there as karkuns They had not received anything more than a rudimentary education before they left their family house at Nagothna *K* remained at [illegible] from mortgage and purchased lands at Nagothna, varvatni and vagni These lands were entered in the revenue records in *K*'s name *K* managed the whole property and applied the rents to the support of the family In 1881 *K* mortgaged the property. In 1885 *M* and *N* brought this suit to recover possession of the house and lands, alleging that they were their self-acquired property, and that *K* had no power to alienate them They also prayed, in the alternative, for a partition of their two-thirds share of the property. *Held* that, the plaintiffs having received only a rudimentary education in their family, their earnings in the exercise of their profession as karkuns were self-acquired and impartible, and that the property purchased or redeemed with those earnings would also be impartible, unless it appeared that they had voluntarily thrown such property into the joint stock, with the intention of abandoning all separate claims upon it. If they did so, the property would thereupon become joint property. *Held* also that, the plaintiffs having held out *K* as the manager of the whole estate so as to induce outsiders dealing

HINDU LAW—JOINT FAMILY
—*continued*

2 NATURE OF, AND INTEREST IN, PROPERTY—*continued*

with him to believe that he had authority to mortgage the whole interest of the three brothers in the property, they (the plaintiffs) were estopped from [illegible]

[I. L. R., 15 Bom., 32

145. ———— *General education acquired at the expense of the joint family funds*—*Held* that the mere fact that a member of a joint Hindu family had acquired a certain general education of a not very advanced character at the expense of the joint family funds would not have the result of making all the subsequent earnings of that member joint family property, but they would remain his self-acquired property *Pauliem Valoo Chetty* [illegible]

146. ———— *Prostitution*—The ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance *Secus*, where the science has been imparted at the expense of persons not members of the learner's family The trade of prostitution is recognized and legalized by Hindu law. CHALAKONDA ALASANI *v* CHALAKONDA RATAN CHALAM . . . 2 Mad., 56

147. ———— **Income derived from prostitution**—*Dancing girl—Education in dancing and music*—Property acquired with income derived [illegible]

[I. L. R., 4 Mad., [illegible]

148. ———— **Professional earnings of vakil**—*Self-acquired property—Gains of science.*—Upon the question whether the professional earnings of a vakil were generally his self-acquisition and impartible,—*Held* by KINDERSLEY, *J*, that the question must be upon the facts in each case how far the common family means were instrumental in enabling the professional man to earn the property which is claimed as subject to partition The fair presumption is that such attainments as are usually possessed by a vakil have been acquired with the assistance of the family means *By* HOLLOWAY, *J*, that the ordinary gains of science by one who has received a family maintenance are certainly partible Moreover, within the meaning of the authorities a vakil's business is not matter of science at all DURVASULA GANGADHARUDU *v* DURVASULA NARASAMMAH

[7 Mad., 47

149. ———— **Partnership property**—*Agreement allowing members to draw separately from assets of firm—Self-acquired property*—Where the relation between the plaintiff and the defendant

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HINDU LAW—JOINT FAMILY —*continued*

3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—*continued*

reference to several terms of the agreement, it appeared that the elder had become liable on the footing of an ordinary agent, accountable for receipts and expenditure, and that he was not in the position of the managing member of a joint family liable only to account as to the then existing state of the property. SETRUCHERLA RAMABHADRA *v.* SETRUCHERLA VIRABHADRA SURYANARAYANA

[I. L. R., 22 Mad., 470
L. R., 26 I. A., 167
3 C. W. N., 533

154. ———— Manager, Liability of, to account.

and charged in the name of each member,—*Held* that this was in the nature of a partnership, and an account was decreed RANGANMANI DASI *v.* KASINATH DUTT

[3 B. L. R., O. C., 1: 13 W. R., 76 note

155. ———— *Suit for account during minority of members* —A managing member of joint Hindu family is bound to render an account of his management to his co-sharers and he is

S. C. OBHOY CHUNDER ROY CHOWDRY *v.* PEAREE MOHUN GOOHO . . 13 W. R., F. B., 75

156. ———— *Suit for account of portion of joint property* —One member of a joint Hindu family sued another, who was the manager, for a moiety of two items pertaining to the

157. ———— *Suit by a coparcener for an account of the profits of a joint family firm—Injunction—Exclusion of partner* —A member of a joint Hindu family cannot maintain a suit for an account of the profits of a partnership which is alleged to be joint family property, and an award of his share in such profits when ascertained. This rule of Hindu law does not prevent an injunction being granted in cases in which one member of the family is prevented from taking part in the business of the firm GANPAT *v.* ANNAJI

[I. L. R., 23 Bom., 144

158. ———— *Right of excluded minor to account* —Where an infant has been ejected by the manager of the joint Hindu family from the family house, and excluded from enjoyment of the family property, the manager is bound to

159 ———— *Suit for share of profits—Suit for partition—Account, Right to* —A member of a joint Hindu family cannot sue for a share of the profits of the joint family estate, as he has no definite share until partition He may sue for a partition of such estate unless by a family usage or special law it is impartible, and then is entitled to an account PIRTHI LAL *v.* JOWAHIR SINGH

[I. L. R., 14 Calc., 493
L. R., 14 I. A., 37

See SHANKAR BAKSH *v.* HARDEO BAKSH

[I. L. R., 16 Calc., 397
L. R., 16 I. A., 71

160. ———— *Power of father as manager of joint family to refer to arbitration the partition of the joint family property—Effect of award* —It is competent to the father of a joint

161. ———— *Remuneration for management* —In a suit for partition of family property, one of the defendants claimed to be credited with a sum payable to him as the managing coparcener under a deed of management to which the plaintiff was not party,—*Held* that the claim under the deed of management was not valid against the plaintiff In the absence of a valid special agreement, the managing co-parcener of a joint Hindu family is clearly not entitled to remuneration, he being a joint owner of the property which he manages. KRISHNASAMI AYYANGAR *v.* RAJAGOPALA AYYANGAR . . . I. L. R., 18 Mad., 73

162. ———— *Power of manager to revive a time-barred debt—Limitation Act (XV of 1877), s 19* —The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. DINKAR *v.* APPAJI . I. L. R., 20 Bom., 155

clear that on his father's death his father's share in the firm by law descended to the appellant and his brothers, if he had any. He then became a partner in the firm, if he had not been so already. It was open to him to show that he did not become a partner; but the facts above mentioned being established, the burden rested on him of displacing them, and of showing that he did not become a member of the family firm. IN THE MATTER OF HAROON MAHOMED

[I. L. R., 14 Bom., 189

177. ——— *Partnership—Joint family, Member of, starting new business—Presumption as to funds obtained from joint family, how rebutted.*—The father of *A*, *N*, *M*, *H*, and *T* died, leaving a gold and silver business, which was, after his death, carried on jointly for the benefit of the family. The brothers remained joint in food, worship, and estate. Subsequent to the death of the father, *A* and *N* started a new business in rice in partnership with others. It was shown by the evidence that the profits of the new business were appropriated exclusively by the admitted partners, and *A* denied that the other brothers had any interest in that business. *Held* that on those facts the presumption that the new business was started with funds belonging to the joint family was rebutted. *Semble*—That if the other members of the joint family were minors at the time the new business was started, the eldest brother had no power to start the new business so as to bind the infant members. MAKHUN DUTT *v.* RAM LALL SHAW

[3 C. W. N., 134

178. ——— *Promissory note by member of an undivided Hindu family—Liability of other members—Negotiable Instruments Act (XXVI of 1881), ss. 4, 26, 27.*—The maker of a promissory note (executed in plaintiff's favour), being a member of an undivided Hindu family, had borrowed from plaintiff the money represented by the note and purchased therewith land for the benefit of the family which consisted of himself (the maker of the note), an uncle, and the sons of the uncle. The uncle had always recognized the debt as a family debt, and the land purchased with the money borrowed had, in a subsequent division of property, been allotted to the uncle and his sons, who had also agreed with the maker of the note that they would discharge the debt. On a suit being brought against the maker of the note, as well as the uncle and his sons,—*Held per* SHEPHARD and SUBRAHMANIA AYYAR, *JJ.* (DAVIES, *J.*, [illegible]). [illegible] t all the members of the undivided [illegible] *Per* SUBRAHMANIA AYYAR, *J.*—Even assuming that the maker of the note was not the manager of the family, he was the agent of his co-parceners when buying the land and raising the loan, and his acts as such agent bound the uncle who expressly assented to them; also that, inasmuch as the uncle was liable, his sons must be also held liable for the debt to the extent to which they were interested in the family property, and that even if they were minors when the money was borrowed. *Per* DAVIES *J.*—(1) Had the suit been brought on a bond or on the debt of which the promissory note afforded evidence, other members of the family might have been held liable as well as the maker of the note, on the ground that the latter represented them. But in the case of a suit on a promissory note (as this suit was) no such representation could be alleged unless the persons said to be represented appeared by name on the face of the document. (2) Where the name of only one person appears on a promissory note and he does not purport to make it on behalf of any one but himself, none but the maker can be held liable to discharge it. KRISHNA AYYAR *v.* KRISHNASAMI AYYAR

[I. L. R., 23 Mad., 597

179. ——— *Business carried on by one member as manager—Liability of all as joint owners—Ancestral trade and ordinary partnership, Difference between—Contract Act, IX of 1872.*—*J*, the father of the three defendants, established a trading firm in 1865 under the name of *J H*. He and his three sons lived together as a joint Hindu family. *J* died in 1872, and the business was continued under the same name by *S* as the eldest brother and manager of the family. The youngest of the three brothers was a minor at the date of his father's death. The plaintiff sued the three brothers to recover money due on an account signed by *S* in the name of the firm. The second defendant contended that he had never participated in the property of the business; that he had not resided at the family residence for six years; that he could not be considered a partner of the firm, and therefore was not liable to the plaintiff. *Held* that he could not repudiate a liability arising out of the ordinary transactions of the firm. During his father's life he was joint owner, and after his father's death he acquiesced in the continuance of the firm under the same name, and ostensibly therefore with the same constitution. He had done no act to divest himself of his share. He had given no notice of repudiation and made no partition, and there was nothing to prevent him from demanding his share of the partnership or claiming to share in the profits. There was therefore nothing to exempt him from the ordinary rule of Hindu law, which makes every member of a united family liable for debts properly incurred by a manager for the benefit of the family. The debt due to the plaintiff for goods supplied to the shop was properly incurred in the course of the ordinary transactions of the firm, and presumably therefore for the benefit of all the joint owners of the firm. The rights and liabilities arising out of joint ownership in a trading business created through the operation of Hindu law between the members of an undivided Hindu family cannot be determined by exclusive reference to the Contract Act (IX of 1872), but must be considered also with regard to the general rules of Hindu law which regulate the transactions of united families. An ancestral trade may descend, like other inheritable property, upon the members of a Hindu undivided family. The

HINDU LAW—JOINT FAMILY
—continued

4 DEBTS AND JOINT FAMILY BUSINESS
—continued.

171. ——————— *Business carried on for benefit of infants—Debts incurred by guardian—Liability of infants—Contract Act, s 247* —Where the ancestral trade of a Hindu was carried on after his death for the benefit of his infant children by their guardian, and debts were incurred by the firm in the course of business,—*Held* that the guardian of a Hindu minor is competent to carry on an ancestral [illegible]

COWAR *v.* NITTYANUND NUNDY
[I. L. R., 3 Calc., 738: 2 C. L. R., 440

172. ——————— *Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by acts of the guardian—Liability of minor for debts* —Under Hindu law, [illegible]

173. ——————— *Power of managing member to bind members of partnership* — [illegible]

business might require financing, and to have consented to such financing Where, therefore, a *managing member of such a family, in carrying on the family* business, obtains an advance necessary for the purposes of the business by pledging the joint family [illegible]

See SHAM SUNDAR LAL *v.* ACKHAN KUNWAR
[I. L. R., 21 All., 71

174. ——————— *One member as agent of others—Partnership* —As between the members of a joint family, any one or more may be authorized by the rest to act as their agent or agents in any business transaction; but when a joint family or any members of it carry on a trade in partnership, and contract with the outside public in the course of that trade, they have no greater privileges than any other traders If they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts of law as any other partnership.
RAMSEBUK *v.* RAMLALL KOONDOO
[I. L. R., 6 Calc., 815: 8 C. L. R., 457

HINDU LAW—JOINT FAMILY
—continued

4. DEBTS AND JOINT FAMILY BUSINESS
—continued

175 ——————— *Joint family—Partnership—Infant sons—Mitakshara law—Promissory note, suit on—Non-joinder of parties—Plea in bar of suit* —In a suit on a promissory note executed by the defendant in favour of a firm whose original partners were two brothers, one of [illegible]

Even therefore, where parties are governed by the Mitakshara law, an infant need not be joined as a co-plaintiff in a suit by the father to recover a trade debt Decrees obtained in such suits by or against the managers of the business are presumed to have been obta[illegible] tive capa[illegible] family [illegible] *L R, 6* [illegible] *1 Taylor, 27J* and *Ramsebuk v. Ramlall Koondoo, I L R., 6 Calc., 815,* referred to. LUTCHMANEY CHETTY *v.* SIVA PROKASA MODELIAR
[I. L. R., 26 Calc., 349
3 C. W. N., 190

176. ——————— *Family firm—Cutchi Memons—Partnership in firm—Onus pro*[illegible] *of* [illegible] *H,* [illegible] his [illegible] an insolvent *H* appealed denying that he was a partner All of the insolvents were Cutchi Memons, and were members of the same family The firm had existed for forty years, having been established by the great-grandfather of the appellant, and had ever since been carried on under the same name by the family of the founder The petitioning creditors alleged that the members of the insolvent's family lived together and were joint in food and estate, and that the firm was a family firm; that the appellant's father had been principal manager of the firm in his lifetime, and that on his death two years previously the appellant had taken his place The appellant denied that he was joint with the other members of [illegible] a partner, or had [illegible] er in the firm [illegible] e Court below, [illegible] rules of Hindu law and custom applied to the appellant, and that his position with regard to the family property was *to be determined by the same considerations as would* apply in the case of a member of a joint and undivided Hindu family; (2) that the firm in question was a family firm, and was the property of a family subject to Hindu law, that whatever might have been the appellant's position previously, it was

HINDU LAW—JOINT FAMILY —*continued.*

5. POWERS OF ALIENATION BY MEMBERS —*continued.*

Hindu family, though living together, from entering into an agreement with his co-parceners in respect of the expenditure on family property and repayment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately. MUTTASVAMI GAUNDAN *v.* SUBBIRAMANYYA GAUNDAN [1 Mad., 309

188. ——— **Discretion of managing member to expend moneys for improvements**—*Mortgage for improvements to family property.*—Where a mortgagee of a house, the ancestral property of a Hindu family, advanced money on the representation that it was required to complete improvements in the family house and to pay a mortgage-debt carrying a higher rate of interest which had been contracted to make those improvements,—*Held* that the sons of the mortgagor were bound by the mortgage. In the case of improvements of the family property made by the managing member of a Hindu family where the sum spent was large, but the discretion of the managing member was exercised *bonâ fide* and for the benefit of the estate and the family had this benefit, such discretion should not be narrowly scrutinised. *Saravana Tevan* v. *Muttayi Ammal, 6 Mad., 371,* and *Hunoomanpersaud Panday* v. *Munraj Koonweree, 6 Moore's I. A., 393,* discussed and followed. RATNAM *v.* GOVINDARAJULU [I. L. R., 2 Mad., 339

189. ——— **Costs incurred by manager in protecting property of joint family**—*Liability of shares of members of joint family for.*—Pending an appeal, the plaintiff, who was the appellant, died, leaving one adult and four minor sons. The adult son prosecuted the appeal, which was dismissed, as was the suit in the Court below, with costs. The decrees for costs were sold by the defendant to a third person, who caused certain property which belonged to the estate of the plaintiff to be sold in execution. *Held,* in a suit by the minor sons to recover possession of the shares in the property sold, that, as all the sons were interested in the litigation, all their shares were liable for the costs, and the suit was dismissed. JUTADHARI LAL *v.* RUGHOBEER PERSAD [I. L. R., 9 Calc., 508: 12 C. L. R., 255

190. ——— **Alienation by manager**—*Sale by manager of joint family.*—The manager of an undivided Hindu family can sell his own share of the family property only. DAMODHAR VITHAL KHARE *v.* DAMODHAR HARI SOMANA . 1 Bom., 183

KOYLASHESSUR BOSE *v.* NARAINEE DOSSEE [10 W. R., 303

191. ——— *Acquiescence.*—An alienation made by the managing member of the joint Hindu family cannot be questioned by another member if he stands by and sees to the application of the purchase-money for the benefit of the whole family, without refusing to participate in it. WHITE *v.* BISTO CHUNDER BOSE . . 2 Hay, 567

HINDU LAW—JOINT FAMILY —*continued.*

5. POWERS OF ALIENATION BY MEMBERS —*continued.*

192. ——— *Sale of family property by manager when binding on an adult member of family absent at time of sale—Consent to such sale.*—*B* and *C* were half-brothers and members of an undivided family. *C* left his native place, and in his absence *B* carried on the family business and managed the family affairs. In order to raise money for the business and to provide for the marriage expenses of *C*'s sisters, *B* sold to the plaintiff a house which was part of the family property. On *B*'s death, *C* returned to his village and refused to give up possession of the house to the plaintiff, who accordingly filed this suit. It was contended that *B* could not sell the house so as to bind *C* without his expressed assent. *Held,* confirming the decree of the lower Appellate Court, that the sale was binding on *C*, who, under the circumstances, must be presumed to have intended that *B* should continue as *de jure* and *de facto* manager to exercise such powers as the family necessities required. CHHOTIRAM *v.* NARAYANDAS [I. L. R., 11 Bom., 605

193. ——— *Mortgage by member of Hindu family.*—A member of an undivided Hindu family has a right to mortgage his own share of the family estate, and, if he be acting as representative and manager of the undivided family to mortgage the interests of the other members of the family therein on any common family necessity, or for the common benefit and use of the undivided family. GUNDO MAHADEV *v.* RAMBHAT BIN BHAUBHAT . . . . . 1 Bom., 39

194. ——— *Power of manager to alienate joint family property.*—The holder of an impartible zamindari governed by the law of primogeniture having a son executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards) now sued the assignee of the lessee to have the lease set aside. *Held per* MUTTUSAMI AYYAR and WILKINSON; *JJ.* (affirming the judgment of PARKER, *J.*) that the lease was not one which a managing member of an ordinary joint family governed by Mitakshara law could providently enter into. BERESFORD *v.* RAMASUBBA . I. L. R., 13 Mad., 197

195. ——— *Sale by widow, as manager of the joint family, of immoveable property left by husband—Family necessity—Effect of sale as against minor sons—Deed of sale—Intention of parties.*—A Hindu died in debt, leaving two minor sons. His widow, who after his death was the manager of the family, borrowed money for family purposes, and as security mortgaged some of the immoveable property left by

HINDU LAW—JOINT FAMILY
—continued.

4. DEBTS AND JOINT FAMILY BUSINESS
—concluded.

partnership so created or surviving has many, but not all, of the elements existing in an ordinary partnership. For example, the death of one of the partners does not dissolve the partnership; nor, as a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses SAMALBHAI NATHAUBHAI v. SOMESHVAR MANGAL . . . I. L. R., 5 Bom., 38

180. ——— Payment of debt—*Debtor of undivided family—Release—Manager of family*—The debtor of an undivided Hindu family is not justified in paying his debt to the eldest member of the family, unless such eldest member be also the

[illegible]

181. ——— *Bond in favour of one co-sharer—Joint family—Payment of such* [illegible]

to recover debts due on bonds taken in the other's name. In 1890 defendant passed a bond to *A*. In [illegible]

5. POWERS OF ALIENATION BY MEMBERS

(a) MANAGER.

182. ——— Power of manager—*Position of manager of family—How far his acts bind other members*—A Hindu family is regarded as a corporation whose interests are necessarily centered in the manager, the presumption being that the manager is [illegible]

owners as parties to the suit (as required by English law) GAN SAVANT BAL SAVANT v. NARAYAN DHOND SAVANT . . . I. L. R., 7 Bom., 467

183. ——— *Ancestral family trade*—The case of a widow, or of a daughter differs from that of the manager or head of an undivided family who manages an ancestral trade, and has a certain power to pledge for the requirements of the business The validity of his charge however, on the family estate, where there is a minority or non- [illegible]

the family estate has devolved, has no larger power to pledge the ancestral assets than his principal. SHAM SUNDAR LAL v. ACHHAN KUNWAR

I. L. R., 21 All., 71
L. R., 25 I. A., 183
2 C. W. N., 729

Upholding decision of High Court in ACHHAN KUAR v. THAKUR DAS . I. L. R., 17 All., 125

184. ——— *Debt incurred by managing members of a joint family—Personal liability of other members.*—Three brothers, being the managing members of their joint Hindu family, borrowed money from the plaintiff for a family purpose The plaintiff now sued the survivor of the brothers and the sons of all three to recover the amount of the debt, and he obtained a decree that the debt was recoverable from the family estate and also personally from the survivor of the three borrowers *Held* on appeal that the plaintiff was not entitled to a personal decree against the other defendants CHALAMAYYA v. VARADAYYA I. L. R., 22 Mad., 166

185. ——— *Debt contracted by a manager for family purposes—Decree against the managing member alone—Sale in execution of such decree—Effect of such sale.*—Where a debt is incurred by a Hindu as manager of the family for family purposes, the other members of the family, though not parties to the suit, will be bound by the [illegible]

I. L. R., [illegible] Bom., [illegible]

186. ——— *Transactions of, liable to be questioned—Fraudulent contract*—Every member of a family of proprietors who has an interest in the estate has a right to question any transactions entered into by the elder member as manager whereby the former would be defrauded. The right of a person defrauded by a contract between a manager and a third party is to have the contract altogether rescinded. LAVJI J. SHARANGPANI v. GANGADHARBHAT . I. L. R., 4 Bom., 29

187. ——— Money expended in improvement or repair—*Agreement by one co-parcener in respect of expenditure of family property.*—While the members of a Hindu family enjoy in common undivided property, money expended in its [illegible] is considered as spent on [illegible] the benefit [illegible] There is no [illegible] an undivided

acquired under it a title to the minor's share of the property. Upon the question of what is the amount of proof which the law renders necessary to discharge that burden of proof,—*Held* that where the dispute as to the validity of a sale or mortgage of family property is with the person to whom it was made, and the pecuniary consideration for it has not been advanced for the purpose of discharging an antecedent charge on the property or an old debt incurred by an ancestor; the case of the vendee or mortgagee, as regards the existence of a family need or sufficient beneficial purpose requiring the advance of the consideration-money, must be established by positive proof. But that between a *bonâ fide* sale or mortgage for an advance made to pay off a pre-existing mortgage claim or an unsecured debt of an ancestor, and one not made for that purpose, there was this distinction to be observed, that the burden of establishing by direct proof that such prior claim or debt was incurred for a proper family purpose is not cast upon the vendee or mortgagee. He is only required to show this presumptively. But to do so it is incumbent on him to give proof not only of the consideration-money for the sale or mortgage having been *bonâ fide* advanced in discharge of an antecedent debt, but also of an enquiry productive of results which warranted his reasonably believing that such debt was a family obligation, and the sale or mortgage a prudent arrangement for its discharge. SARAVANA TEVAN *v.* MUTTAYI AMMAL

[6 Mad., 371

202. ———————— *Mortgage of joint family property—Powers of kurta—Acknowledgment by kurta or by executor under Hindu will —Acquiescence.*—*H*, a Hindu, died leaving two adult and two minor sons, and having made a will or anumatipatra, addressed to his two eldest sons, *L* and *G*, whom he thereby appointed malik mukhtars of the whole of his estate with full powers of management. He directed them to maintain his widow and minor sons and to pay the marriage expenses of the latter out of the joint estate, and further directed them to pay his liabilities and, if necessary, to raise money for that purpose by sale or mortgage; the necessary documents to be signed by *L* and *G*, "the names of the infants being signed by you as guardians and executors." In case of the death of either *L* or *G*, the will provided that all the powers of the executors should be vested in the survivor; the minors to have the same powers upon attaining majority. The will further provided that the executors should, when the minors came of age, "make over to them with explanation the share of each;" and that the four sons should take the property in equal shares. *L* died after his father leaving a widow and having made a will, whereof he appointed *G* executor, and *G* subsequently obtained a certificate under s. 7, Act XL of 1858, in respect of the property of his minor brothers. Thereafter *G*, by a deed in the English form, which was executed by him alone "as executor of *H*" and also "as executor of *L*," mortgaged a portion of the property to the plaintiff to secure R6,847-3-3. Of this sum, R947-3-3 were advanced to *G* at the time of the mortgage, and were applied by him for the benefit of *H*'s estate, R1,000 were advanced to pay a debt due from *L* to third persons, the remainder being in respect of debts of *H*, all of which, however, with the exception of one debt of R100, were barred by the law of limitation. In a suit by the mortgagee for an account and sale, or foreclosure of the mortgaged property, it appeared that one of the minors had attained his majority when the mortgage was executed, and the other some years thereafter, and that both had been informed of the mortgage several years before the suit, and had then raised no objections. No question as to the effect of the limitation law on the mortgage was raised on the pleadings or at the trial. *Held* by MARKBY, *J.*, that, although the mortgage was not executed in accordance with the will of *H*, the younger sons had stood by and had taken the benefit of the transaction, and could not therefore question it. A member of a joint Hindu family is bound, when he comes of age, to make himself acquainted with the acts during his minority of the manager, and to express his dissent at once if he disapprove of such acts. No evidence having been offered as to *L*'s estate when the mortgage was executed or that *L*'s widow knew of the mortgage, the suit must be dismissed as against her. *Held*, on appeal, by COUCH, *C.J.*, and PONTIFEX, *J.*, tha tdebts by Hindu law being a charge upon the estate of the debtor, and the intention of *H*, as shown by the provision in his will for the maintenance of his widow and minor sons, being that the family should for a time continue to be joint, no charge or trust was created by the clause in *H*'s will for payment of his debts, and therefore the fact that in executing the mortgage *G* professed to act under the will and not as kurta did not invalidate the mortgage. For the same reason, the clause for payment of debts could not prevent the operation of the law of limitation. The manager of a joint Hindu family, or the executor of a Hindu will, has no power by acknowledgment to revive a debt barred by the law of limitation except as against himself. *G* as kurta of the joint family could not make a valid mortgage of *L*'s share separately from the shares of the other members of the family; his estate therefore was liable to pay the plaintiff the R1,000 borrowed to pay *L*'s debt, and his representatives could claim to be repaid from *L*'s estate. GOPALNARAIN MOZOOMDAR *v.* MUDDOMUTTY GUPTEE. SHOSHEEBHOOSUN MOZOOMDAR *v.* MUDDOMUTTY GUPTEE. MUDDOMUTTY GUPTEE *v.* BAMASOONDERY DOSSEE

[14 B. L. R., 21

203. ———————— *Mortgage of joint family property.*—An alienation made by a managing member of a joint Hindu family is not binding upon his adult co-sharers unless it is shown that it was made with their consent, either express or implied. In cases of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation, but a general consent may be

HINDU LAW—JOINT FAMILY—*continued*

5. POWERS OF ALIENATION BY MEMBERS—*continued*

her husband. She subsequently sold it, and the Court held that the evidence showed that it was sold to pay off the family debts *Held* that the minor sons were bound by the sale *Held* also that the effect of a conveyance of property sold by the manager of a family depends on the intention of the parties as gathered from the terms of the instrument and from the surrounding circumstances SUCCARAM MORARJI SHETAY *v* KALIDAS KALIANJI [I. L. R., 18 Bom., 631

196. ——— *Gift by manager* [illegible]

[illegible]

197. ——— *Gift of un-* [illegible]

[illegible] the occupier for possession *Held* that the plaintiff could not recover. The gift, not being made from [illegible] pious duties [illegible] was invalid, [illegible] respect to [illegible]

[I. L. R., [illegible] Bom., 803

198 ——— *Manager of lunatic appointed under Act XXXV of 1858—Mortgage of interest of minors*—Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in ac- [illegible]

HINDU LAW—JOINT FAMILY—*continued*

5 POWERS OF ALIENATION BY MEMBERS—*continued*

the property, but as regards the interest of the minors which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes ANPURNABAI *v* DARGAPA MAHALAPA NAIK [I. L. R., 20 Bom., 150

199. ——— *Debts contracted by manager for family purposes—Evidence required where there has been a series of transac-* [illegible]

[illegible] show, in respect of each item in a long series of borrowings, the particular purpose for which it was borrowed It will be sufficient for him to show that the family was in chronic need of money for the current outgoings of the family life or its trade necessities, and that the moneys were advanced on the representation of the manager that they were needed for such objects And if the fair inference to be drawn from all the circumstances of the case leaves no doubt that the moneys were borrowed for family reasons, the plaintiff is entitled to succeed, although he is not able to indicate the particular purpose for which such sum has been borrowed KRISHNA RAMAYA NAIK *v* VASUDEV VENKATESH PAI VASUDEV VENKATESH PAI *v*. MHASTI . I. L. R., 21 Bom, 808

200 ——— *Purchaser from member of joint family.*—If a person dealing with [illegible] him by such manager was entered into for some con- [illegible]

201. ——— *Power of man-* [illegible]

[illegible] charge be for the benefit of the joint estate; and in every case to which the rule is applicable the onus of showing either by direct or presumptive proof a *primâ facie* case in support of the existence of the condition necessary to give the legal capacity to make the disputed disposition lies upon the party claiming to have

defendant Babaji appeared, and admitted that he had locked up the room, and he refused to give up possession, contending that he was not bound by the mortgage, that at the date of the mortgage Rajaram was not joint with him and the other sons of Sambhapa, and that the loan was not required for family necessity. The Subordinate Judge dismissed the plaintiff's application. In 1882 the plaintiff brought the present suit against the defendant, in which he prayed for a decree giving him possession of the said room on the terms of the decree passed in 1877. The defendant alleged that the house in question was not the joint property of his uncles Sadoba and Raghoba, but that his father Sambhapa was the sole owner; that his uncles Sadoba and Raghoba and his brother Rajaram had no right to mortgage it, and that the money was not required for family necessity. He contended that the decree of 1877 was not binding on him, and, further, that the present suit was barred. *Held* that the plaintiff was entitled to a decree against the defendant. There was nothing to show that at the date of the mortgage in 1875 the defendant was not still a member of the same joint family with Rajaram into which he had been born. In the mortgage transaction all the branches of the family were represented by their eldest members, and the mortgagee (the plaintiff) might reasonably suppose that a transaction entered into by them and apparently necessary for the common interest was really necessary. BALVANT SANATARAM *v.* BABAJI BIN SAMBHAPA

[I. L. R., 8 Bom., 602

207. ———————— *Mortgage for family purposes—Decree against manager for mesne profits—Execution against family property.*—*D*, the manager of an Alyasantana family, having executed a usufructuary mortgage of certain land belonging to the family to *V*, to secure the repayment of a debt contracted for purposes binding on the family, *V* was compelled to sue for possession of the land mortgaged, and obtained a decree for possession against *D* and two other members of the family and for payment of mesne profits from the date of the mortgage against *D* only. After the death of *D*, *V* sought in execution proceedings against the surviving members of the family to obtain payment of the mesne profits decreed, by sale of the equity of redemption of the land mortgaged to him by *D*. *Held* that *V* was not entitled to execute the decree for mesne profits against the family. VENKATA KRISHNAYYAR *v.* KAVERI SHETTATI

[I. L. R., 7 Mad., 201

208. ———————— *Polygar, Position and liabilities of—Debts incurred by—Acquisition of moveable property by—Assets in hands of successor—Duty of lender dealing with polygar.*—*Per* KERNAN, *J.*—A simple loan and an express charge require the same foundation to bind the family and estate of a polygar. The position of a polygar differs from that of a manager of a Hindu family in this incident amongst others, *viz.*, that *primâ facie* he borrows on his own personal credit (where there is no mortgage) and not on the credit of the family estate, and the rule requiring a lender to satisfy himself of the existence of family necessity or of the family benefit which justifies the manager in borrowing would not be sufficiently complied with by similar enquiries in the case of a polygar borrowing money. To entitle a creditor, obtaining a charge from a polygar on the corpus of the estate, to the security of the estate, proof of imminent pressure or danger of loss, or of such close enquiries as to the position of the estate and the immediate circumstances of the pressure or apprehended danger as to satisfy a prudent and reasonable mind of the truth of an alleged pressure and impending danger, should be given. *Per Curiam*—Although moneys lent by a creditor to a polygar have been actually expended in payment of paramount charges on the estate, the mere fact of such payments is no evidence of family necessity, nor can the estate be said to derive any benefit thereby, when the annual rents of the estate are more than sufficient to pay for all proper charges on the estate, so as to entitle the creditor to recover from the family estate. When a creditor has made no enquiry as to the necessity for a polygar borrowing money, he cannot remedy the omission by showing that if he had enquired he would have been informed that the money was wanted to pay for Government kist due by the polygar. *Per* KERNAN, *J.*—When the rightful owner of a polliam has stood by and allowed another to take and remain in possession of the polliam, and loans have been made to the *de facto* polygar, the moveable property, purchased by the *de facto* polygar out of the income or with borrowed moneys in his possession at his death, is assets available for payment of his creditors. *Per* MUTTUSAMI AYYAR, *J.*—The moveable property acquired by means of the income of the polliam by a *de facto* polygar is not available as assets for his creditors in the hands of *de jure* polygar who succeeded him and who has not admitted his predecessor's title, nor accepted maintenance from him, but moveable property acquired by means of borrowed money may be pursued by the creditor as assets. KOTTU RAMASAMI CHETTI *v.* BANGARI SESHAMA NAYANIVARU

[I. L. R., 3 Mad., 145

209. ———————— *Agreement made by manager of family.*—Every member of a joint family is not bound by an agreement made by the head of that family. The rent of a joint undivided tenure cannot be enhanced on the strength of an ikrar executed by one of the co-parceners. HEMUYETOOLAH CHOWDRY *v.* NIL KANTH MULLICK 17 W. R., 139

210. ———————— *Authority of elder brother to sell.*—In the absence of authority in the eldest brother from his brothers to sell their rights, the sale by the eldest brother is not the act of all the brothers. OAHAD BUKSH *v.* BINDOO BASHINEE DOSSEE . . . . . . 7 W. R., 298

See BHUJONANUND MYTEE *v.* RADHA CHURN MYTEE . . . . . . 7 W. R., 335

HINDU LAW—JOINT FAMILY —*continued.*

5. POWERS OF ALIENATION BY MEMBERS —*continued.*

deducible in cases of urgent necessity, from the very fact of the manager being entrusted with the management of the family estate by the other members of the family; and the latter entrusting the management of the family affairs to the manager must be presumed to have delegated to him the power of pledging the family credit or estate when it is impossible or extremely inconvenient for the purpose of an efficient management of the estate to consult them and obtain their consent before pledging such credit or estate. MILLER v. RUNGA NATH MOULICK

[I. L. R., 12 Calc., 389

204. ——— *Mitakshara law —Ancestral property*—*A*, the kurta of a Hindu family governed by the Mitakshara law, living with his two sons, *B* and *C*, in joint enjoyment of the family property, took a loan from certain persons, and executed to them a mortgage bond on the joint family property. The bond holders obtained a decree on their bond, in execution of which they caused the property to be sold, and themselves became the purchasers. *C* was a minor at the time of the alienation. In a suit by *B* on behalf of himself and *C* to set aside the alienation, on the ground that it had been made without their consent and without legal necessity, the Court found that *B* had taken such a

members of the family. *Held* that, under these circumstances, the alienation failed to convey to the

favouring the equity the purchasers clearly had against *A* and *B*, directed that, on recovery of the property, it should be held and enjoyed in defined shares, and that the shares of *A* and *B* should be jointly and severally subject to the lien thereon of the purchasers for the repayment of the loan to *A*. So long as the members of a Hindu family under the Mitakshara law are living in the joint enjoyment of the family property, without having come to an

tifiable family necessity, by the kurta alone. MAHABEER PERSHAD v. RAMYAD SINGH

[12 B. L. R., 90: 20 W. R., 192

205. ——— *Attachment and sale of the interest of manager where manager is not the father of other co-sharers—Tenants-in-common*—*N* and *H* (uncle and nephew) were members of an undivided Hindu family. On the 22nd April 1872, *N* mortgaged the land in dispute (part of the family property) to *J*, who, on the 10th June 1876, obtained a decree against *N* on the mortgage, and put up the land for sale in execution. It was purchased by the defendant on the 26th October 1876. *N* and *H* had previously sold the land to the plaintiff by a registered deed, dated the 30th June 1876. On the 28th September 1877, the plaintiff sued the

gage executed by *N* to *J*. In appeal the District

decree, and the interest of *H* therefore was not affected by the sale. He affirmed the decree of the first Court, with the variation that the plaintiff and defendant were jointly entitled to the possession of the land. In second appeal it was contended for the defendant that the District Judge ought to have found whether the mortgage-debt contracted by *N* was for a family necessity and therefore binding on *N*, and whether the sale to the plaintiff was *bonâ fide*. *Held* that the plaintiff was entitled to recover. The defendant had only purchased that which was seized and sold in execution of the decree, *viz.*, the right, title, and interest of *N* in the land, and *H*'s share was not affected by the sale. *Held* also, following *Maruti Narayan v. Lilachand, I. L. R., 6 Bom., 564*, that it was not competent for the Court in this suit to consider the question whether the loan contracted by *N* in 1872 was contracted by him as manager for a necessary family purpose so as to bind the share of *H* in the property. *Held* also that, if the share of *N* had already been sold to the defendant under the mortgage-decree, the defendant and *H* were simply tenants-in-common, and there could be no object on to *H* doing what he liked with his remaining share. KISANSING JIVANSING v. MORESHWAR VISHNU

[I. L. R., 7 Bom., 91

See also PANDURANG KAMTI v. VENKATESH PAI

[I. L. R., 7 Bom., 95 note

206. ——— *Mortgage of family property, Effect of, on minor members*—Sadoba, Raghoba, and Sambhapa were members of an undivided Hindu family,

brought a suit upon the mortgage against Sadoba, Raghoba, and Rajaram. The Court of first instance awarded him possession of the house until he should receive payment of the mortgage-debt. In execu-

the plaintiff. On 28th January 1879, the plaintiff complained that he was prevented from obtaining possession of one of the rooms in the said house; the

HINDU LAW—JOINT FAMILY —*continued*.

5. POWERS OF ALIENATION BY MEMBERS —*continued*.

father died and *D* separated from his brother. At the time of separation *D* took nothing out of the family estate, which was very small. He subsequently supported himself by practising medicine, which he taught himself from some medical books which his father had bought for him before his death. *D* had two sons, *viz.*, *M*, born in 1846, and *H*, born in 1849. At the end of the year 1850, *D* and his two sons came to Bombay, where *D* continued to practise medicine and established a dispensary. In 18 2, having saved R5,000 by his medical practice, he set up business as a merchant, and acquired a considerable fortune. His two sons, *M* and *H*, who were joint with him, assisted him in his business. On the 7th October 1882, *M* separated from his father and brother and received as his share of the property a sum of R6,000 and jewels and clothes worth about R5,000. On the same day *M* made his will, whereby he appointed his father *D* executor, and disposed of the whole of the portion of the property so allotted to him, directing that it should be invested and paid over to his son (the plaintiff) on his attaining majority; and, in the event of his dying without issue, that it should go to his (*M*'s) brother, *H* (defendant No. 2). On the 16th October 1882, *M* died leaving the plaintiff, his son, him surviving. The plaintiff in this suit contended that the whole of the said property was ancestral property in the hands of *M* and as such came to him (the plaintiff) unaffected by the will. The defendants contended that the property previously to the division was the joint, but not the ancestral, property of *M*, his father, and brother; that it was property earned by the joint exertions of *D* and his sons; that at the division in October 1882, the portion taken by *M* was his self-acquired property; and that he was entitled to dispose of it by will. *Held* that whether, previously to the division in October 1882, the joint property of *D* and his two sons was ancestral or not, as soon as a portion of such joint property was divided off by the father (*D*) and given to his son *M*, it became ancestral in *M*'s hands. For, assuming the truth of the defendants' story as to the mode in which the whole property was acquired, it could not be held that it was acquired by the equal exertions of the father and his two sons. The father contributed the nucleus of R5,000, and on that nucleus the property was formed by the joint exertions of himself and his sons. The portion, therefore, that came to *M* did not represent the equivalent of his own exertions only. It represented also a portion of the father's original capital. The property thus being ancestral in the hands of *M*, he could not, in the town of Bombay, dispose of it by will, even though it consisted of moveables, to the prejudice of the plaintiff's rights. CHATTURBHOOJ MEGHJI *v.* DHARAMSI NARANJI [I. L. R., 9 Bom., 438

219. ———————— *Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interest and costs.*—The plaintiff's father mortgaged certain ancestral property for a limited term. A suit was brought on the mortgage against the father, and a decree was passed, directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father. In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question. Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father on the ground that the debts contracted by the father were for immoral purposes, and that therefore the estate could not be bound by the decree at all. The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit. On appeal to the High Court,—*Held* that, under the decree passed against the father, the interest and costs became a debt upon the whole estate, from which it could not escape, unless it was clearly made out that the debt was the result of fraud or immorality. Although the father alone was primarily liable for the fulfilment of the decree, still the debt was one which was rightly chargeable to the whole estate, and the sons would be liable just as they would have been liable if the father had compromised the suit, unless the transaction were tainted with fraud or immorality. In a united family the father is capable of acting as the representative of the family, except in the case of borrowing for fraudulent or immoral purposes. In this case he entered into litigation, which resulted in loss to himself and the family which he represented, and he could make the family responsible for any loss so incurred. The judgment-creditor could also make them liable. Although where the father desires to represent the whole estate he can do so, yet he is not necessarily bound to do so, nor is the whole estate liable where he explicitly or impliedly binds only his own portion. NARAYANRAV DAMODAR *v.* JAVHERVAHU . . . . I. L. R., 12 Bom., 431

220. ———————— *Mortgage by father and one of the sons—Agreement by father alone that mortgagee should enjoy the property for a term of years in satisfaction of debt—Agreement not binding on sons—Alienation—Decree against father—When binding on his sons—Dekkan Agriculturists' Relief Act (XVII of 1879), s. 44.*—In 1888 one *D* and his eldest son *B* mortgaged certain ancestral property for R1,500. In 1890 *D* alone came to an arrangement with the mortgagee by which it was agreed that the mortgagee should enjoy the income of the mortgaged property till 1900 A.D. in full satisfaction of the mortgage-debt. This agreement was filed in Court under s. 44 of the Dekkan Agriculturists' Relief Act on 4th April 1891, when it took effect as a decree. In execution of this decree, the mortgagee sought to attach the property mortgaged. *D* having died in the meantime, his sons objected to the attachment on the ground that the decree was fraudulent and collusive. But this objection was disallowed by the Court, and the property

HINDU LAW—JOINT FAMILY—*continued.*

5. POWERS OF ALIENATION BY MEMBERS—*continued.*

211. ——— *Permanent lease by elder brother—Necessity.*—The elder brother in a

212. ——— *Agreements made by adult members of family.*—Arrangements relating to the enjoyment of joint family property and

not detrimental to their interest, and such arrangements consented to by a father should be held binding on his minor child. NURSINGH DASS *v.* NARAIN DASS . . . . . . 3 N. W., 217

Upheld by Privy Council . . 26 W. R., 17

(*b*) FATHER.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

213. ——— Alienation by father—*Mitakshara law—Interest of father in ancestral property.*—Before partition, a Hindu father has, under Mitakshara law, no definite share in joint ancestral property which he can aliene. NOWBUT RAM *v.* DURBAREE SINGH . . . . . 2 Agra, 145

214. ——— *Sale by father of joint family of his own share.*—A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction according to the Madras school between a father and other co-parceners PALANIVELLAPPA KAUNDAN *v.* MANNARU NAIKAN . . . 2 Mad., 416

law, invalid.

equity which the purchaser may have to a refund of

S. C. HONOOMAN DUTT ROY *v.* BHAGBUT KISHEN [15 W. R., F. B., 6

216. ——— *Mitakshara law—Power of father to aliene.*—A Hindu father in a Mitakshara joint family has no power to settle ancestral property by conveyance in his lifetime, or by a will to take effect after his death, without the consent of all his sons living at the time Where such a settlement is not assented to by the sons living at the

[11 W. R., 480

217. ——— *Mitakshara law—Alienability by a co-parcener of his undivided share of ancestral estate—Will.*—A Hindu of the

Madras Court alienation by will to support that *v.* RAMCHANDRA DADA NAIK . . . I. L. R., 5 Bom., 48 [L. R., 7 I. A., 181

218. ——— *Ancestral property—Joint property earned by a father and his sons—Effect of contribution by the father of a nucleus of property earned by himself exclusively—Power of disposition by will over.*—D (defendant No. 1) lived at Jamnagar jointly with his father and brother until the year 1850. In that year his

HINDU LAW—JOINT FAMILY
—*continued.*

5. POWERS OF ALIENATION BY MEMBERS
—*continued.*

COSSERAT *v.* SUDABURT PERSHAD SAHOO [3 W. R., 210

PHOOLBAS KOER *v.* LALLA JOGESHUR SAHOY [18 W. R., 48

Affirming on review SADABURT PERSHAD SAHOO *v.* LOTFALI KHAN . . . 14 W. R., 339

229. ———— *Suit by one member to set aside alienation by another.*—There is nothing in *Rajaram Tewari* v. *Luchman Prasad, B. L. R., Sup. Vol.*, 731: 8 *W. R.*, 15, or in *Sadabart Prasad Sahu* v. *Foolbash Koer*, 3 *B. L. R., F. B.*, 31, to justify the contention that where there is an alienation made by one shareholder, and another sharer sues to set aside that alienation, it follows as a consequence that a party who sues to set aside the alienation must obtain a decree. SRI PRASAD *v.* RAJGURU TRIAMBUKNATH DEO [6 B. L. R., 555 : 14 W. R., 386

230. ———— *Mitakshara law—Mortgage of undivided share in joint family property—Succession—Survivorship—Decree in suit against widow—Misjoinder—Parties.*—On the death without issue of a member of a Hindu family joint in estate and subject to the Mitakshara law, his undivided share in the joint family property passes to the surviving members of the joint family and not to his widows, and cannot be made liable for his debts under decrees obtained against his widows as his representatives. *Quære*—Where a member of a joint Hindu family governed by the Mitakshara law, without the consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of the joint family, mortgages in his lifetime his undivided share in portion of the joint family property, can the other members of the joint family, on his death, recover from the mortgagee the mortgaged share, or any portion of it, without redeeming? A suit by a surviving member of a joint Hindu family subject to the Mitakshara law, to recover a moiety of the undivided share of a deceased member of the family in the joint family property, ought not to be dismissed on the ground that all the members of the family have not joined in bringing the suit, where it appears that the only other surviving member of the family has already sued for and recovered his moiety of the property, and disclaims all further interest, and is joined as a co-defendant in the suit. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY . . . I. L. R., 1 Calc., 226 [25 W. R., 285 : L. R., 3 I. A., 7

231. ———— *Power of one member to alienate his right to rent.*—Where members of a Hindu family are so far separate in estate that each collects his quota of rent separately, there is no reason why one of them should not make over, either in exchange or sale, his right of receiving a part of the rents. KALIKA SAHOY *v.* GOUREE SUNKUR . . . . . 12 W. R., 287

HINDU LAW—JOINT FAMILY
—*continued.*

5. POWERS OF ALIENATION BY MEMBERS
—*continued.*

232. ———— *Mitakshara law—Alienation by a member of his own share.*—One member of a joint and undivided Hindu family, governed by the law of the Mitakshara, cannot mortgage or sell his share of the family property without the consent, express or implied, of the other members. *Chamaili Kuar* v. *Ram Prasad*, *I. L. R.*, 2 *All.*, 267, followed. *Deendyal Lal* v. *Jugdeep Narain Singh*, *I. L. R.*, 3 *Calc.*, 198, and *Suraj Bunsi Koer* v. *Sheo Prasad Singh*, *I. L. R.*, 5 *Calc.*, 148, referred to. RAMANAND SINGH *v.* GOBIND SINGH . . . I. L. R., 5 All., 384

SHEO PERSAD JHA *v.* GUNGA RAM JHA [5 W. R., 221

233. ———— *Mitakshara law—Alienation by one member of his own share.*—According to the law of the Mitakshara, joint family property cannot be alienated by any member of the family, save for urgent and necessary expenses of the family, without the consent of all the members. *Held*, therefore, where the holder of an impartible raj made an absolute gift of a portion of the estate appertaining to the raj to one of his wives, "in token of his love for her," and his eldest son sued to set aside the alienation, that the parties being members of a joint Hindu family, and governed by the law of the Mitakshara, the son was entitled to bring the suit, and that the alienation not being made for necessary purposes was void. BHAWANI GHULAM *v.* DEO RAJ KUARI . . I. L. R., 5 All., 542

234. ———— *Power of member to give stranger interest in property.*—Until a division of ancestral property is effected, no member of a joint family governed by the Mitakshara law can give a stranger any interest in the property. MUDDUN GOPAL LALL *v.* GOWURBUTTY [21 W. R., 190

235. ———— *Effect of introduction of stranger into family—Auction-purchaser—Gift by member of family—Co-sharers, Assent of.*—The introduction of a stranger in blood as auction-purchaser of a portion of the rights and interests of an undivided Hindu family breaks up the constitution of such family as undivided, and destroys the character of such property as joint and undivided family property, and a gift subsequently made by the remaining members of the original undivided Hindu family of their rights to a third person, without the assent of the auction-purchaser, is not invalid by reason of the principle of Hindu law which requires the assent of co-parceners in an undivided Hindu family to give validity to such a gift. BALLABH DAS *v.* SUNDER DAS . I. L. R., 1 All., 429

236. ———— *Joint undivided family property—Assent of co-parceners—Stranger.*—The member of a joint Hindu family who alienates his rights and interests in the family property to a stranger in blood thereby incapacitates himself from objecting to similar alienation by another member of such family of his rights and interests in

HINDU LAW—JOINT FAMILY—*continued*

5 POWERS OF ALIENATION BY MEMBERS—*continued*

was attached Thereupon D's sons filed a suit for redemption of the mortgage of 1888 Defendant pleaded that the mortgage was merged in the agreement of 1890 [illegible] redeem [illegible] upon the [illegible] redeem th[illegible] the provisions of s 15A of the Dekkan Agriculturists Relief Act ceased and the right to the surplus profits in the hands of the mortgagee over and above

[illegible]

of ancestral property It amounts *pro tanto* to an alienation by him of the ancestral estate without consideration. *Held* also that, as the agreement was not binding upon the plaintiffs, the decree against their father based upon the agreement was also not binding upon them BALA *v* BALAJI MARTAND

I. L. R., 22 Bom., 825

(c) OTHER MEMBERS

221. ———— Alienation by one member—*Alienation without consent of others—Mitakshara law*—*Quære*—Whether, under the law of the Mitakshara in Bengal, a voluntary alienation by one co sharer, without the consent of the rest of his undivided share in joint ancestral property is valid. DEENDYAL LAL *v* JUGDEEP NARAIN SINGH

I L. R, 3 Calc, 198 1 C L R., 49 L. R., 4 I A, 247

222 ———— *Transfer by one member of his share in the joint family property to another member—Consent of co-sharers*—One member of a joint Hindu family cannot transfer his undivided share in the joint family property to another member of the family without the consent of the rest of the co-sharers CHANDAR KISHORE *v* DAMPAT KISHORE I L R., 16 All., 369

223 ———— *Investment of proceeds of estate by one member*—If a member of an undivided Hindu family invests the proceeds of the joint ancestral estate in the purchase of other estates he does so for the benefit of the joint family Without the consent of all the members or a legal necessity, or a declaration and acts amounting to a division, he cannot alienate so as to bind even his own share BONA KOERRE *v* BOOLEE SINGH

8 W. R, 183

224. ———— *Mitakshara law*—Under the Mitakshara law, a single member of a family was empowered to sell immoveable property for the purpose of paying off family debts only where the sons and grandsons are minors or otherwise incapable of giving their consent Where the sale of landed estate by a single member for the payment of family debts is set aside because made without the son's consent, the son can only get possession on repayment of the purchase-money which was applied to the liquidation of the debts. MUTHOORA KOONWAREE *v* BOOTUN SINGH 13 W. R., 31

225 ———— *Power to alienate share of joint family property*—Where the validity of a sale of ancestral property is objected to on the ground that it was effected without the consent of all the members of the joint Hindu family, the objection can only be made by the member who did not consent A member of a Hindu family may mortgage his undivided share of the joint property [illegible] to raise [illegible] to pay [illegible] necessity [illegible]

14 W. R., 60

226 ———— *Alienation of joint property—Mitakshara law*—As long as a Hindu family under the Mitakshara is living in the joint enjoyment of family property such property can only be alienated by the joint consent of all the members or in the event of such necessity as will, in the eye of the law give the kurta power to aliene as the agent of all them by the kurta alone BUNSEE LALL *v* AOLADH AHSAN 23 W R, 552

227. ———— *Sale by co-parceners, Effect of—Mitakshara law*—A sale by one member of a joint family held to be bad under the Mitakshara law as being an appropriation by him without any partition of joint family property CHUNDER COOMAR *v* HURBUNS SAHAI

I. L. R., 16 Calc., 137

228 ———— *Mitakshara law—Survivorship—Mortgage of share in joint family property*—A member of a Hindu family living under the Mitakshara law and having joint family property died entitled to an undivided share in such property leaving two widows him surviving The widows were sued in their representative capacity in respect of debts incurred by him during his lifetime on his own account and decrees were obtained against them In execution an interest in certain portions of the joint family property to the extent of the share to which the deceased was entitled in his lifetime was sold and the auction purchasers obtained possession of it *Held* that the share of the deceased did not at his death pass to his widows but that there being no male issue it passed to the remaining members of the family by survivorship and could not be rendered liable to the debts of the deceased in a suit against his widows *Quære*—Whether those who take the share by survivorship are liable for the debts of the deceased to the extent of his share? A member of a joint Hindu family has no authority without the consent of his co-sharers to mortgage his undivided share in a portion [illegible] in order to raise money [illegible] benefit of the [illegible] *v* PHOOLBASH [illegible] W. R., F. B., 1

HINDU LAW—JOINT FAMILY
—*continued.*

5. POWERS OF ALIENATION BY MEMBERS
—*continued.*

family mortgaged some land forming a portion of the ancestral estate. The mortgagee, having obtained a decree in 1856 on his mortgage, caused 20 gundas of the mortgaged land to be attached and sold, on account of the right and interest of one of the mortgagors only, on 24th January 1871. In a suit brought by the purchaser against a third member of the undivided family, in whose possession the 20 gundas then were, to recover the same from him, as being the property of the mortgagor, whose right and interest therein had been attached and sold,—*Held* that the share of a co-parcener, being in the estate as a whole and not in any particular part of it, can be ascertained only by taking a general account of the whole estate, and making a distribution in accordance with the results of such account. In taking such account, however, and in making the consequent distribution, it would be only equitable that the share of the co-parcener who affected to deal with a portion of the land as if empowered to mortgage it should, *cœteris paribus,* if the purchaser takes his place, be so made up as to embrace wholly, or so far as possible, the land which the purchaser bought as belonging to such co-parcener. *Held* also that to obtain possession of the land purchased by himself the purchaser must file against the other members of the family a partition suit for the ascertainment of the share of the co-parcener, whose interest he has purchased, as it stood in 1848, and for the allotment to himself of that share so far as it can legally and equitably be identified with the land purchased by himself, and that consequently the suit in its present form will not lie. PANDURANG ANANDRAV *v.* BHASKAR SHADASHIV . . 11 Bom., 72

245. ———— Alienation by one holder of inam—*Right of alienee.*—*Held* that it was competent for an inamdar to alienate a third share of whatever interest he himself had in a family inam, in consideration of services rendered in recovering the inam itself; and that the grantee had a right to have the award made by the decree in the terms of the grant, which purported to bestow the third share in perpetuity. SULTANJI T. PATIL SIRVALE *v.* RAGHUNATH R. MARATHE . 2 Bom., 48: 2nd Ed., 45

246. ———— Mortgage by a co-parcener —*Liability of his share after his death to satisfy the mortgage.*—Where a member of a joint Hindu family makes a mortgage, such mortgage, being good when made, creates a valid charge on the property to the extent of his share, which cannot be defeated by his death. RANGAYANA SHRINIVASAPPA *v.* GANAPABHATTA . . . I. L. R., 15 Bom., 673

247. ———— *Mortgage—Attempt by one co-sharer to mortgage his undivided share on his own account—Effective sale of part of such a share in execution of a decree against the co-sharer.*—Under the Mitakshara, as administered by the High Courts of the North-West Provinces and Bengal, an undivided share in ancestral estate, held by a member of a joint family in co-parcenary, cannot be mortgaged by him on his own private account, without the consent of those who share the joint estate. An attempted mortgage by one of them does not create a charge which can have priority over purchases at execution-sales made *boná fide* and without notice of it; such purchasers having acquired the right of compelling the partition which the debtor might have compelled, had he been so minded, before the alienation by the sale of his share. As to the invalidity of the attempted mortgage, *Sadabart Prasad Sahu* v. *Foolbash Koer, 3 B. L. R., F. B., 31,* referred to and approved. As to the right of the purchaser of the share at a judicial sale, *Deen Dayal Lal* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198 : L. R., 4 I. A., 247,* followed, and reference made to the distinction mentioned in the latter case, between a voluntary alienation without such consent and an involuntary one as the result of the execution of a decree against the co-partner and a judicial sale thereunder. A father and son composed a joint family, holding a share of ancestral lands. The son mortgaged to a banker, to secure a loan, his interest in the undivided share. His father, without having notice of the mortgage, purchased in good faith portions of the estate forming part of the son's joint share at sales in execution of decrees against the latter obtained by his creditors. *Held* that the son's interest in the portions so sold passed to the father, whose rights therein as purchaser at the judicial sales were not affected by the mortgage. The mortgagee could, in execution of a money-decree which he might obtain against the mortgagor, personally attach and bring to a judicial sale such parts of the mortgaged property as had not already been sold, but not in virtue of the mortgage. BALGOBIND DAS *v* NARAIN LAL . . . I. L. R., 15 All., 339
[L. R., 20 I. A., 116

248. ———— *Ancestral estate held jointly by family under the Mitakshara —Sale attempted by one member of his share—Effect of partition—On death of vendor, right by survivorship of other members—Equity of purchaser to have a lien against survivor.*—As to ancestral estate under the Mitakshara, so long as the estate is undivided and the share of a member of the family is indefinite, he cannot dispose of it without the consent of his co-parceners. *Held* that in a joint family a nephew, having taken by survivorship the undivided share of an uncle, deceased, was entitled to recover that share from a purchaser, to whom the uncle in his lifetime had sold it without the consent of his co-parceners and without necessity. *Held* also that the purchaser could have no lien on the share for return of the purchase-money. As soon as partition is made —actual partition not being in all cases essential, as, for instance, where the family has agreed to hold their estate in definite shares, or a member's undivided share, in execution of his creditor's decree, has been attached—that will be regarded as sufficient to support the alienation of a member's interest, as if it had been his acquired property. As regards members

HINDU LAW—JOINT FAMILY—*continued*

5. POWERS OF ALIENATION BY MEMBERS—*continued*

[I. L. R., 2 All., 898

237. ———— *Sale of share in execution of decree.*—According to the Hindu law current in Madras, the member of an undivided family may aliene the share of the family property to which, if a partition took place, he would be individually entitled, and there may be a valid sale of such share on an execution in an action of damages for a tort. VIRASVAMI GRAMINI *v.* AYYASVAMI GRAMINI [1 Mad., 471

238. ———— *Suit to enforce purchase.*—The right of a co-parcener to alienate his vested interest in the property held in co-parcenary is limited to the extent of the co-parcener's share in the particular property which is the subject of the alienation. In a suit to recover a moiety of a village which was a portion of the joint family property, and which had been sold by the managing member without the assent of the plaintiff's father, and not for family purposes, the entire village being less in quantity and value than the share of the managing member,—*Held* that the plaintiff was entitled to the relief prayed. VENKATA CHELLA PILLAY *v.* CHINNAYA MUDALIAR . 5 Mad., 166

239. ———— *Power to dispose of portion of property by will.*—A long course ... the right of ... joint ... can- ... his ... In ...

of property. At the moment of death the right of survivorship was in conflict with the right by devise. Then the title by survivorship, being the prior title, took precedence to the exclusion of that by devise. VITLA BUTTEN *v.* YAMENAMMA . 8 Mad., 6

240. ———— *Impartible pol-* ...

future rights of succession which might accrue to them as members of an undivided family. Possession ... was not a new and ... law of ... rs of ... held

by a single member. An estate so possessed, free from present co-parcenary rights in others, is not entirely at the disposal of the holder for his own purposes. The ...

SALUCKAI TEVAR *alias* OYYA TEVAR 8 Mad., 157

In the same case on appeal to the Privy Council this decision however was reversed and it was held that the construction to be put on the words was that they were a renunciation by the person using them for himself and his descendants of all interest in the pollaput either as the head or as a junior member of the joint family and that their effect was to make the pollaput, with its incidents of impartibility and peculiar course of succession, the property of the other members of the family as effectually as if it had been assigned on partition. SIVAGNANA TEVAR *v.* PERISAMI I. L. R., 1 Mad., 312

S. C. PERIASAMI *v.* PERIASAMI [L. R., 5 I. A., 61

241. ———— *Law ... in Bombay Presidency.*—On the western side of India a member of an undivided Hindu family can, without the consent of his co-parceners, sell his share in the undivided property. TUKARAM AMBAIDAS *v.* RAMCHANDRA VALAD BHIMANNA DHUOI [6 Bom., A. C., 247

242. ———— *Right to alienate share—Liability to attachment.*—It is settled law in the Presidency of Bombay that one of several par- ...

in the undivided estate of a ... taken in execution under a judgment against the parcener to whom such share belongs at the suit of his personal creditor. VASUDEV BHAT *v.* VENKATESH SANBHAV 10 Bom., 139

243. ———— *Right to alienate share—Consent.*—*Held* by a Full Bench, following the doctrine laid down in the preceding case, *Vasudev Bhat v. Venkatesh Sanbhav, 10 Bom., 139*, that a Hindu parcener may without the consent of his co-parceners alienate his share in undivided family property. *Tukaram v. Ramchandra, 6 Bom., A. C., 247*, approved and adopted. *Payne v. ...*, *Morris Part II, 93*, disapproved of. FAKIRAPA BIN SATTAPA *v.* CHANAPA BIN CHANMALAPA [10 Bom., 162

... by ... alien- ... arti- ... India

HINDU LAW—JOINT FAMILY —*continued.*

5. POWERS OF ALIENATION BY MEMBERS —*continued.*

interest) to one *G*. Formal possession was given to the purchaser, but the actual possession remained with the mortgagee (*A*). After this sale took place, no other family property remained in which *B* had an interest. *K* died in 1880, and *R* died in 1883, no partition having been made between them and *B*. In March 1891, *B* sold his interest in the house to the plaintiff, who in 1892 filed this suit to redeem the mortgage of 1845. The lower Appellate Court dismissed the suit, holding that when in 1878 *G* purchased *B*'s right and interest in the last remaining portion of the family property, *B* ceased to be a co-parcener with *K* and *R*, and consequently took nothing by survivorship on their death, their shares going to *G*. On appeal to the High Court,—*Held* that *B*'s rights to succeed to his brothers' shares were not affected by the sale of his interest in the last item of joint family property to *G* so long as the latter did not proceed to work out his rights by partition. *B* became entitled, on the death of *K* and *R*, to their respective shares. GURLINGAPA SATWIRAPA GIDWIR *v.* NANDAPA CHANBASAPA SOLAPURI . . . . I. L. R., 21 Bom., 797

253. ———— *Sale of land not joined in by all co-parceners—Partial application of consideration towards debt binding on all —Suit for ejectment—Rights of purchaser.*—In a sale of land the consideration was expressed to be the discharge by the purchaser of a debt owing by the vendor and secured by mortgage on the land, and of sundry other debts which had been incurred by the vendor for family necessity. In a suit for ejectment by the vendor's co-parceners, who were minors at the time and had not joined in the sale, it was held that there had been no legal necessity for the sale, which was accordingly declared to be not binding on the plaintiffs. It was, however, found that a portion of the consideration had been applied to the discharge of a mortgage debt, which would have been also binding on the plaintiffs. On its being contended that plaintiffs' interest in the property comprised in the sale should be held liable to the extent of their share of the mortgage debt. *Held* that in making the purchase defendant was, with reference to plaintiffs, a mere volunteer, and could not as against them claim by way of equity a charge on their shares, even though part of the consideration had been applied towards the discharge of their joint debt; also that, if a purchaser wishes to stand by a sale which is only partially valid, he must be content with the vendor's share; and that, if he wishes to repudiate the transaction altogether, his only remedy is by suit against the vendor for the return of the price paid on the ground that the consideration for the same has failed. MARAPPA GAUNDAN *v.* RANGASAMI GAUNDAN

[I. L. R., 23 Mad., 89

254. ———— *Release by a co-parcener of his rights in favour of another co-parcener.*—In a joint Hindu family, consisting of four brothers, *A*, *B*, *C*, and *D*, *A* and *B* obtained their shares by a partition suit. In the plaint they stated that they relinquished their shares of the moveable property in favour of *C*. In a suit by *C* against *D* to recover his share *C* claimed three-fourths of the moveable property. *D* contended that the release by *A* and *B* in favour of *C* could not, according to Hindu law, add to the share of *C* as a co-parcener. *Held* that *C* was entitled to the share claimed. PEDDAYYA *v.* RAMALINGAM

[I. L. R., 11 Mad., 406

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

255. ———— **Sale of interest of one member.**—The right, title, and interest of one co-sharer in joint ancestral estate may be attached and sold in execution to satisfy a decree obtained against him personally, under the law of the Mitakshara, as well in Bengal as in Bombay and Madras. The purchaser at such a sale acquires merely the right to compel a partition as against the other co-sharers which the judgment-debtor possessed. DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH

[I. L. R., 3 Calc., 198: 1 C. L. R., 49
L. R., 4 I. A., 247

SOOMRUN THAKOOR *v.* CHUNDER MUN MISSER

[3 C. L. R., 282: 5 C. L. R., 26

256. ———— *Mitakshara law —Right of purchaser.*—The principle laid down in the case of *Deendyal Lal* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198*, that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution of a decree obtained against him personally is applicable to the right, title, and interest of any member of the joint family, and is not confined to the interest of the father alone. RAI NARAIN DASS *v.* NOWNIT LAL

[I. L. R., 3 Calc., 809: 4 C. L. R., 67

257. ———— *Mitakshara law —Alienation by father, and decree against son—Purchaser of son's interest at sale in execution of decree—Partition.*—Where property belongs to a father and son governed by the Mitakshara law, the son's interest vests at birth and is saleable. The son may obtain a partition and separate possession of his share of ancestral property, and his share, once partitioned, will be liable to sale. There is therefore no reason why the interest of the son in the property while undivided should not be sold in satisfaction of his debts, but in such case the purchaser should bring a suit to obtain partition of the property. JALLIDAR SINGH *v.* RAM LAL . . I. L. R., 4 Calc., 723

258. ———— **Sale under decree against one member**—*Purchaser, Right of.*—The purchaser of the rights and interests of a judgment-debtor, who is a member of a joint family, at a sale in

HINDU LAW—JOINT FAMILY
—continued

5. POWERS OF ALIENATION BY MEMBERS
—continued

of a family living at the time when their alienation was set aside at the instance of another member,

tions of his uncle, what might have been an enforceible equity against the interest of the latter, while it existed, could not affect the interest which had passed to a surviving co-parcener MADHO PARSHAD v. MEHRBAN SINGH I L R., 18 Calc, 157
[L. R., 17 I. A, 194

249. ———————— *Right of son to alienate joint ancestral property—Mortgage*—A member of a joint Hindu family has no power in

to BHAGIRATHI MISR v SHEOBHIK
[I. L R, 20 All., 325

250. ——— ——— *Mitakshara law—Mortgage of undivided shares in joint family property—Consent of co sharer*—A, B, and C together formed a joint Mitakshara family On the 27th June 1872, A and B without the consent of C for their own benefit and without legal necessity, executed a bond in favour of J and I (defendants, 2nd party), mortgaging to them certain joint properties On the 14th August 1882, J and I obtained an *ex-parte* decree on their bond against A, B, and C, and in execution mouzahs Pipra and Bangra were put up to sale on the 16th March 1888 and purchased by H (defendant, 1st party) Prior to the ... A, B, and C, ... gaged mouzahs ... h March 1884 ... mortgage, and ... was sold on the ... purchased the property and duly obtained possession from the Court. In a suit by the plaintiffs for a declaration that the mortgage of the 27th June 1872 was invalid, and the decree and execution-sale upon the basis thereof ineffectual as against them and for confirmation of possession, and in the alternative that if the mortgage bond was valid the amount due thereunder and chargeable on mouzah Pipra might be determined, and the plaintiffs declared entitled to redeem upon payment of such amount,—*Held* that, although A and B had no authority, without the consent of their co-sharer C, to mortgage their undivided shares to J and I, yet as the plaintiffs derived their title from those mortgagors they were not entitled to recover such shares without paying to H, who by his auction purchase had acquired the rights of the mortgagees the money advanced on the mortgage-bond of 1872 with interest and that the same was a charge on such shares *Mahabeer Persad v Ramyad Singh, 12 B L R, 90* applied in principle *Sadabart Prasad Sahu v Foolbash Koer, 3 B L R, F B, 31* and *Madho Prasad v Mehrban Singh, I L R 18 Calc, 157 L R, 17 I A, 194*, distinguished *Nilakant Banerji v Suresh Chandra Mullick I L R, 12 Calc, 414*, referred to JAMUNA PARSHAD v GANGA PARSHAD SINGH HARDHANI LALL v GANGA PARSHAD SINGH I L. R, 19 Calc., 401

251. *Alienation to pay off mortgage executed by widow to pay debt of husband—Revival of a barred debt by the widow of a deceased Hindu*—Although a managing member of a joint Hindu family cannot as such revive a barred debt as against his co-parceners it is competent to the widow of a deceased member of the family, who represents the inheritance for the time being and in whom it is a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts, though they were barred at the time of its execution Where therefore the managing members of an undivided Hindu family, after the death of the widow, sold family property for the purpose of discharging such a mortgage,—*Held* that the sale was binding on the coparcenary KONDAPPA v SUBBA
[I. L. R., 13 Mad., 189

252. ———————— *Alienation of his share by a co parcener—His position and rights after such alienation—Position and rights of purchaser—Subsequent death or birth of other coparceners—Effect on position of purchaser and on right of survivorship*—(1) The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position The pur-

(3) As the purchaser ... vendor lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition (4) The purchaser like his alienor is liable to have his share diminished upon partition by the birth of other co-parceners if he stands by and does not insist on an immediate partition Three undivided brothers, viz., S, N, and M, were the owners of a certain house which on the 1st August 184? N mortgaged with possession to one A. In 1876, the house was vested in the respective sons of the said three brothers, viz., B (son of S) R (son of N) and A (son of M) In September 1878 in execution of a decree against ? alone the house was sold ... (... ...) ...

affected by sale in execution of a decree against his father—Parties to suit.—A family, governed by Mitakshara law, carrying on a trade in the names of some of its members, having become indebted to the defendants in a large amount in respect of advances made for the purposes of the trade, some of the head members of the family executed a bond in favour of the defendants for the amount due, and hypothecated certain family properties which stood in their names as collateral security therefor. The amount not having been paid on the due date, the defendants brought a suit on the bond against the persons who had executed it, and obtained a decree which, however, did not direct that the properties hypothecated should be sold. In execution of that decree, the interest of the judgment-debtors in the hypothecated properties, and in other family properties, were sold, and were purchased by the defendants, who subsequently, under their purchase, obtained possession of the shares of the judgment-debtors and of those of their sons. The decree not having been satisfied by those sales, the defendants brought a suit against the remaining head members of the family to have it declared that their interests in the family properties were liable to satisfy the decree, and that suit also was decreed. Under the last decree, the interests in the family properties of the judgment-debtors under that decree were sold, and were purchased by the defendants who subsequently obtained possession of the shares of those judgment-debtors and of the shares of their sons. Some of the sons of the judgment-debtors in both decrees were adult at the time when the suits were instituted. In suits brought, many years after the sales, by members of the family who had not been parties to the previous suits, to recover their shares in the family properties, —*Held* that the interests of all the members of the family had passed on the sales. *Per* MITTER, *J.*—There is no distinction in principle between the case of an adult son and that of a minor son as regards a son's interest in ancestral property being liable to pass on a sale of such property in execution of a decree against his father only; but if an adult son proves that he would have been able to save the property by paying off the debt out of his private funds, if he had been a party to the suit, *quære*—whether he should not be allowed to have the sale set aside on payment of the debt due under the decree. BASO KOER *v.* HURRY DASS

[I. L. R., 9 Calc., 495 : 12 C. L. R., 292

265. ———— **Sale under decree against joint family property**—*Liability of family for debts contracted by co-sharer—Debts binding on joint family.*—When one member of a Mitakshara family contracts a debt which is binding not only on the persons executing the contract, but on the other members of the joint family to which he belongs, the creditor has two courses open to him: (*a*) he may elect to treat the debt as a personal debt, and confine his suit to the person who actually contracted it. In such a suit he obtains a mere personal decree not binding on the family, and in execution thereof he merely sells the right, title, and interest of the person who actually contracted the debt; that was the case of *Deendyal Lal* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198 : L. R., 4 I. A., 24;* or (*b*) he may treat the borrower as acting for the family, sue him as representing the joint family, and, when he has obtained a decree against the borrower in that capacity, proceed to sell the right, title, and interest of his judgment-debtors (*i.e.*, all the members of the joint family) or any of them. That was the case of *Bissessur Lal Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233.* JUMOONA PERSAD SINGH *v.* DIG NARAIN SINGH

[I. L. R., 10 Calc., 1 : 13 C. L. R., 74

266. ———— *Rights of purchaser of co-sharer's interest in joint family property.*—When the right, title, and interest of a co-sharer in a joint family estate are sold in execution to satisfy a decree against him personally, the purchaser acquires merely the right of the judgment-debtor to compel a partition against the other co-sharers. *Deendyal Lal* v. *Jugdeep Narain Singh, L. R., 4 I. A., 247 : I. L. R., 3 Calc., 198,* referred to and followed. A money-decree having been made against the father of a family, and the decree-holder having caused to be attached the family estate, and brought to sale the father's right, title, and interest therein,—*Held* that, by the sale not the father's share, but that interest which he had—*viz.*, the right which he would have had to a partition, and to what would have come to him under it—passed to the purchaser. The family governed by the Mitakshara consisted of father, mother, and minor son at the time of the decree, and the Court below had decreed to mother and son one-third each, leaving one-third to the purchaser. A second son was born, and the mother died pending this appeal, the two sons becoming parties in respect of her share,—*Held* that on this appeal preferred by the purchaser, the decree should stand, the appellant having got quite as much as he would have got if the decree had been more correct in form, as he had obtained all that he would have been entitled to on a partition without being left to demand it. HARDI NARAIN SAHU *v.* RUDER PERKASH MISSER

[I. L. R., 10 Calc., 626 : L. R., 11 I. A., 26

267. ———— *Alienation—Liability of the joint undivided family property for family debts—Sale in execution of decree against one member of family property—Rights of other members.*—During the minority of *S*, a member of a joint Hindu family, consisting of himself, his father *J*, and his uncle *H*, and while he was living under the natural guardianship of his father, *R* sued *J* and *H*, but not *S*, as the heirs of *P*, *S*'s grandfather, and as the heads and representatives of the joint family, to recover a joint family debt incurred to *R* by *P* before *S*'s birth, by the sale of

HINDU LAW—JOINT FAMILY
—*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

[illegible]

v. AGHOREE AJAIL LALL
I. L. R., 5 Calc., 144: 4 C. L. R., 465

259. ——— *Right of purchaser at sale in execution of decree—Bona fide purchaser*.—Although a purchaser at an execution-sale can ordinarily get no greater rights than the rights of the person named as the debtor in the decree under which the sale is held, the effect of a sale in execution of a decree against a member of a joint Hindu family under Mitakshara law has been ex- [illegible]

[illegible] the property of a joint family is so ... [illegible] decree against one of the members, a judgment-creditor who was plaintiff, and at whose instance the sale in execution was held, cannot claim to be in the position of a third person purchasing *bond fide* without notice *Girdharee Lall* v. *Kantoo Lall* and *Muddun Thakoor* v. *Kanto Lall, L. R. 1 I. A., 321; Deendyal Lall* v. *Jugdeep Narain, I. L. R., 3 Calc., 198: 1 C. L. R., 49: L. R. 4 I. A., 247*, and *Ram Sahai* v. *Sheo Proshad Singh, 4 C. L. R., 266* discussed. GONESH PANDEY *v.* DABEE DOYAL SINGH
5 C. L. R., 36

260. ——— *Mitakshara law—Mortgage of family property by one of several co-sharers in a joint estate*.—In a suit on a mortgage against a member of a joint Hindu family governed by the Mitakshara law, the whole of the interest of the joint family in the estate was decreed to the mortgagees, who subsequently obtained possession of it. Afterwards a suit was brought by another member of the family, who had attained majority prior to the mortgage, to set it and the decree aside so far as he was concerned, and to recover possession of his share of the joint family property. *Held* that the mere circumstance of an antecedent debt was not in itself sufficient to bind him and that the alienation was not good as against him, unless it could be shown that he had either expressly or impliedly given his consent to the mortgage. UPOROOP TEWARI *v.* LALLA BANDHJEE SUHAY
I. L. R., 6 Calc., 749: 8 C. L. R., 192

261. ——— *Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—* [illegible] *not being parties to the decree* [illegible]

passed to the purchaser [illegible]

HINDU LAW—JOINT FAMILY
—*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

decree against the father alone upon a mortgage by him of his right. *Held* that, as the mortgage and decree, as well as the sale-certificate, expressed only the father's right the *primâ facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract, but supported. The enquiry in recent cases regarding the liability of the estate of co-sharers in respect of transfers made by, or execution against, the head of the family has been this, *viz.*, what if there was a conveyance, the parties contracted about, or what, if there was only a sale in execution, the purchaser had reason to think he was buying. Each case must depend on its own circumstances. *Upooroop Tewary* v. *Lalla Bandhjee Suhay, I. L. R., 6 Calc., 749*, distinguished. SIMBHUNATH PANDE *v.* GOLAP SINGH
I. L. R., 14 Calc., 572
L. R., 14 I. A., 77

262. ——— *Mortgage by sons of an insane person—Sale in execution of decree—Suit by Committee to recover possession—* [illegible] *Rights of*—Although a [illegible] [illegible]

debtor ascertained by partition yet this rule will not be applicable where the suit is brought by a person [illegible]

[illegible] RAM SAHYE BHUKKUT *v.* LALLA LALJEE SAHYE
I. L. R., 8 Calc., 149: 9 C. L. R., 457

263. ——— **Sale under decree against adult members**—*Sale of right, title, and interest of member of joint Hindu family—Suit to set aside alienation*.—A suit having been brought against the ostensible heads of a family governed by Mitakshara law upon a mortgage a decree was obtained for the sale of the mortgaged property, and under that decree [illegible]

suit, instituted a suit to recover their shares in the property sold. The debt for which the property had been mortgaged was one which the plaintiffs and their predecessors were morally bound to pay. *Held* on review, reversing the decision of *Hunooman Sahai* v. *Parsidh Narain Singh, 7 C. L. R., 4 5*, that the entire property of the family passed to the purchaser, and that the plaintiffs' suit must be dismissed. PARSIDH NARAIN SINGH *v.* HUNOOMAN SAHAI
11 C. L. R., 203

264. ——— *Mitakshara law—Family trade—Alienation of ancestral property by some members of family—Interest of son*

HINDU LAW—JOINT FAMILY
—*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued.*

entertained the question as between the sons and the creditor of the father "whether the attachment of the rest of the family property specified in the plaint ought not, in respect of plaintiff's shares, to be cancelled," and decided it in favour of the creditor on the ground that the debt had been contracted for purposes binding on the family, and further decided that the property so under attachment ought to be sold to discharge the debt, and it was sold accordingly. Subsequently to the decree for partition, and when the defendants were divided from their father, *S D* (who was the sole judgment-debtor in suit No. 28 of 1871), the house and lands now in issue, which formed no part of the property mortgaged for the debt, the subject of suit No. 28 of 1871, were attached and sold and bought by the father of the present plaintiffs. The question in the present suits was whether the properties last mentioned, not having been attached in execution of the decree in suit No. 28 of 1871, and not therefore being any of those specifically affected in favour of the creditor by the decree in suit No. 33 of 1872, were liable as part of the joint family property, under the declarations of the judgment in that suit, to discharge the debt due to the creditor of the father by the decree in suit No. 28 of 1871. *Held* on this question by the High Court (MORGAN, *C.J.*, INNES and KINDERSLEY, *JJ.*), affirming the decree of the Court of first instance, that these properties were not so liable; that under the decree and execution-proceedings in suit No. 28 of 1871 merely the rights of *S D* were sold; that nothing in that litigation indicated that it was intended to enforce the debt against the whole property as a debt due from the family, and that the decision in the partition suit (No. 33 of 1872) covered only what was then in question, and could not be viewed as authorizing the attachment of the items of property now in question in execution of that decree. That the present suits were therefore rightly dismissed. *By* INNES, *J.*—That the prayer of the plaintiffs (the sons) in suit No. 33 of 1872, so far as it related to the removal of the attachment in execution of the decree in suit No. 28 of 1871, should have been at once granted. That the creditor in suit No. 28 of 1871 had elected to sue the father alone, and that, though it might have been open to him (the creditor) to have so framed his suit as to have obtained a decree making the joint family liable in persons and property, having failed to do so, he could not afterwards seek to extend the operation of the decree beyond the proper and limited scope of it; and that the Court, in trying the question of the liability of the sons to discharge the debt due to the first defendant's creditor, in effect instituted against them a new suit. *Deendyal Lal* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198,* followed. The authorities reviewed on the question whether in execution of a decree the interests of any but those who were actual parties to it, or those who, on the death of such parties, became their representatives in interest, could be affected. VENKATARAMAYYAN *v.* DIKSHATAR . **I. L. R., 1 Mad., 358**

272. ———— *Rights of creditors and purchasers—Partition.*—*Per* INNES, *J.* —A creditor of an undivided Hindu family as such has no right to intervene in a partition suit among co-parceners, and to claim that the debt owing to him be distributed over the several parcels of the family property so as to charge all the co-parceners. *Per* MUTTUSAMI AYYAR, *J.*—Although an account is taken between co-parceners as a convenient matter of procedure for resolving their joint rights and liabilities into several rights and liabilities, this does not create an additional right in the creditors of the family to forbid partition until their debts are paid, or in purchasers at a Court sale to add to the determinate interest that has been sold to them by a fresh enquiry into the real character of the decree debt. VELLIYAMMAL *v.* KATHA CHETTI

I. L. R., 5 Mad., 61

273. ———— *Mortgage by one co-parcener—Suit to declare shares of other co-parceners liable.*—*C*, one of two undivided Hindu brothers, hypothecated family property as security for money lent. The creditor having obtained a decree, in a suit brought against *C*, against the property hypothecated only, the personal remedy being barred by limitation, attached the property hypothecated. *S*, the brother, and the minor sons of *C* intervened, and their shares in the property were released from attachment, and the one-sixth share of *C* alone was sold in execution and bought by the creditor. The creditor having brought a suit to have it declared that the shares released from attachment were liable to be sold for the amount due under the decree against *C*, and having proved that the debt was incurred by the managing member for purposes which would render it binding on the defendants,—*Held* that the suit must nevertheless be dismissed. CHOCKALINGA MUDALI *v.* SUBBARAYA MUDALI

I. L. R., 5 Mad., 133

274. ———— *Mortgage made by managing brother—Rights of purchaser at Court sale.*—If one of several undivided Hindu brothers mortgages the family lands, and the creditor sues upon the mortgage-bond without making the brothers of the debtor parties to the suit, and a decree is passed against the mortgagor personally, directing payment of the debt and costs, and declaring the property mortgaged liable for the amount decreed, and the property is subsequently attached by the judgment-creditor in execution of the decree, and the right, title, and interest of the judgment-debtor in the land mortgaged is sold by the Court and purchased by a third party, the brothers of the judgment-debtor are entitled, in a suit for partition of the family property, to recover their shares in the lands made over by the Court to the auction-purchaser, although such purchaser proves that the mortgage-debt was contracted by the judgment-debtor as

HINDU LAW—JOINT FAMILY
—*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

the joint family estate which had been hypothecated by *P* as security for the payment of such debt *R* obtained a decree in this suit against *J* and *H* for such debt, such decree directing the sale of the joint family estate for the satisfaction of the debt In the execution of such decree the rights and interests of *J* and *H* in such estate were put up for sale and were purchased by *R*, who took possession of such estate *Held*, in a suit by *S* to recover his share of the joint family estate, that, under the circumstances it must be held that the decree against *J* and *H* was made against them as representing the joint family, and therefore such decree was properly executable against such estate, notwithstanding that *S* was not formally brought on the record of the suit in which such decree was made, and *S* could not recover his share of such estate *Bissessur Lall Sahoo* v *Luchemessur Singh, L R 6 I A*, 233, followed *Deendyal Lall* v *Jugdeep Narain Singh, I L R*, 3 *Calc*, 198, distinguished RAM SEVAK DAS *v* RAGHUBAR RAI

[I. L R, 3 All, 72

268 ———— *"Ancestral property"—Right of occupancy at fixed rates—Liability of son for father's debts—Purchaser at*

The transferee by sale of the decree brought to sale in execution thereof the judgment-debtor's right of occupancy in certain land as a tenant at fixed rates The judgment-debtor's two sons brought a suit against the purchaser to recover two-thirds of the holding *Held* that the right of occupancy at fixed rates in such land was ancestral property,—that is property in which under Hindu law the sons took a vested interest by birth *Held* also that, as the decree was not one to satisfy which the family property could be sold, being a mere money-decree against the father personally, and for a debt which it was not the duty of the sons to pay, and as the purchaser was bound to have satisfied himself as to *whether the family* property was liable to be sold in satisfaction of the decree, the purchaser could not, on the principles laid down in *Girdharee Lal* v *Kantoo Lall, 14 B L R*, 187, and *Suraj Bunsi Ko*[illegible]
be [illegible]
wit[illegible]
hat [illegible]
must be taken to have had constructive notice of that fact MAHABIR PRASAD *v* BASDEO SINGH

[I. L. R., 6 All, 234

269. —— *Joint ancestral property—Execution against deceased son's interest in hands of the father—Death of judgment-debtor after attachment and before sale—Civil Procedure Code, s 274*—In execution of a money-decree an order was issued under s 274 of the Civil Procedure Code for the attachment of property which was the joint ancestral estate of the judgment debtor and his father. The sale was ordered and a day fixed for sale, but in consequence of postponements made at the judgment debtor's request no sale took place In the meantime the judgment debtor died and the decree holder applied for execution against the father as representative of the judgment-debtor whose interest had survived to him *Held* that the decree-holder had by the proceedings taken in execution during the son's lifetime obtained rights over his interest which could not be defeated by his death before sale *Suraj Bunsi Koer* v *Sheo Persad Singh, I L R* 5 *Calc* 148 followed. RAI BALKISHEN *v* RAI SITARAM I. L R, 7 All, 731

270 —— *Alienation by father—Co-sharers Sale of minor's share—Right of purchaser* Plaintiff's father (first defendant) borrowed money to enable him to sue for the recovery of certain lands and being unable to repay it judgment was obtained against him and the lands in suit were sold and purchased at the Court sale by the fourteenth defendant Plaintiff brought the present suit to set aside the sale of one-half of those lands on the ground that they formed his share that he was a minor when his father incurred the debt and that his share was not liable for debts incurred by his father The Munsif gave a decree in favour of plaintiff The fourteenth defendant appealed. The District [illegible]
[illegible]
property could be sold [illegible]
[illegible]

271. —— *Mortgage by father—Minor's interests*—The plaintiffs minors by their mother, as next friend and guardian, sued defendants, sons of one *S D*, under s 230 of Act VIII of 1859 to recover a four-fifths share of a house and lands of which plaintiffs were dispossessed by the defendants in the execution of the decree in a suit, No. 33 of 1872 The facts were that in a suit, No. 28 of 1871, a decree for money due under a mortgage-bond was passed against *S D*, the father of the present defendants and in execution of the decree certain immoveable property was attached The sons of *S D* came forward and put in a claim to the property and applied for the release of the attachment The claim was disallowed The sons, being dissatisfied with the order disallowing their claim, brought suit No. 33 of 1872 in which they prayed for a partition, and that their four-fifths share might be released from attachment. Prior to that suit, the attached property had been sold, but the sale was limited to the right, title and interest of the father in the joint property; however, in suit No. 33 of 1872, the Court, having decreed a partition, further

the plaintiff's claim to be regarded as a mortgagee of the entire property could not be allowed. The temporary absence of his father, *H*, owing to the pressure of his creditors, could confer no legal authority on *J* to take upon himself to mortgage the family property. He had not been authorized by his father, nor did he assume to act for him when he mortgaged the property. The mortgage to the plaintiff was therefore to be regarded as the act of *J* in his individual capacity, and as such could receive no ratification by the mere reticence of his father. The plaintiff, however, having been in possession, was entitled, if he could establish his title to a lien on *J*'s share, to be put into possession jointly with the defendant if the latter's title was proved. PATIL HARI PREMJI *v.* HAKAMCHAND

[I. L. R., 10 Bom., 363

281. ——————— *Joint and undivided property—Debts of deceased member—Liability of his interest.*—*J*, a member of a joint Hindu family, left two sons, *R* and *S*. *S* borrowed money upon a simple bond, and, after his death, the obligee sued his widow and daughter-in-law upon the bond, obtained a decree against them, and in execution thereof brought to sale *S*'s interest in the property. *B*, the grandson of *R*, thereupon sued the purchaser to recover the same, on the ground that it was the joint property of *S* and himself, and could not be attached and sold in satisfaction of *S*'s debt. *Held* that, on the death of *S*, his interest passed to the plaintiff by survivorship, and was not liable after his death to any personal debt he had incurred, inasmuch as no charge had been made on the property, and the creditor could not recover his money from the joint property after the death of *S* when he had not obtained judgment against *S*, and taken out execution by attachment against him. *Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc., 148,* and *Rai Bal Kishen* v. *Rai Sita Ram, I. L. R., 7 All., 731,* referred to. BALBHADAR *v.* BISHESHAR

[I. L. R., 8 All., 495

282. ——————— *Liability of ancestral estate for separate debt of deceased co-parcener.*—Undivided family property is not, in the hands of surviving co-parceners, generally speaking, liable to separate debts of a deceased co-parcener. Where therefore a Hindu, undivided in estate from his father, died separately indebted to the plaintiffs, who obtained a decree against the father and wife of the deceased, as his legal heirs and representatives, to recover, from the estate and effects of the deceased, the amount of their debt and costs, and sought, in satisfaction of the decree, to attach a shop which during the lifetime of the deceased and subsequently to his death had been in the possession of his father, there being no proof of any separate estate of the deceased having devolved upon his father,—*Held* that, though the son was, during his life, jointly interested with his father in the shop as being ancestral property, his right had come into existence at his birth and died with him, and therefore the plaintiffs could not render the shop available for their claim. In the Bombay Presidency, the share of one of the co-parceners in a Hindu undivided family in the ancestral estate may, before partition, be seized and sold in execution for his separate debt in his lifetime. Such a co-parcener cannot, however, by simple voluntary gift or by devise, alienate his share to a stranger, so as to bind his surviving co-parceners after his decease. The purchaser, mortgagee, or other alienee, for valuable consideration, of such an unascertained share, cannot, before partition, insist upon the possession of any particular portion of the undivided family estate. The mortgagee or purchaser of a share in the undivided ancestral estate of a Hindu family takes such share subject to the prior charges or encumbrances affecting the family estate or that particular share. If the mortgage or sale be of a special portion of the family property, and possession of such portion can, on partition, be given to the mortgagee or purchaser, without injustice to prior encumbrancers or to co-parceners, it is the duty of the Court making the partition to give effect to the mortgage or sale, and so to marshall the family property among the co-parceners as to allot that portion, or so much of it as may be just, to the mortgagee or purchaser. *Quære*—Whether, in the event of it being impossible, consistently with the rights of others, to give possession of the portion mortgaged or sold to the mortgagee or purchaser, he would be entitled to be recouped out of such other portion as might, on partition, be allotted to the parcener whose share in the special portion had been mortgaged or sold. The attachment of a parcener's share in the family property under an ordinary money-decree should go against the share, right, title, and interest of the judgment-debtor in such parts of the family property (naming and describing them) as the judgment-creditor can specify, and against his share, right, title, and interest in all other parts of the family property. *Kalyanbhai* v. *Motiram Jamnadas, 10 Bom., 378; Vasudev Bhat* v. *Venkatesh Sanbhav, 10 Bom., 139;* and *Fakirappa* v. *Chanappa, 10 Bom., 162,* commented on and distinguished. *Goor Pershad* v. *Sheodin, 4 N. W., 137,* approved. UDARAM SITARAM *v.* RANU PANDUJI **11 Bom., 76**

283. ——————— *Mortgage made by one co-parcener without consent of the others—Onus probandi.*—Where joint family property is mortgaged by one parcener, in order that it may bind the co-parceners, the mortgagee must prove affirmatively that the mortgage was assented to by the other co-parceners, or was necessary for family purposes. LILA MORJI *v.* VASUDEV MORESHVAR GANPULE . . . . **11 Bom., 283**

OODHUN MISSER *v.* HOOBDAR SIHGH

[1 N. W., Ed. 1873, 271

284. ——————— *Sale in execution of decree of one of several co-parceners' share*

HINDU LAW—JOINT FAMILY —*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

manager of the family and for purposes binding on the family. DASARADHI *v.* JODDUMONI [I. L. R., 5 Mad., 193

275. ——— *Suit by co-par-* ... *of decree*

...

sold to which the alienation could not extend and which has now become his separate property CHINNA SANYASI *v.* SURIYA . I. L. R., 5 Mad., 196

276. ——— *Decree on mortgage-bond—Rights of purchaser*—Where the property of an undivided Hindu family consisting of

...

enforcement of the mortgage, the sons in a suit for partition of the family property are not entitled to recover their share of the property sold from the purchaser SRINIVASA NAYUDU *v.* YELAYA NAYUDU [I. L. R., 5 Mad., 251

277. ——— *Undivided family—Uncle and nephew—Decree against uncle—Sale of ancestral land—Interest of purchaser—* ... Hindu the undi- ... reby ... cure ... ccu- ... bond, ... and ... uned ... *D* to ... that ... upon ... ther, ... pur- ... ATRA

DIKSHATAR . . I. L. R., ... , 136

278. ——— *Debt binding on family—Suit against one of two undivided brothers—Personal decree—Attachment of family* ... joint ... ed the ... or) to ... aving ... debt ... y the ... *quod* ... t, mas- ... elder ... ounger

HINDU LAW—JOINT FAMILY —*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

brother's suit must prevail *Bissessur Lall Sahoo v Luchmessur Singh, L R, 6 I A, 233,* distinguished. VIRARAGAVAMMA *v* SAMUDRALA [I. L. R., 8 Mad., 208

279. ——— *Mortgage by* ... *against manager of family* ... *or sale of* ... *—Rights* ... executed ... property of a mort ... *V V* ... sued by ... mortgage-deed and as representative of *V*, and a decree was passed for the sale of the house in default of payment by *P* within three months of the debt then due. This period having elapsed, the mortgagee applied to the Court to enforce the decree by attachment of the mortgaged property, and the property having been attached, application was made for sale By a warrant, dated 3rd December 1874 the Sheriff of Madras was ordered to sell the property, and on the 12th July 1875 the Sheriff sold the right title, and interest of the judgment-debtor in the said house to *K* In a suit brought by *K* against *P* and the other members of the family to recover possession of the house,—*Held* that, as the mortgagee intended to enforce his rights under the mortgage by sale and the Court intended to sell the house as mortgaged property, *K* was entitled by virtue of his purchase, to recover possession of the house *Bissessur Lall Sahoo v Luchmessur Singh, L R, 6 I A, 233,* referred to and followed KRISHNAMA *v* PERUMAL [I. L. R., 8 Mad., 388

280. ——— *Mortgage of family property by son during father's temporary absence how far binding on the family—Subsequent sale of such mortgaged property in execution of money-decree against father—Rights of purchaser at such a sale*—The land in dispute was the ancestral property of *H* and his son, *J*, who were members of an undivided Hindu family This land had been mortgaged to one *B*, to whom the father and son were also liable on a separate money bond. *H*, being pressed by his creditors, left his village and remained away for some years. During his father's absence, *J*, being pressed for payment of his debts, compromised *B*'s entire claim for R?00 which he obtained on loan from the plaintiff, to whom he gave as security a mortgage with possession of the land in question The plaintiff continued in possession until he was dispossessed by defendant No. 2, who claimed to be purchaser of the land at a sale held in execution of a money-decree obtained by defendant No. 1 against *H* The plaintiff now brought the present suit against the defendants, praying that either he should be restored to the possession of the lands or that the sum of R200, which he had advanced to *J*, should be decreed to be paid by the defendants. Both the lower Courts rejected the plaintiff's claim. On appeal by the plaintiff to the High Court,—*Held* that

HINDU LAW—JOINT FAMILY—*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued.*

and between the dates of proclamation and the auction-sale the zamindar died. Or the argument that, this having given rise to an ambiguity, the Court must be understood to have sold all that it could sell, and that under the circumstances it could sell, and was bound to sell; (*b*) because the debts, the subject of the decrees under execution, not having been incurred by the late zamindar for any immoral purpose, the entire zamindari formed assets for their payment in the hands of his son. *Held* that the question of what the Court could, or should, have sold had not arisen. All that required decision was what the Court had sold. If (*a*) only was put up for sale, then that interest only could have been purchased. Two Courts having concurred in finding that (*a*) only was sold, in which also their Lordships agreed, only that interest passed to the purchaser. PETTACHI CHETTIR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR . . . I. L. R., 10 Mad., 241 [L. R., 14 I. A., 84

290. ——— *Decree against an undivided brother—Mortgage of joint property.*—*A*, an undivided member of a Hindu family, mortgaged part of the family property by way of conditional sale to *B*, to secure a loan. *B* having sued *A* personally for the amount due, *A* admitted the mortgage and said he would surrender the property in discharge of the debt, and a decree was passed accordingly. *A*'s undivided brothers intervened in execution. *Held* that the decree, not being passed against the joint family or its representative, and not describing the property, which it directed to be delivered to the plaintiff by way of absolute sale to be family property, could not be executed against the family property. GURUBAPPA *v.* THIMMA [I. L. R., 10 Mad., 316

291. ——— *Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, Effect of.*—In 1858, *S* mortgaged certain ancestral property to the first defendant for a term of nine years. In 1864, *S* being then dead, the defendant sued *R*, the son of *S*, to recover the money-debt, and obtained a decree against the estate of the deceased. The land in question was thereupon attached and sold on the 13th August 1873 subject to defendant's mortgage lien, and was purchased for the defendant by his cousin. The certificate of sale was drawn up in accordance with the decree, and recited that the purchaser bought the whole right, title, and interest of *S*. On the 3rd August 1882, the plaintiff purchased from *R*'s sons the share of *R* in *S*'s estate. The plaintiff sued the defendant to redeem the property. The Court of first instance rejected his claim. On appeal, the lower Appellate Court reversed that decree, and remanded the case for re-trial. Against this order of remand, the defendant appealed to the High Court. *Held*, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely *S*'s interest. By his purchase the defendant was to be regarded as having bargained for and purchased the entire interest in the land. *Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21,* followed. SAKARAM SHET *v.* SITARAM SHET [I. L. R., 11 Bom., 42

292. ——— *Mortgage by father—Decree subsequently to father's death against eldest son as heir of father—Minor sons not parties—Sale in execution of family property other than that comprised in mortgage—Subsequent suit by minor sons to recover their shares—Minor sons when bound by decree against eldest son as heir of father.*—One *K* mortgaged certain land to *B*, and died leaving four sons, *viz.*, *R* and three minor plaintiffs. Subsequently *B* brought a suit on the mortgage against *K* by his heir, *R*, for the amount due, and obtained a decree whereby it was ordered that the amount should be recovered from the mortgaged property, and if that proved insufficient, from the other estate of the deceased. The minor sons were not made parties to that suit, nor was *R* sued as representing the joint family. In execution of the decree, *B* attached and sold the whole of the joint family property, the certificate of sale showing that the right, title, and interest of *K*, deceased, by his heir *R*, was attached and sold and conveyed to the purchaser. The three minor sons subsequently brought this suit to recover some of the property, contending that their shares were not bound by the sale. *Held* on the authority of *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233,* and reversing the decree of the lower Court, that the property in question having been declared liable for the debt incurred by the father, the intention was that the estate in its entirety should be sold. The minor sons were therefore bound by the sale, unless they could prove that the father's debt had been incurred for an immoral and improper purpose. The case was accordingly sent back for trial of an issue upon that point, with a direction that the burden of proof should lie upon the plaintiffs. JAIRAM BAJABASHET *v.* JOMA KONDIA . . . . . I. L. R., 11 Bom., 361

293. ——— *Manager, Decree against—Sale in execution of such decree passing his interest only—Effect of sale on shares of co-parceners not parties to the suit.*—A sale under a decree obtained against the manager of a Hindu family only passes the right, title, and interest of those who are parties to the suit. Accordingly, where, in execution of a decree obtained against two of the brothers of the plaintiff as managers in a suit to which the plaintiff was not a party, the house, which was the family property, was sold,—*Held* the sale was void as against the plaintiff's share in the house. *Maruti Narayan* v. *Lilachand, I. L. R., 6 Bom., 564,* followed. LAKSHMAN VENKATESH *v.* KASHINATH [I. L. R., 11 Bom., 700

HINDU LAW—JOINT FAMILY —*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

in joint family property—Right of purchaser—Right of parceners to partition —The purchaser at a Court's sale of the right, title, and interest of one of the co parceners in the undivided estate, by his certificate, under s 259 of the Civil Procedure Code, can take no more than the interest of such co parcener in the property disposed of, as a member of the united family. Course pointed out as to the ascertainment of what that interest is, and how the transaction can be made good for the benefit of the purchaser of a co-parcener's interest in a particular [illegible]

that the purchaser was in as a tenant-in-common with the judgment-debtor's co-parceners, and that they were entitled to possession in common with him, and might enforce their right for a share of the enjoyment, or for a definition of the portions in which each party in future was to have a sole interest. Such co-parceners, however, are not entitled to eject the purchaser wholly from a defined moiety of any particular portion of the joint property. MAHABALAYA BIN PARMAYA *v.* TIMAYA BIN APPAYA . . 12 Bom., 138

285. ———— *Alienation of joint family property—Mortgage by manager—Decree against manager—Sale in execution of decree.*—*G*, the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued *G* on the mortgage, and obtained a decree A house, which was part of the family property, was sold in execution, and was purchased by the defendant himself. The plaintiff [illegible]

[illegible] obtained against G alone *Held* also that the [illegible]

binding on the minor plaintiff MARUTI NARAYAN *v.* LILACHAND I. L. R., 6 Bom., 564

286 ———— *Son's liability for father's debts—Execution sale of ancestral* [illegible]

[illegible] whether the purchaser is a stranger or the decree-holder himself. *Deendyal v. Jugdeep Narain Singh, L. R., 4 I. A., 247, Hurdey Narain v. Ruder Perkash, L. R., 11 I. A., 26*, and *Muddun Thakoor v. Kantoo Lall, L. R., 1 I. A. 321*, referred to *Lakhmichand v. Kastur, 9 Bom 60* and *Sobagchand Gulabchand v. Bhaichand, I. L. R., 6 Bom., 205*, followed. BHIKAJI RAMCHANDRA OKE *v.* YASHVANTRAV SHRIPAT KHOPKAR

[I. L. R., 8 Bom., 489

287. ———— *Decree against father alone for unsecured debts—Purchaser at a sale in execution of such decree—Liability of family property—Sons, How far such decree and sale binding on* —Where a father alone is sued, not expressly in his representative capacity and without his sons being joined as co-defendants for unsecured debts contracted by him whatever be the nature of such debts the decree does not bind the interest of the sons in the family estate Nor when the judgment-creditor proceeds to sale in execution of such decree against the family property does the sale of the father's "right, title, and interest" pass any more than the father's interest to be ascertained generally by a partition with his sons BABAJI *v.* DHULI

[I. L. R., 9 Bom., 305

288. ———— *Decree against the father alone—Attachment of family property in execution of such decree—Son's interest in the family property when bound by decree against the father or by sale effected by the father* —Where in a joint Hindu family the father disposes of family property, the son's interest is bound unless the son [illegible]

alone, the son's interest is bound unless the son can show that the sale was on account of an obligation to which he was not subject. The father is in fact, the representative of the family both in transactions [illegible]

289. ———— ———— *Civil Procedure Code, Act VIII of 1859 s 264—Execution of decree against a member of an undivided family by sale of his personal interest in the family estate which was an impartible zamindari; such interest, by reason of the death before the sale, consisting only of the rents and profits then uncollected* —On a sale of the right, title and interest in an impartible zamindari in execution of decrees against the zamindar, the head of an undivided family, the question was whether (a) only his own personal interest or (b) the whole title to the zamindari, including the interest of a son and successor, passed to the purchaser The proclamation of sale purported to relate to (a) only [illegible]

who afterwards purchased the property at the execution-sale. In a suit brought by the latter against the other members of the family to obtain a declaration that he had purchased the entire family estate, the defendants, without showing that the mortgage did not validly bind the family estate, contended that, not having been made parties to the suit, they were not affected by the decree, and their shares had not passed at the sale in execution. *Held* that, as the defence was substantially on the latter ground only, though there was every opportunity given to the defendants to raise the former ground also, the suit need not be remanded; and that the whole estate had passed to the purchaser. *Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21 : L. R., 12 I. A., 1,* referred to and followed. *Pursid Narain Singh* v. *Honooman Sahay, I. L. R., 5 Calc., 845,* referred to and approved. DAULAT RAM *v.* MEHR CHAND

[I. L. R., 15 Calc., 70
L. R., 14 I. A., 187

297. ——— *Sale of joint family estate in execution of decree upon the father's debt—Exoneration of son's share only where debt has been incurred for an immoral or illegal purpose—Burden of proving the nature of the debt.*—The sons in a joint family, under the Mitakshara, cannot set up their rights of inheritance in the family estate against their father's alienation for an antecedent debt, or against a sale in execution of a decree upon such debt, although the sons may not have been parties to the decree, unless the sons can establish that the debt has been contracted for an immoral or illegal purpose. The son's position is distinct in this respect from that of other relations in the joint family, inasmuch as it is his duty to pay, out of the family estate, his father's debt. A decree against indebted fathers, in a family consisting of fathers and sons, charged the family estate, and the sale in execution was not merely of the right, title, and interest of the debtors, but of the property being such interest. On the other hand, before the sale notice was given on behalf of the sons that the property was ancestral and joint. *Held,* in a suit on behalf of the sons against the purchaser at the sale to recover their shares, that it was for the plaintiffs to show affirmatively that the debts were contracted for an illegal or immoral purpose, and that to establish general extravagance against the fathers was insufficient. It was not necessary for the purchaser to show that there had been a proper inquiry as to the purpose of the loan or to prove that the money was borrowed for family necessities. BHAGBUT PERSHAD SINGH *v.* GIRJA KOER . . . I. L. R., 15 Calc., 717

[L. R., 15 I. A., 99

298. ——— *Decree against father—Sale of ancestral estate in execution of money-decree—Son's rights and liabilities.*—*A* purchased the half share of the judgment-debtors in certain immoveable family property, at a Court-sale held in execution of money-decrees against *B* and his brother, who were members of an undivided Hindu family. *B*'s undivided son sued *A*—*B* and the remaining members of his family being also joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale; but he did not prove that the debt for which the decrees were passed was immoral, and it appeared that *A* had bargained and paid for the entire estate. The plaintiff was a minor at the time of the sale, and *B* was not the managing member of the family. *Held* that the Court-sale was binding on the plaintiff's share. *Nanomi Babuasin* v. *Modhun Mohun, L. R., 13 I. A., 1 : I. L. R., 13 Calc., 21,* discussed and followed. KUNHALI BEARI *v.* KESHAVA SHANBAGA . . . . I. L. R., 11 Mad., 64

299. ——— *Decree on mortgage for ancestral debt of family—Minor.*—In a suit by a minor to set aside a sale in execution of a decree on a mortgage for a debt of his father's,—*Held* on the merits that the debt for which the decree was passed, being a family and ancestral debt, was binding upon the whole family, including the plaintiff, who was therefore not entitled to disturb the execution-purchaser. DAJI HIMAT *v.* DHIRAJRAM SADARAM . . . I. L. R., 12 Bom., 18

300. ——— *Ancestral property—Alienations by father—Son's liability for father's debts—Purchaser—Notice.*—Where a Hindu governed by the Mitakshara law seeks to set aside his father's alienations of ancestral property, if the alienees are purchasers at Court-sales held in execution of decrees against the father, it is not enough for him to show that the debts, for which the decrees were passed, were contracted by the father for immoral purposes; it must also be shown that the auction-purchasers had notice that the debts were so contracted. The points to be determined in such case are—(1) What was the interest that was bargained for and paid for by the purchaser? Was it the father's interest only, or was it the interest of the entire family? (2) Were the debts for which the decrees were obtained, under which the property was sold, contracted for immoral purposes? and (3) Had the purchaser notice that the debts were so contracted? *Suraj Bunsi Koer* v. *Sheo Proshad Singh, L. R., 6 I. A., 88 : I. L. R., 5 Calc., 148,* and *Nanomi Babuasin* v. *Modhun Mohun, L. R., 13 I. A., 1 : I. L. R., 13 Calc., 21,* followed. The plaintiff sued in 1883 for partition of ancestral property, consisting (*inter alia*) of certain thikans which had been sold in execution of decrees passed against his father. The plaintiff, though an adult at the time, was not a party to the suits in which the decrees were passed against the father, nor to the execution-proceedings. In the certificates of sale granted to the different purchasers, the property sold was described as being a four-annas share, which would be equal to the shares of the father and the son together, but this description was

HINDU LAW—JOINT FAMILY—*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

294. ———————— *Mortgage of family property by father—Decree against father enforcing mortgage—Decree for money against father—Sale in execution of decree—Rights of sons* —The members of a joint Hindu family brought suits in which they respectively prayed for decrees that their respective proprietary rights in certain ancestral property might be declared, and that their interests in such property, which were about to be sold in exe-

[illegible]

behalf of the plaintiffs in connection with this decree that, although the judgment debtor was a person of immoral character, the creditor had no means of

[illegible]

not entitled to any declaration in respect of the execution-proceedings under the decree for enforcement of hypothecation The second of the decrees above referred to was a simple money decree for the principal and interest due upon a hundi executed by the father in favour of the decree-holder The suit terminating in that decree was brought against the father alone, and the debt was treated as his separate debt *Held* that the creditor's remedy was to have brought his suit, if he desired to obtain a decree which he could execute against the family

[illegible]

rights and interests in the attached property *Muttayan Chettiar* v. *Sangili Virapandia Chinnatambiar, I. L. R., 6 Mad., 1,* distinguished *Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21,* and *Basa Mal* v. *Maharaj Singh, I. L. R., 8 All., 205,* referred to BALBIR SINGH v. AJUDHIA PRASAD

[I. L. R., 9 All., 142

295 ———————— *Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money-decree, Sale in execution of—Sale-certificate referring to*

[illegible]

members of a joint Hindu family of whom the father was one can produce as his document of title only a sale-certificate showing him to have bought, in execution of a money-decree against the father only, the right, title and interest of the father, then he has bought nothing more than such interest, and

HINDU LAW—JOINT FAMILY—*continued*

6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

he is liable to be compelled to restore to the other members of the joint family their interests which had not, upon the face of the sale-certificate, passed by the sale The father and manager of a joint Hindu

[illegible]

should not be ... on a certain ... this trans-

[illegible]

be assumed to have been passed against him in his capacity as karta, and that the other members of the family were therefore bound by the decree and sale The other members brought a suit to recover posses-

[illegible]

maintain the suit and to have a decree declaring them entitled to the whole property, subject to a declaration that the defendants as auction-purchasers of the father's share might come in and claim a partition of that share out of the joint estate *Per* MAHMOOD J, that the plaintiffs were entitled to succeed on the further ground that the debt for which the decree against the father was passed was immoral within the meaning of Hindu law *Suraj Bunsi Koer* v. *Sheo Proshad Singh*... *Pande* v. *Golap Singh, I. L. R., 14 Calc., 572: L. R., 14 I. A., 77; Deendyal* v. *Jugdeep Narain Singh, L. R., 4 I. A., 247 I. L. R., 3 Calc., 198,* and *Hurdey Narain Sahu* v. *Ruder Perkash Misser, L. R., 11 I. A., 26: I. L. R., 10 Calc., 626,* referred to. RAM SAHAI v. KEWAL SINGH I. L. R., 9 All., 672

296. ———————— *Mitakshara law—Sale of joint family property in execution of*

[illegible]

and passed at the sale in execution of a decree upon the mortgage Whether the shares of all were bound depended on the authority of those who executed the mortgage. By this authority they had to raise money to pay a debt owed by the family as joint members of an ancestral trading firm. The managing members of a joint trading family, having purported to mortgage the family estate, to pay a debt due by the firm, were sued upon it by the mortgagee,

HINDU LAW—JOINT FAMILY —*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued.*

has been contracted for an illegal or immoral purpose that the son, upon a decree against the father alone being executed by the attachment and sale of the family estate, can claim to have the liability limited to the father's own share under the Mitakshara law. In the absence of such proof, whether the entirety of the family estate has been transferred at the sale in execution or not, is a question of fact in each case dependent on what was understood to be brought, and has been brought to sale. *Nanomi Babuasin* v. *Modhun Mohun, L. R., 13 I. A., 1 : I. L. R., 13 Calc., 21*, and *Bhagabut Pershad Singh* v. *Girja Koer, L. R., 15 I. A., 99 : I. L. R., 15 Calc., 717*, referred to and followed. The description of the property in a certificate of sale as the right, title, and interest of the judgment-debtor is consistent with every interest which he might have caused to be sold passing at the sale, and does not necessarily import that, when the father of a joint family is the judgment-debtor, nothing is sold but his interest as a co-sharer. MAHABIR PERSHAD *v.* MOHESWAR NATH SAHAI . . . I. L. R., 17 Calc., 584

S. C. MAHABIR PERSHAD *v.* MARKUNDA NATH SAHAI . . . . L. R., 17 I. A., 11

307. ——— *Decree against Hindu father—Interest of undivided son—Certificate of sale.*—In execution of a decree for sale passed on a hypothecation-bond, all the land comprised in the security was attached. The judgment-debtor was a member of an undivided family; his son put in no claim in execution, but on a claim put in by his nephew it was ordered that the right, title, and interest of the judgment-debtor be sold. The decree-holder became the purchaser, and having obtained a sale certificate which recited that "all the interest of the judgment-debtor" was sold, he was put in possession of all the land part of which he leased to the son. Subsequently, the nephew obtained a decree for his share against the decree-holder and then purchased the rest of the land from him. In a suit by the son against the nephew to recover his share, the plaintiff having failed to prove that the judgment-debt had been incurred for purposes not binding on him,—*Held* that the entire estate less the interest of the nephew was sold to the decree-holder, and consequently the son's interest had passed to him. GNANAMMAL *v.* MUTHUSAMI I. L. R., 13 Mad., 47

308. ——— *Decree against manager of debt due by the family—Sale in execution of such decree. Effect of, on the other co-sharers, though not parties to the decree.*—The plaintiffs and their brother *E* were in joint occupation of certain thikans in a khoti village. *E*, being the eldest brother, was in management of the family estate. In 1877 the khot sued *E* alone for arrears of assessment due on the thikans in question, obtained a decree, and in execution put up the thikans to sale. Defendants 2 to 5 became the auction-purchasers, and were put into possession by the Court. Thereupon the plaintiffs sued for a partition of their five-sixths share of the thikans sold, alleging that they were not bound by the Court-sale, as they were not parties to the khot's suit against their brother or to the execution-proceedings. *Held* that, the assessment for which the khot obtained a decree against *E* being due by the whole family, the sale in execution passed the shares of the plaintiffs, as well as that of their brother, to the auction-purchasers. *Daulat Ram* v. *Mehr Chand, I. L. R., 15 Calc., 70 : I. R., 14 I. A., 187*, followed, by which *Lakshman Venkatesh* v. *Kashinath, I. L. R., 11 Bom., 700*, and *Maruti Narayan* v. *Lilachand, I. L. R., 6 Bom., 564*, are overruled. HARI VITHAL *v.* JAIRAM VITHAL [I. L. R., 14 Bom., 597

309. ——— *Mortgage for debt due by father of joint family—Sale in execution of decree—Effect of sale on members of family not made parties.*—When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale, simply because they are not parties on the record. This principle of law applies as much to a Hindu family governed by the Mitakshara law as to a Mahomedan family. *Hari* v. *Jairam, I. L. R., 14 Bom., 597*, and *Khurshetbibi* v. *Keso, I. L. R., 12 Bom., 101*, referred to and followed. DAVALAVA *v.* BHIMAJI DHONDO . . . I. L. R., 20 Bom., 338

310. ——— *Money-decree against father—Auction-purchaser at such sale.*—In the absence of special circumstances showing an intention to put up the entire interest of the family in the property sold in execution of a money-decree against the father, only the interest of the father passes to the auction-purchaser, regard being had to *Hurdey Narain Sahu* v. *Ruder Perkash Misser, L. R., 11 I. A., 26 : I. L. R., 10 Calc., 626*, and *Simbhunath* v. *Golab Sing, L. R., 14 I. A., 77 : I. L. R., 14 Calc., 572.* MARUTI SAKHARAM *v.* BABAJI [I. L. R., 15 Bom., 87

311. ——— *Mortgage of ancestral property by father of joint family—Decree on mortgage—Sale in execution of decree—Extent of the right, title, and interest sold.*—*A* mortgaged his family property to *C*. Subsequently *C* got a decree upon his mortgage and purchased the property at an auction-sale held in execution of the decree. In a suit brought by *C*'s son against the heirs of *A* to recover possession of the property,—*Held* that, having regard to the language of the mortgage-deed, there could be no doubt that the entire family property was intended to be mortgaged. The auction-purchaser, therefore, took the whole interest in the property, and not merely the interest of *A* alone. *Simbhunath Pande* v. *Golap Sing, I. L. R., 14 Calc., 572 : L. R., 14 I. A., 77*, distinguished.

HINDU LAW—JOINT FAMILY—*continued*

6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

qualified by the statement that "the right, title, and interest in the above-mentioned property of the said *R* (*i e*, the father) was sold" There was nothing to show that the purchasers bargained for

the ancestral property *Held* that, under the circumstances, the father's interest alone passed to the auction purchasers KRISHNAJI LAKSHMAN *v.* VITHAL RAVJI RENGE I. L. R., 12 Bom., 625

301. —————— *Ancestral zamindari sold in execution of decree for money against the father, including the son's right of succession —Debt not immoral* —A sale in execution of a decree against a zamindar for his debt purported to compromise the whole estate in his zamindari. In a suit brought by his son against the purchaser,

failing, the suit failed, and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu v. Ruder Perkash Misser, I L R, 10 Calc, 626* (where the sale was

302 —————— *Money-decree —Decree against father alone—Purchaser at execution sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution-proceedings* —In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money-decree In the case of an execution sale the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit

execution of a money-decree obtained against the ... defendant ... of the ... a joint

HINDU LAW JOINT FAMILY—*continued*

6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

the father's interest was bound by the sale and the lower Courts decided in their favour On appeal, the High Court reversed the decree and sent back the case for a fresh decision on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. KAGAL GAMPAYA *v.* MANJAPPA I. L. R., 12 Bom., 691

303 —— *Money-decree against deceased member—Execution after judgment-debtor's death against joint family property not allowed.*—The mere obtaining of a simple money-decree against a member of a joint Hindu family without any steps being taken during his lifetime to obtain attachment under or execution of the decree does not entitle the decree holder after the judgment-debtor's death and a subsequent partition, to bring to sale in execution of the decree the interest which the judgment-debtor had in the joint family property *Suraj Bansi Koer v. Sheo Pershad Singh, I L R, 5 Calc, 148*, *Rai Balkishen v. Rai Sita Ram, I L R 7 All, 731* and *Balbhadar v. Bisheshar, I L R 8 All 495*, referred to. JAGANNATH PRASAD *v.* SITA RAM

[I L R., 11 All., 302

304. —— *Money-decree against father—Attachment of ancestral estate*— In execution of a money-decree, ancestral property of the joint family of the judgment debtor was attached His son sued to release their interest from attachment, alleging that the judgment-debt had been incurred for immoral purposes which was denied by the decree holder It was held by the lower Courts that nothing more than the father's share was liable to be attached as the sons were not parties to the decree *Held* that the nature of the debt should be determined since the creditor's power to attach and sell depends on the father's power to sell, which again depends on the nature of the debt *Nanomi Babuasin v. Modhun Mohun, I R, 13 I A, 1 I L R, 13 Calc 21* discussed and followed. RAMANADAN *v.* RAJAGOPALA

[I. L. R., 12 Mad., 309

305 —— *Son's liability for father's debt—Decree against father—Son's interests when not affected by sale* —When ancestral property is sold in execution of a decree against a Hindu father, there are only two cases in which the son's interests do not pass under the sale *first* when they are not sold; *second* when the debt is not binding upon the son by reason of its having been contracted for an illegal or immoral purpose JOHARMAL *v.* EKNATH I. L. R., 24 Bom., 343

306. —————— *Sale of joint family estate in execution of a decree against the father upon debts contracted by him—Liability of son's share—Liability of father*—It is only on condition of the son's showing that the father's debt

HINDU LAW—JOINT FAMILY —*continued.*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued.*

of the whole family in the properties sold, but it was described as the right, title, and interest of *L* and *S*, the persons sued. *Held* that *L* and *S*, though not the managers of the family, were yet its accredited agents in the management of the money-lending business, and as such had the authority of the other members to pledge the family properties for a joint-debt contracted in the ordinary course of that business. *Johurra Bibee* v. *Sreegopal Misser, I. L. R., 1 Calc., 470,* referred to. *Held* also that, the sale having been under a decree in respect of a joint-debt of the family, the whole interest of the family in the properties in dispute passed at the sale, although *L* and *S* only out of the members of the family were sued. *Pursid Narain Sing* v. *Honooman Sahai, I. L. R., 5 Calc., 845; Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233: 5 C. L. R., 477: Nanomi Babuasin* v. *Modhun Mohun, I. L. R., 13 Calc., 21; Daulat Ram* v. *Mehr Chand, L. R., 14 I. A., 187: I. L. R., 15 Calc., 70; Gaya Din* v. *Raj Bansi Kuar, I. L. R., 3 All., 191; Ram Narain Lal* v. *Bhowani Prasad, I. L. R., 3 All., 443; Phul Chand* v. *Lachmi Chand, I. L. R., 4 All., 486; Bemola Dossee* v. *Mohun Dossee, I. L. R., 5 Calc., 792; Baso Kooer* v. *Hurry Dass, I. L. R., 9 Calc., 495; Samalbhai Nathubhai* v. *Someshvar, I. L. R., 5 Bom., 38;* and *Hari Vithal* v. *Jairam Vithal, I. L. R., 14 Bom., 597,* referred to. *Held*, further, that in execution-proceedings the Courts will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find it is substantially right. *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233: 5 C. L. R., 477,* followed. SHEO PERSHAD SINGH *v.* SAHEB LAL. RAJKUMAR LAL *v.* SAHEB LAL . **I. L. R., 20 Calc., 453**

315. ——————— *Money-decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son—Civil Procedure Code (1882), s. 234.*—A money-decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands, even if the debt has been incurred for the sole purposes of the father, provided that it is not tainted with immorality or illegality. UMED HATHISING *v.* GOMAN BHAIJI . . **I. L. R., 20 Bom., 385**

316. ——————— *Family debt—Liability of family property—Decree against manager—Sale in execution of decree—Rights of auction-purchaser.*—Where the manager of a joint Hindu family is sued for the recovery of a debt, and his right, title, and interest in the family property are sold in execution, the questions which the Court has to decide in determining the quantum of interest which has passed to the auction-purchaser are (1) whether the debt was one for which the entirety might, by proper procedure, have been brought to sale and (2) whether, as a matter of fact, the purchaser bargained and paid for the entirety. *A* and his three younger brothers, *B, C,* and *D*, were members of a joint Hindu family. *A* was the manager of the family. After *A*'s death, *B, C,* and *D* were sued as his legal representatives in respect of a debt which *A* had contracted for the benefit of the family. *A* decree was passed against them as *A*'s representatives, directing the recovery of the debt by sale of *A*'s estate. In execution of this decree, *A*'s right, title, and interest in certain family property was put up to sale. *Held* that the sale affected the rights of all the members of the joint family. Under the circumstance, what was meant to be brought to sale was the right, title, and interest of the family of which *A* had been the manager, and for the benefit of which the debt had been incurred. JANKIBAI *v.* MAHADEV . . **I. L. R., 18 Bom., 147**

317. ——————— *Mitakshara law—Sale of joint property in execution of decree against father—Decree for damages for theft or misappropriation—Antecedent debt—Pious duty of sons to pay father's debt—Bonâ-fide purchaser, Equities of.*—In execution of a decree for damages for theft or misappropriation against *M* and *S*, two of the members of a joint Hindu family under the Mitakshara law, ancestral property of the family was sold, and the purchasers took possession. In a suit by the sons of *M* and *S* and several other members of the family for recovery of their interests in the property,—*Held* that there was no "debt antecedent" to the decree in this case; that even if the right to obtain damages for the theft or misappropriation could be said to have created a "debt," the debt was tainted with illegality or immorality, the sons were not under a pious duty to pay the debt, and the interests of the sons did not pass by the sale. *Held* also that the purchasers in this case were not entitled to the equities of a *bonâ fide* purchaser, as the decree, if examined, would have put them upon inquiry. PAREMAN DASS *v.* BHATTU MAHTON . . **I. L. R., 24 Calc., 672**

318. ——————— *Family debt, Liability of family property in execution of—Decree against a manager—Parties, Non-joinder of.*—Where family property is sold in execution of a decree, obtained against a brother as manager of a joint Hindu family, for a family debt contracted by his father and himself and a brother, the interest of all the members of the family passes to the auction-purchaser, though they have not been joined as parties to the suit or to the execution-proceedings. BHANA *v.* CHINDHU **[I. L. R., 21 Bom., 616**

319. ——————— *Benares school of law—Joint family property—Ancestral property assigned to wife in lieu of maintenance, Devolution of—Collateral succession—Decree passed*

HINDU LAW—JOINT FAMILY —*continued*

6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued.*

... *Koer, I. L. R., 15* ... lowed. PEMRAJ

[I. L. R., 15 Bom., 293

312. ———————— *Ancestral property—Father's debt—Decree against father—Liability of family property—Purchaser, Rights of—Civil Procedure Code (Act XIV of 1882), ss 316, 332, 333* —In a suit for specific performance of ...

... vestigated, but to sale ... note should be made in the proclamation of sale, that the sons claimed to be interested in the said lands and premises on the ground that they were ancestral, and that the one-fourth share of the defendant only could be sold by the attaching creditor Under this proclamation, the right, title, and interest of the defendant in the property were sold. At the sale the sons gave notice of their claim, the property was duly sold, and the purchaser was put into possession, the claimants being dispossessed. The ... s 332 of ... purchaser ... restored to possession. *Held* (1) that ... debt due by the defendant was one which the plaintiff could enforce, if necessary, against ancestral property ...

... The plaintiff evidently did not ac- ...

... who had bought the whole of the ...

HINDU LAW—JOINT FAMILY —*continued*

6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

property on his own account His possession is the possession of the family; (5) what all the sons were entitled to was to try the fact or nature of the debt due to the plaintiff in a suit of their own In such suit they would have to prove that the debt was not such as to justify the sale COOVERJI HIRJI *v.* DEWSEY BHOJA I. L. R., 17 Bom., 718

313. ———————— *Execution of mortgage-decree against the estate of a deceased judgment debtor, member of a joint family under Mitakshara law—Survivorship—Hindu law* —On an application for the execution of a mortgage-decree the following order was made 'In this case the sale was stayed awaiting the disposal of the regular suit It being not necessary to keep the case pend- ... allowed to ... ment." The ... Hindu family ... died a fresh application for execution was subsequently made against his estate The heirs of the judgment-debtor objected to the application on the ground that the decree having been passed against their father alone, *it could not be executed against the joint family* estate, now theirs by operation of Mitakshara law *Held* that, inasmuch as there was an attachment ... joint Mitakshara family ... *Sheo Persad Singh, I. L. R. 5 Calc. 148 L. R. 6 I. A., 88* relied on *Karnataka Hanumanthaiya v. Andukuri Hanumayya, I. L. R. 5 ... 232* distinguished. BENI PERSHAD *v.* PARBATI KOER

[I. L. R., 20 Calc., 895

314. ———————— *Mitakshara law—Debts incurred by agent of joint family—Suit and decree against managing members of a joint family business—Effect of sale against other mem-* ...

... they were joint family properties, but wrongfully sold in execution of a decree upon a bond executed by their paternal uncles *L* and *S*, and one *B S* The family was a trading family, and carried on a money-lending business under the supervision of *L* and *S* One *Z M* had dealings with *L* and *S*, and in the course of such dealings he deposited a certain sum of money with them, for which the above bond was executed in which certain properties belonging to the family were pledged as security Subsequently, *Z M* sued on this bond, obtained a decree and put up the properties for sale which were purchased by some of the defendants, who dispossessed the plaintiffs The share of the property advertised for sale, certified in the sale-certificate granted to the defendants to have passed to them, was the share

HINDU LAW—MAINTENANCE —*continued.*

See CASES UNDER DECREE—FORM OF DECREE—MAINTENANCE.

See PARTIES—PARTIES TO SUITS—MAINTENANCE, SUITS FOR.

[I. L. R., 2 Bom., 140
I. L. R., 7 Mad., 428

1. NATURE OF RIGHT.

1. ———— **Nature of right to maintenance**—*Right not based on contract.*—Ordinarily, the right to maintenance does not rest upon contract. It is a liability created by the Hindu law, and arises out of the jural relation of the Hindu family. It is enforceable in numerous instances in which there is no connection with contract. SIDLINGAPA *v.* SIDAVA [I. L. R., 2 Bom., 624

2. ———— *Charge on immoveable property.*—A claim for maintenance held not to be a charge upon immoveable property. BEER CHUNDER MANIKHYA *v.* RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO [I. L. R., 9 Calc., 535 : 12 C. L. R., 465

2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

3. ———— **Impartible raj**—*Allowance to younger sons—Matters which may be considered in assessing such allowance.*—*Held* that in calculating what allowance might properly be made to the younger brother of the holder of an impartible raj regard might properly be had, not merely to the extent of the property constituting the raj, but to the other sources of income, whencesoever derived, possessed by the incumbent of the raj. MAHESH PARTAB *v.* DIRGPAL SINGH . . I. L. R., 21 All., 232

4. ———— **Power of Court to fix maintenance**—*Husband and wife—Wife residing apart from husband.*—A Civil Court has power to fix the rate of maintenance payable by a husband to his wife, where she, for lawful cause, is residing apart from him and to make an order that maintenance at that rate shall be paid in future, subject to be set aside or modified according to circumstances. NOBO GOPAL ROY *v.* AMRIT MOYEE DOSSEE . 24 W. R., 428

5. ———— **Form of allowance**—*Fixed annual sum—Share of income—Widow.*—In a case where a Hindu widow is entitled to maintenance, it is better to award a fixed annual sum and not a share of the income of the estate. JHUNNA *v.* RAMSARUN [I. L. R., 2 All., 777

6. ———— *Assignment of mortgaged property as maintenance of a widow—Subsequent redemption of the mortgage—Widow's right to the redemption money—Form of decree.*—A field held in mortgage by the family of the parties was assigned to a widow in the family for her maintenance when the family divided. The mortgage money was subsequently paid into Court in pursuance of a decree for redemption. *Held* that it was clear on the assignment that the widow was entitled to the money just as she was entitled to the field, *i.e.*, to the usufruct of it for her life. GAMBHIRMAL *v.* HAMIRMAL . . I. L. R., 21 Bom., 747

7. ———— **Calculation of amount**—*Maintenance of widows and daughters.*—The question of the adequacy of the maintenance granted to widows and daughters must depend in each case on its own peculiar circumstances. DINOBUNDHOO CHOWDRY *v.* RAJMOHINEE CHOWDRY [15 W. R., 73

8. ———— *Maintenance, Widow's right to—Arrears of maintenance.*—A widow has by Hindu law a right to maintenance, and the amount is to be determined on a consideration not merely of her absolute necessities, but also of the circumstances of her family. SAKVARBHAI *v.* BHAVANJI RAJE GHATJI ZANJARRA DESHMUKH [1 Bom., 194

9. ———— *Widow's maintenance—Separate savings.*—In a suit by a widow against her step-son for separate maintenance on the ground of ill-treatment, the Court held that, the ill-treatment being proved, a reasonable maintenance ought to be provided. Taking the income tax return as evidence of the amount of defendant's income, R25 a month out of an annual income of R7,000 was held to be sufficient. In an enquiry of this kind any savings which a woman might make by living with her own family should not be taken into consideration; and the degradation which a Hindu widow is expected to live in is a matter of ceremonial observance rather than of law. HURRY MOHUN ROY *v.* NYANTARA . . . . . . 25 W. R., 474

10. ———— *Stridhan—Hindu widow.*—*Semble*—The stridhan of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her. SAVITRIBAI *v.* LUXIMIBAI . . . . . I. L. R., 2 Bom., 573

11. ———— *Valuable moveable property—Jewels.*—The fact that a widow has in her possession jewels and other property unproductive of income does not deprive her of, or diminish her right to, maintenance; but if the property she possesses be productive, the amount should be taken into consideration in determining the allowance for maintenance. SHIB DAYEE *v.* DOORGA PERSHAD [4 N. W., 63

12. ———— *Discretion of Court.*—The quantum of maintenance to be awarded is a question in the discretion of the Court, and the Privy Council will not interfere with such discretion unless strong grounds are shown for their so doing. COLLECTOR OF MADURA *v.* MUTU RAMALINGA SATHUPATHY [1 B. L. R., P. C., 1 : 12 Moore's I. A., 397
10 W. R., P. C., 17

HINDU LAW—JOINT FAMILY—*continued*

6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*continued*

by mistake against father, Effect of, on sons—Sale in execution of decree against father—Purchase by decree-holder—Interest passed by sale—Nature and extent of mother's share in joint family property, Nature and devolution of.—A Hindu, governed by the Benares school of law, died leaving a joint family consisting of four sons, *A, B, C*, and *D*, and a widow, *R*, to whom he assigned an ancestral mouzah in lieu of her maintenance All the sons predeceased the widow, *C* and *D* dying childless After the widow's death, a separation took place in 1862 among all her grandsons *viz*, *E* and *F*, sons of *A*, and *G* and *H*, sons of *B* At the separation, *E* withheld possession, among other properties, of the mouzah assigned to *R* on alleged transfers from *R* and the widows of *C* and *D* *H* sued *E*, making *G* a *pro formâ* defendant, and recovered a decree for 4 annas of the mouzah in 1864 and *G* also recovered a similar decree for 4 annas in 1866. Some time after *H* brought an action for mesne profits and recovered a decree in 1875 against *M*, heir of *E*, and also against *G*, although there was no allegation of wrong against the latter and no finding in the Court's judgment to that effect In execution of this decree, *H* caused the interest of *G* in the mouzah to be sold, purchased it himself, and took delivery of possession on the 19th December 1878 In 1881 the wife of *G*, together with her two sons (plaintiffs 1 and 2), executed a kobala in respect of one anna six pies of the mouzah to *S* (defendant 4), the wife of *G* died in 1885 The present suit was brought by the three sons of *G* to recover a four fifths of the four annas of the said mouzah—a three-fifths in their own right and a one-fifth in right of their mother Among the objections raised by the defendants and pressed by them on appeal to the High Court it was urged (1) that out of the four anna share, two annas were acquired by *G* collaterally from his uncles *C* and *D*, and therefore were not "ancestral property" of the plaintiffs. *Held* that the mouzah in question retained the character of ancestral property during the lifetime of the widow *R*, and that, upon her death, it devolved upon her grandsons *E, F*, [illegible] property [illegible] or *D*. [illegible] 1875 was [illegible] plaintiff [illegible] istence of [illegible] plaintiffs were not precluded from showing that there was no [illegible] *L. R*, *13 I. A.*, *1*; *Deendyal Lal* v. *Jugdeep Narain Singh*, *I L R*, *3 Calc*, *198* *L. R.*, *4 I. A.*, *247*; *Hardey Narain Sahu* v. *Rooderperkash Misser*, *I. L. R.*, *10 Calc*, *626* *L. R*, *11 I A*, *26*, and *Simbhunath Panday* v *Golab Sing*, *I L. R.*, *14 Calc*, *572* *L. R*, *14 I A*, *77*, referred to. (3) It was further urged that, the claim being for a four-fifths [illegible] would not stand. *Held* that this contention could not be sustained, and the defendants could claim only that share which if a partition had taken place on or before the date of sale, would be allotted to the father, *i e*, a one-fifth share *Deendyal Lal* v. *Jugdeep Narain Singh*, *I L R*, *3 Calc*, *198* *L. R*, *4 I A 247*, *Hardey Narain Sahu* v *Rooderperkash Misser* *I L R*, *10 Calc*, *626* *L. R*, *11 I. A.*, *26*; and *Suraj Bunsi Koer* v *Sheoproshad Singh*, *I. L. R*, *5 Calc*, *148* *L R*, *6 I A.*, *88*, referred to. (4) As to the kobala executed by the plaintiffs 1 and 2 and their mother in 1881, it was contended that six pies out of a one anna six pies share, the proportionate share of the mother, passed absolutely to the purchaser, and plaintiffs could not recover that portion of the share *Held* that the mother was entitled to a one-fifth share in lieu of maintenance only, and had no absolute power of disposal in respect of that share *Judoonath Tewaree* v *Bishonath Tewaree*, *9 W R*, *61* and *Lalljeet Singh* v *Rajcoomar Singh*, *12 B L R*, *374* *20 W. R.*, *336*, referred to BENI PARSHAD *v*. PURAN CHAND

[I. L. R., 23 Calc., 262

HINDU LAW—MAINTENANCE.

HINDU LAW—MAINTENANCE —*continued.*

2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*continued.*

by assignment of the rents payable by certain raiyats. Subsequently the holding the rents of which were assigned having become unfit for cultivation by reason of an inundation of salt water, and the defendant himself having become greatly impoverished by his estate having been injured by the same cause, the amount due for maintenance was not paid, and the widow brought a suit to recover that amount. *Held* that, inasmuch as the amount of maintenance must be taken to have been fixed with reference to the extent and value of the property, the Court had power to reconsider the allowance and to re-adjust it to the altered circumstances. RAJENDRO NATH ROY *v.* PUTTO SOONDERY DASSEE . . 5 C. L. R., 18

23. ———— *Reduction in value of property on which maintenance is charged—Natural equity.*—A zamindar bequeathed the whole of his zemindari to his eldest son, leaving certain fixed stipends to his other children. In consequence of subsequent events, the Court considered these stipends ought to be reduced. It was alleged that the value of the zamindari had been reduced by sale of a part of it; but as it was nowhere alleged that the sale had been occasioned by bad seasons or acts of God, and not by the neglect of the person through whom the appellant claimed, the question of natural equity was held not to have arisen. GREES CHUNDER ROY *v.* SUMBHOO CHUNDER ROY
[5 W. R., P. C., 98

24. ———— *Suit to reduce rate awarded by decree.*—*S*, a Hindu, obtained a decree for maintenance at a certain rate against *R*, her father-in-law. After the death of *R*, *V*, who was adopted by *R* subsequent to the decree, sued *S* to have the rate reduced on the ground that the estate of *R*, which came to his hands, was considerably diminished in value. *Held* that, as the estate had been diminished by the voluntary acts of *R* and *V*, the claim could not be allowed. VIJAYA *v.* SRIPATHI
[I. L. R., 8 Mad., 94

25. ———— *Widow's maintenance—Withholding of maintenance—Demand and refusal—Arrears of maintenance—Limitation—Decree providing for reduction of maintenance in event of altered circumstances of persons paying it—Decree, Form of.*—*K*, a Hindu widow, sued the undivided brothers of her deceased husband for maintenance. She also claimed arrears of maintenance for six years prior to the institution of the suit. The Court of first instance passed a decree in her favour awarding her maintenance at the rate of R52 a year during her lifetime, but "subject to variation according to the change in defendants' circumstances for the worse." The Court also awarded her arrears of maintenance for three years only (not six as claimed) on the ground that she was only twenty years old, and had always lived with her father and been maintained by him, and that a formal demand had only been made on the defendants three years previously. On appeal, the District Court increased the rate of maintenance to R65 per annum, and awarded the plaintiff arrears of six years, holding that the fact of the demand having been made only three years before suit did not prevent her from recovering arrears for six years. *Held* by the High Court that, although the withholding of maintenance, which constituted the cause of action, might be proved otherwise than by a demand and refusal, yet in this case it had not been shown that there were any circumstances which would amount to a refusal of maintenance. The decree of the lower Appeal Court was therefore, confirmed, except so far as it gave the plaintiff arrears of maintenance for six years, which period was altered to three years. The clause as to the reduction of maintenance in the event of altered circumstances was also struck out. MOTILAL PRANNATH *v.* BAI KASHI
[I. L. R., 17 Bom., 45

26. ———— *Decree for maintenance—Suit for altering the rate of maintenance fixed by a decree.*—A suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property. But where such deterioration is due to the plaintiff's own default in not keeping the property in a proper state of repair, he has no right to ask for a reduction. *Per* PARSONS, *J.*—Courts should insert words which would enable them on application to set aside or modify their orders as circumstances might require, and in such cases the remedy would be the more appropriate one by application under the leave reserved. GOPIKABAI *v.* DATTATRAYA
[I. L. R., 24 Bom., 386

3. ARREARS OF MAINTENANCE.

27. ———— **Power to award arrears.**—Arrears of maintenance may be awarded. PIRTHEE SINGH *v.* RAJ KOER
[12 B. L. R., 238 : 20 W. R., 21
L. R., I. A., Sup. Vol., 203

Affirming decision of Court below in
[2 N. W., 170

28. ———— **Right to recover arrears—** *Limitation.*—No rule of Hindu law precludes the recovery of arrears of maintenance. The only bar to the enforcement of a purely legal right is the lapse of the time required by the law of limitations to bar the remedy. VENKOPADHYAYA *v.* KAVARI HENGUSU . . . . 2 Mad., 36

SINTHAYEE *v.* THANAKAPUDAYEN *alias* PONDILY UDAYAN . . . . . 4 Mad., 183

29. ———— *Limitation—Hindu widow—Demand and refusal—Arrears of maintenance.*—A Hindu widow has a legal right, irrespective of demand and refusal, to maintenance, and may recover arrears for any period not excluded by the law of limitation applicable to her suit. JIVI *v.* RAMJI . . . I. L. R., 3 Bom., 207

HINDU LAW—MAINTENANCE —continued

2 FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—continued.

13. ———— *Widow—Style of living in husband's lifetime* —It is not necessary that a Hindu widow should be maintained in the same estate in which her husband would maintain her. KALLEEPERSAUD SINGH v. KUPOOR KOOWAREE [4 W. R., 65

14. ———— *Annual proceeds of husband's share of family property.*—A Hindu widow is not entitled to a larger portion of the annual produce of the family property as mainten- [illegible]

15. ———— *Penalty for vexatious defence—Reduction of maintenance.*—Case in which some of the elements in determining what is a suitable amount of maintenance for a Hindu widow out of her deceased husband's estate were considered A Court is not justified in reducing, as a kind of punishment for vexatious defence to a suit, the amount of maintenance which it would otherwise have awarded. NITTO KISSOREE DOSSEE v. JOGENDRO NAUTH MULLICK . . L. R, 5 I A., 55

16. ———— *Increase or decrease for sufficient cause* —There is nothing in the law to prevent an increase or a decrease of the amount of maintenance allowed to a Hindu widow, should sufficient cause be shown for either The increase, if allowed, should be made from date of suit SREERAM BHUTTACHARJEE v PUDDOMOOKHEE DEBIA . . . . . 9 W. R., 152

17. ———— *Widow's second suit for maintenance—Enhancement of rate of maintenance—Res judicata* —A Hindu widow in 1867 [illegible] for maintenance against her hus- [illegible]

risen and that in other respects also circums[illegible] changed *Held* that the decree in the suit of 1867 was not a bar to the present suit RANGARU AMMAL v. VIJAYAMACHI REDDIAR I. L. R., 22 Mad., 175

18. ———— *Widow—Reduction of amount, Ground for* —*Held* in a suit by a [illegible]

[I. L. R., 2 All., 407

19. ———— In estimating the amount of maintenance which should be allowed to a Hindu widow out of her husband's estate, regard should be had to the value of the estate as gauged by the annual income derivable therefrom, to the position and status of the deceased, and to the position and status of the widow, and the expenses involved by the [illegible]

MOOD, J —The amount of maintenance should not be determined with reference to the principle that the life of a Hindu widow should be of a peculiarly ascetic character, and that she should have only a "starving allowance" The austerities enjoined upon Hindu widows are matters not of legal obligation, but only of moral injunction, and cannot be enforced by Courts of justice The Courts should bear in mind that Hindu widows are by ancient custom debarred from re-marriage, and should fix the maintenance at a sum sufficient to obviate the danger of the widow being driven to immorality BAISNI v RUP SINGH [I. L. R., 12 All., 558

20. ———— *Maintenance of widow by her husband's brothers and nephew—Death of the plaintiff's husband prior to his father's death.*—In a joint Hindu family governed by the Mitakshara law, the property of *S*, the father, consisted at any rate partly of ancestral property He died leaving three sons and one grandson (son of a predeceased son) *A*, another son of *S*, died childless before his father leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for maintenance, in which she claimed R100 a month,—*Held* that in determining the amount of maintenance the Court should take into consideration not only the reasonable wants of a person in her position of life, but also the means of the family of her husband. *Nittokissoree Dossee v Jogendro Nath Mullick, L. R., 5 I A., 55; Baisni v Rup Singh, I L. R., 12 All., 558,* referred to. DEVI PERSAD v. GUNWANTI KOER [I. L. R., 22 Calc., 410

21. ———— *Suit for reduction of maintenance where fund from which it is paid has decreased—Right of suit* —A Hindu lady obtained a decree awarding her maintenance at a certain fixed rate and charging the assets of a certain firm with the payment of such maintenance There was no provision in this decree that such rate was subject to any modification which future circumstances might render necessary The assets of such firm having diminished the proprietor of the same brought a suit for the reduction of such rate of maintenance. *Held* that such suit was maintainable RUKA BAI v GANDA BAI [I. L. R., 1 All., 594

22. ———— *Decrease of estate in value on which maintenance is charged* —A suit brought by a widow against the adopted son of her husband, for possession of her husband's estates, was compromised on the terms of a razinamah under which the defendant agreed to pay to the plaintiff a certain sum for maintenance, the same to be secured

HINDU LAW—MAINTENANCE —*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

son of the defendant, who was the Thakor of Amod, a talukhdari estate of the nature of an impartible raj or principality. The plaintiff's family belonged to the community of Molesalam Girasias. Plaintiff alleged that, according to a family usage, he as a junior member of the family was entitled to receive maintenance from his father, who was the holder of the gadi. The estate was under the management of the talukhdari settlement officer from 1878 to 1888, during which period that officer granted the plaintiff an allowance in lieu of maintenance without any objection on the defendant's part. On the 1st August 1888, the estate was restored to the defendant, who stopped the allowance. The plaintiff thereupon sued in 1891 to recover from the defendant arrears of maintenance for two years and eleven months at R200 a month. *Held* that the plaintiff was entitled to recover, and that the claim was not time-barred. FATESANGJI JASVATSANGJI *v.* KUVAR HARISANGJI FATESANGJI **I. L. R., 20 Bom., 181**

39. ———— **Suit for partition in part unsuccessful**—*Partible and impartible property—Right of junior member of family to maintenance.*—In a suit for general partition of Hindu family estate the plaintiff succeeded only with regard to a small portion thereof, the bulk being found to be impartible. *Held* the family did not, in consequence of these proceedings, become a divided one, and that, as regarded the impartible estate, the younger members retained their rights of maintenance. YARLAGARDA MALLIKARJUNA PRASADA NAYUDU *v.* YARLAGARDA DURGA PRASADA NAYUDU **[L. R., 27 I. A., 151**
I. L. R., 24 Mad., 147

(*b*) CONCUBINE.

40. ———— **Incontinence of a co-parcener's concubine disentitling her to maintenance.**—Continued continence is, under the Hindu law, a condition precedent to a deceased co-parcener's concubine claiming maintenance. YASHVANTRAV *v.* KASHIBAI . . . **I. L. R., 12 Bom., 26**

41. ———— **Right of discarded concubine to maintenance.**—A woman who has been kept by a man as his concubine for a number of years continuously, and then discarded, is not entitled under the Hindu law to claim maintenance from him. RAMANARASU *v.* BUCHAMMA **[I. L. R., 23 Mad., 282**

(*c*) DAUGHTER.

42. ———— **Daughter living separate from father.**—A daughter living apart from her father for no sufficient cause cannot sue him for maintenance. ILATA SHAVATRI *v.* ILATA NARAYANNA NAMBUDRI . . . . . . **1 Mad., 372**

43. ———— **Widowed daughters**—*Their right of maintenance out of their father's estate.*—According to Hindu law, it is only the unmarried daughters who have a legal claim for maintenance out of their father's estate. The married daughters must seek their maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs. BAI MANGAL *v.* BAI RUKHMINI **[I. L. R., 23 Bom., 291**

44. ———— **Right of maintenance of a sonless widowed daughter in indigent circumstances out of properties inherited by the father's heirs.**—A sonless widowed daughter in indigent circumstances is not entitled to separate maintenance out of the estate of her father in the hands of his heirs. The right would depend upon the fact whether the widowed sonless daughter was at the time of her father's death maintained by him as a dependent member of his family with others whom he was legally or morally bound to maintain. The position of a sonless widowed daughter is not the same as that of a disqualified owner or disqualified heir. *Bai Mangal* v. *Bai Rukhmini, I. L. R., 23 Bom., 291,* referred to. MOKHODA DASSEE *v.* NAND LALL HALDAR . . . . **I. L. R., 27 Calc., 555**
4 C. W. N., 669

(*d*) GRANDMOTHER.

45. ———— **Right of grandmother to maintenance**—*Division of estate.*—On a division of an estate, the Hindu law recognizes the right of a grandmother to maintenance, but not her title to any share of the estate. PUDUMMOOKEE DASSEE *v.* RAYEEMONEE DOSSEE . . . . **12 W. R., 409**

46. ———— *Mortgagee selling the estate—Right of residence secured on sale of house by mortgagee.*—Although according to the Mitakshara a mother may, on partition, or if the estate is being wasted or her maintenance is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition, and her right to maintenance cannot affect a mortgage of the estate created before any portion has been assigned to her, except that, if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage, the house must be sold subject to her right. VENKATAMMAL *v.* ANDYAPPA CHETTI **[I. L. R., 6 Mad., 130**

(*e*) GRANDSON.

47. ———— **Grandson or other more remote descendant of a Raja**—*Impartible raj—Pachete raj.*—In the case of the impartible raj of Pachete there is no law or custom under which any one, not being a son or daughter of a deceased Raja, can claim of right either maintenance or a grant in lieu of maintenance, from the person in possession for the time being of the raj. NILMONEY SINGH DEO *v.* HINGU LALL SINGH DEO . **I. L. R., 5 Calc., 256**

HINDU LAW—MAINTENANCE —*continued*

3 ARREARS OF MAINTENANCE—*continued.*

30. Award of arrears—*Form of decree—Charge on property of husband* —Arrears of maintenance as well as prospective allowance during the widow's life awarded in the same decree, and held to be a charge on the property in the possession of the donees of her deceased husband. NARBADABAI *v* MAHADEO NARAYAN

[I. L. R., 5 Bom, 99

31. ——— Suit for arrears of maintenance—*Proof of wrongful withholding of maintenance* —In a suit for arrears of maintenance it is incumbent on the plaintiff to prove that there has been a wrongful withholding of the maintenance to which he is entitled. *Jiri v Ramji, I L R, 3 Bom, 207,* and *Mahalakshmamma v Venkataratnamma, I L. R, 6 Mad, 83,* followed. MALLIKARJUNA PRASADA NAIDU *v.* DURGA PRASADA NAIDU

[I. L R., 17 Mad., 362

32. ——— *Suit to recover arrears of maintenance due under a personal decree and to establish a charge for future maintenance on the family property* —A Hindu widow obtained a personal decree against her father-in-law for maintenance Her late husband's five brothers were made ... no personal decree was made ... her maintenance ... property ... family property devolved on his sons and grandsons, who sold certain of the property. There were arrears of maintenance due and the widow instituted the present suit, in which she asked for a decree establishing her right to receive maintenance for her life and for the arrears of maintenance on the responsibility of the property *Held* (1) that, the maintenance not having been declared a charge upon the portion of the property which had been alienated, this property was free from any charge for her maintenance, (2) that the arrears of maintenance constituted a personal debt of the plaintiff's deceased father-in-law, and that his sons and grandson (the defendants) incurred his liability on his decease, and were bound to discharge the same out of the family property, (3) that the right to maintenance being ... CHARIA

I. L. R., 17 Mad., [illegible]

33. ——— *Previous demand—Right to arrears of maintenance* —A Hindu widow brought a suit against her husband's brother ... for the arrears. SESHAMMA *v* SUBBARAYADU

[I. L. R., 18 Mad., 403

34. ——— *Discretion of Court in allowing arrears* —Where a Hindu widow sues for maintenance from the family and estate of her deceased husband, with arrears of such maintenance, the allowance of arrears of maintenance is a question for the discretion of the Court, and the Court, if it allows arrears of maintenance at all, will not necessarily allow arrears at the same rate as it may allow future maintenance, especially where the plaintiff has made serious delay in bringing her suit for maintenance RAGHUBANS KUNWAR *v* BHAGWANT KUNWAR I. L. R., 21 All., 183

35. ——— Past non-payment of arrears—*Right of suit—Proof of wrongful withholding—Unwillingness of holder of estate to pay, and denial of right.*—With regard to arrears of maintenance, past non payment does not necessarily give a right of action It is a *primâ facie* proof of wrongful withholding Where the evidence shows that the holder of the estate was unwilling to pay and denied the right, that *primâ facie* proof is not rebutted. YARLAGADDA MALLIKARJUNA PRASADA NAYUDU *v.* YARLAGADDA DURGA PRASADA NAYUDU

[L R., 27 I. A, 151
I. L. R, 24 Mad., 147

4 EFFECT OF DEATH OF RECIPIENT.

36. ——— Death of person maintained where sum has been awarded for ...

5 RIGHT TO MAINTENANCE.

(a) GENERAL CASES

37 ——— Agreement by zamindar to maintain collateral relations—*Construction of agreement—Charge on estate—Impartible zamindari* —The holder of an impartible zamindari estate, in an agreement with the eldest son of his younger brother, settling family disputes, used words to this effect: "I have agreed to give you, through the Collector, every month R300 on account of the maintenance of yourself, your younger brothers, three in all, and the rest of your family" The son of the youngest brother now sued the son and successor of that zamindar for maintenance according to the agreement. *Held* that the payment was not limited to the life of one, or all, of the brothers, but *that the issue of each of the three were included,* and that maintenance at a proportionate rate had been rightly decreed to the plaintiff as a charge on the estate LAKSHMI NARAYANA ANANGA GARU *v.* DURGA MADHAWA DEO GARU

[I. L. R., 16 Mad., 256
L. R., 20 I. A., 9

38. ——— Junior members of raj family—*Impartible property, Maintenance out of. Suit for—Limitation.*—The plaintiff was the second

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

60. ——————— *Right to maintenance of illegitimate member of joint family—Suit by legitimate son of illegitimate member of family to redeem mortgage made by legitimate member—Right of redemption.*—An allowance for maintenance was received by the plaintiff's father, that father having been an illegitimate son born to a collateral relation of the head of a family. The ancestral property was in the possession of the latter, who was in a senior line of descent. The plaintiff, who was himself the legitimate son of his father, claimed to be entitled to redeem a mortgage of part of the ancestral estate, that mortgage having been effected by the above-mentioned head of the family. His ground of claim was that he had inherited the right to maintenance and had thus an interest of charge within the meaning of s. 91 of the Transfer of Property Act, 1884, to entitle him to redeem. *Held* by the High Court,—the right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not descend to his son. The legitimate son of an illegitimate member of a Hindu family who as such illegitimate son might have had a right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate. *Held* by the Privy Council in appeal,—in the regenerate classes of Hindus a son of illegitimate birth has no part in the family inheritance, but is entitled to maintenance out of his father's estate—a right personal to him and not inherited by his offspring. *Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn, 7 Moore's I. A., 18,* referred to and followed. *Held* also that the High Court had rightly concluded that the plaintiff had not inherited that right. The authority of the Mitakshara in Ch. I, ss. 11 and 12, was more consistent with a personal right of the illegitimate son. ROSHAN SINGH *v.* BALWANT SINGH

[I. L. R., 22 All., 191
L. R., 27 I. A., 51
4 C. W. N., 353

Upholding the decision of the High Court in BALWANT SINGH *v.* ROSSHAN SINGH

[I. L. R., 18 All., 253

(*g*) MOTHER.

61. ——— **Parent and child**—*Duty of son to maintain aged mother.*—According to Hindu law, a son is bound to support his aged mother, whether or not he has inherited property from his father. SUBBARAYANA *v.* SUBBAKKA

[I. L. R., 8 Mad., 236

62. ——————— **Maintenance of mother on partition between her son and step-sons.** A widowed mother, on a partition taking place between her son and her step-sons of the property left by her husband, is not entitled to have the whole property charged with her maintenance, but only that portion of it which is allotted to her son on the partition. A separation in food and worship took place between a Hindu widow, her son, and her two step-sons, after which the widow lived as a member of her son's family and was maintained by him. A partition of the moveable property having been made, a suit was brought by the son against the step-sons for partition of the immoveable property, and a decree was made defining the shares of the parties therein. That suit was brought and decreed pending a suit by the widow against her son and step-sons for maintenance from the date of the separation, and for fixing her future maintenance, in which suit she sought to have the maintenance charged on the whole estate left by her husband. *Held* that, from the separation to the decree in the partition suit, the widow was entitled to maintenance charged on the whole estate, and subsequently to the decree to a charge on her son's share only. But, inasmuch as she had during the former period been maintained by her son, and could not claim maintenance over again from her step-sons, whatever claim her son might have against them for contribution for her maintenance during that time, the suit as against them must be dismissed. Where the annual value of the whole estate was found to be R70,000 and the proportionate annual value of her son's portion was R23,333, R150 a month was held under the circumstances to be a suitable maintenance. KEDAR NATH COONDOO CHOWDHRY *v.* HEMANGINI DASSI . . . **I. L. R., 13 Calc., 336**

63. ——————— **Widow's right to a share in lieu of maintenance on a partition.**—A Hindu mother is entitled under the law to be maintained out of the joint family property, and if anything is done affecting that right, as for instance by the sale of any particular share by any of her sons, her right comes into existence. AMRITA LAL MITTER *v.* MANICK LALL MULLICK **I. L. R., 27 Calc., 551**

(*h*) MOTHER-IN-LAW.

64. ——————— **Liability of son's widow for maintenance of her mother-in-law**—*Family house—Proceeds of stridhan.*—Where a Hindu widow sued the widow of her predeceased son for maintenance, and it was found that the only property in the possession of the defendant were the proceeds of her own stridhan and family house, which yielded no rent and was jointly occupied by the plaintiff and defendant,—*Held* that the defendant was not liable for the maintenance claimed. *Savitribai* v. *Lakshmibai, I. L. R., 2 Bom., 573,* followed. BAI KANKU *v.* BAI JADAV . **I. L. R., 8 Bom., 15**

(*i*) SISTER-IN-LAW.

65. ——————— **Suit by sister-in-law against brother-in-law**—*Joint family—Death of plaintiff's husband prior to his father's death and therefore before devolution of estate, which was self-acquired by his father—Amount of maintenance claimable by a sister-in-law—Separate maintenance.*—The plaintiff was the widow of one *P*, who was the [illegible]

HINDU LAW—MAINTENANCE—*continued.*

5 RIGHT TO MAINTENANCE—*continued.*

(*f*) ILLEGITIMATE CHILDREN

48. ——— Children of Sudra caste.—According to Hindu law, illegitimate children of the Sudra caste can inherit, and are entitled to maintenance INDERAN VALUNGYPULY TAVER *v* RAMASWAMY PANDIA TAVER

[3 B. L. R., P. C., 1: 12 W. R., P.C., 41
13 Moore's I. A, 141

Affirming S. C in Court below, PANDAYA TELAVER *v* PALI TELAVER . 1 Mad, 478

49. ——— Adult illegitimate son—*Bengal law*—An adult illegitimate son has not, by Hindu law as prevalent in Bengal, any right to maintenance. NILMONEY SINGH DEO *v.* BANESHUR

[I. L. R., 4 Calc., 91

50. ——— Illegitimate son —By Hindu law an illegitimate son has a claim only to mainten-

[illegible]

51. ——— Under the Mita-

[illegible]

52. ——— *Concubine*—

[illegible]

KOONWER . . 3 Agra, 136

53. ——— *Charge on impartible zamindari*—In a suit for maintenance [illegible] of a Hindu zamindar, [illegible] d that the [illegible] zamindar, and [illegible] been essen- [illegible] ence that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zamindari, or, if not, out of what property or fund, if any, the son was entitled to be paid. MUTTUSWAMY JAGAVERA YETTAPPA NAIKER *v* VENCATASWARA YETTAPPA

[2 B. L. R., P. C., 15: 11 W. R., P. C., 6
12 Moore's I. A., 203

Upholding on this point the decision of the High Court, where it was held that the illegitimate son of a Sudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu law MUTTUSAMY JAGAVERA YETTAPA NAIKAR *v.* VENKATASUBHA YETTIA . 2 Mad, 293

54. ——— *Son of Sudra—Charge on estate*—The legitimate son of a zamindar of the Sudra caste is entitled to maintenance and the maintenance is a charge upon the revenues of the zamindari COOMARA YETTAPA NAIKAR *v* VENKATESWARA YETTIA 6 Mad, 405

55. ——— *Charge on estate*—According to Hindu law and usage illegitimate sons are entitled to maintenance from their father, and his estate is liable for the payment of it *Chuoturya Run Murdun Syn v Purhlad Syn 7 Moore's I A, 18,* followed. *Narbibi v Hurein Lall, I L R, 7 Bom, 539,* referred to. PARICHAT *v* ZALIM SINGH L. R, 4 I. A, 165

56. ——— *Son of Sudra.*

[illegible]

MUTHI UDAYAN *v* SINGARAVELU

[I. L. R., 1 Mad., 306

57. ——— *Sons of female slave or concubine—Obedience to head of family*—It is immaterial whether the illegitimate sons have been begotten on a female slave or on a concubine. *Sarasuti v Mannu, I L R, 2 All 134,* followed The test by which the continuance of the right to receive maintenance must be decided is not the age of the illegitimate descendant, or his capacity to earn his own livelihood, but obedience to the head of the family This test cannot be applied till he has reached full age By docility or obedience in the sense of the texts is meant the rendering to the head of the family such reasonable service as is ordinarily rendered by the cadets of a family in that station of life to which the parties belong HORGOBIND KUARI *v* DHARAM SINGH . I. L. R, 6 All, 329

58. ——— *Issue of adulterous intercourse—Son of Sudra*—A Sudra, having kept the wife of another man in his house for many years as a concubine, had a son by her, whom he recognized as his own In a suit brought by the son,

[illegible]

59. ——— *Suit for partition by illegitimate son of undivided brother against sons of other brothers. Sudra caste*—In a joint Hindu family of the Sudra caste, consisting of three brothers, two left legitimate sons and the third an illegitimate son. In a suit brought by the latter for partition of the family estate against his father's brother's sons—*Held* that he was not entitled to a share, but only to maintenance PANDU *v* KANNU

[I. L. R., 8 Mad., 557

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

claim through his adoptive father to be maintained by the alleged adopter. The natural rights of a person adopted remain unaffected when the adoption is invalid. *Quære*—Whether a right to maintenance can descend as an estate. BAWANI SANKARA PANDIT *v.* AMBABAY AMMAL . . . 1 Mad., 363

(*l*) SON'S WIDOW.

73. ———— **Claim on father-in-law**—*Father and son living jointly.*—A Hindu father and son lived joint in food and worship, but separate in estate. *Held* that the widow of the son had no legal claim upon the father for maintenance. RUJJOMONEY *v.* SIBCHUNDER MULLICK . 2 Hyde, 103

74. ———— **Son's widow remaining chaste**—*Right to choose residence.*—According to Hindu law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations. KOODEE MONEE DABEA *v.* TARA CHAND CHUCKERBUTTY . . . 2 W. R., 134

RUTTAN CHAND SHOOREE *v.* HUREE MONEE [5 W. R., 225

75. ———— **Son's widow residing with her father**—*Liability of father-in-law for maintenance.*—A Hindu died possessed of no property, but leaving a widow. On his death she left the house of her father-in-law, and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held* that she could not sue her father-in-law for a sum of money on account of maintenance. KHETRAMANI DASI *v.* KASINATH DAS [2 B. L. R., A. C., 15 9 W. R., 413: 10 W. R., F. B., 89

UMACHARAN CHOWDHRY *v.* NITAMBINI DEBI [2 B. L. R., S. N., 11 10 W. R., 359

76. ———— **Son's widow refusing to live with father-in-law**—*Bengal and Mitakshara laws.*—Under the Bengal law, the widow of a son who left no property cannot compel her father-in-law to make her a pecuniary allowance in lieu of maintenance if she refuses to reside in his house as a member of his family. But under the Mitakshara, the question is whether the father and son were joint in estate, and whether any joint estate was left by the son burdened with the payment of such maintenance. HEMA KOOEREE *v.* AJOODHYA PERSHAD [24 W. R., 474

77. ———— *Grandson—Misconduct of mother.*—A widowed Hindu mother, who refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low-caste person, thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law. MANMAHINI DASI *v.* BALAK CHANDRA PANDIT . . 8 B. L. R., 22: 15 W. R., 498

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

78. ———— The refusal of a widow to live in her father-in-law's house as one of his family does not disentitle her to maintenance. VISALATCHI AMMAL *v.* ANNASSAMY SASTRY [5 Mad., 150

79. ———— **Obligation of father-in-law to maintain son's widow.**—A Hindu father-in-law is legally bound to maintain his deceased son's widow, notwithstanding that no property left by the son may have come into his hands. Where a father-in-law performs this duty in an imperfect manner as by ill-treating the widow and turning her out of his house, the Civil Courts will award her separate maintenance. UDARAM SITARAM *v.* SONKABAI [10 Bom., 483

80. ———— **Right to maintenance as against a father-in-law where there is no family property.**—A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property. *Held* that they had no legal right to be supported by the defendant, notwithstanding that they were in indigent circumstances. KALU *v.* KASHIBAI *alias* LAKSHMIBAI . I. L. R., 7 Bom., 127

81. ———— **Maintenance of son's widow**—*Self-acquired property.*—A Hindu is under no obligation to maintain his adult son or son's widow out of his self-acquired property. Thus a daughter-in-law can enforce no claim for maintenance against the self-acquired property of her father-in-law which has passed to his grandson, unless the father-in-law showed by conduct or otherwise an unequivocal intention that it should be taken subject to the obligation of providing for his support. AMMAKANNU *v.* APPU . . I. L. R., 11 Mad., 91

82. ———— **Suit by sister-in-law against brother-in-law**—*Death of plaintiff's husband prior to his father's death and therefore before devolution of father's self-acquired estate—"Ancestral property"—Legal obligation of heir to fulfil moral obligations of last proprietor.*—In a Hindu family governed by the Mitakshara law, and living joint in food and worship, there was no joint or ancestral property, but the father possessed certain separate and self-acquired property. He had two sons, one of whom predeceased him, leaving a widow. He died intestate, leaving a son and a widow. The widow of the son who had predeceased his father was, at the time of her husband's death, a minor; she had never cohabited with him or resided with his family or received from them any maintenance, but had always resided with, and been maintained by, her own father. After her father-in-law's death, she sued her brother-in-law and her father-in-law's widow for maintenance, which she claimed to have charged upon the immoveable property which had belonged to the father-in-law during his lifetime, and which was now in the hands of the defendants. *Held* (MAHMOOD, *J.*, expressing no opinion on this point)

HINDU LAW—MAINTENANCE —*continued*

5 RIGHT TO MAINTENANCE—*continued*

of one *N* *N* had three sons *viz* *M*, *P*, and the defendant *C*, and all lived together as a joint family The plaintiff was married to *P* about thirty years

was admittedly self acquired property His widow (*L*) and two sons *viz*, *M* and the defendant *C*, survived him *M* died in 1883 After *N*'s death, the plaintiff continued for a time to reside in the family house with *C* Disputes, however, arose, and she left the house, and went to reside with her brother She now sued her brother in law, C, for maintenance, alleging that she had been obliged to leave his house in consequence of ill treatment She claimed R1,000 per month by way of maintenance, and also prayed for the delivery of certain ornaments belonging to her, which she said were in the defendant's possession The defendant denied possession of the plaintiff's ornaments, and, as to her claim for maintenance he contended that all the property of his father, *N*, was self acquired, and that as such the plaintiff's husband, *P*, had never any interest in it, having

the plaintiff, being as *P*'s widow a member of her husband's undivided family, was entitled to maintenance from the defendant Upon *N*'s death intestate, his property devolved upon his sons (*M* and *C*) as ancestral property for the benefit of the undivided family, of which he (*N*) was in his lifetime the head; or, in other words subject to the incidents to which

defendant, she was entitled to separate maintenance, ... upon her ... by *N* at his ... that an ... paid to the ... If *P* (the ... father, *N*, ... fourth ... devolved on ... R1 600, or

HINDU LAW—MAINTENANCE —*continued*

5 RIGHT TO MAINTENANCE—*continued*

R1 600 per annum at 4 per cent —that is R133 per month The plaintiff could not be allowed more than the interest on that sum By analogy to the case of a deserted wife's claim for maintenance against her husband, the plaintiff ought not to be allowed less than one-third of such interest her husband having left no sons. ADHIBAI *v* CURSANDAS NATHU I. L. R., 11 Bom., 199

(*j*) SLAVE.

66 ———— Slave or chela—*Proof of deprivation of ordinary means of livelihood* — The fact of *A* having been long supported by *B*, or of his having been purchased either as a slave or as a chela will not entitle him to claim perpetual maintenance for himself and his heirs especially where *A* does not show that he has been deprived of ordinary means of livelihood which he might otherwise have commanded. NARAIN DASS *v* MAHATAB CHUND BAHADOOR 7 W R., 137

(*k*) SON

67 ———— Adult son — According to the Hindu or Jain law a father is not bound to maintain a grown up son PREMCHAND PEPARAH *v* HULAS CHAND PEPARAH [4 B L. R., Ap., 23 12 W R., 494

68 ———— *Right of son to maintenance out of impartible property— Right to partition* —A suit for maintenance out of ancestral estate by a Hindu son lies against his father where the property in the hands of the latter is impartible *Quære*—Whether a like suit lies where the son might sue for partition HIMMATSINGH BECHARSING *v* GANPATSING 12 Bom., 94

69 ———— *Maintenance Right of adult son to—Father with no partible property* —If a Hindu father possesses practically no partible property, his legitimate son though adult, suffering from no disability to inherit is entitled to maintenance from him RAMCHANDRA SAKHARAM *v* SAKHARAM GOPAL [I. L. R., 2 Bom., 346

70 ———— *Self acquired property* —A Hindu is under no obligation to maintain his adult son out of his self-acquired property AMMAKANNU *v* APPU I. L. R., 11 Mad., 91

71 ———— Adopted son when adoption is invalid—*Period between adoption and possession of estate* —A Hindu whose adoption is invalid is entitled to maintenance in the adoptive family. A son whether adopted or begotten can claim maintenance of his father until put into possession of his share of the ancestral property AYAVU MUTTAYAN *v* NILADATCHI AMMAL [1 Mad., 45

72 ———— ...

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

living, is entitled to maintenance from her husband's relatives, although she may have shared her husband's estate, and supported herself for a long period by trading. BAI LAKSHMI *v.* LAKHMIDAS GOPAL DAS . . . . 1 Bom., 13

91. ———————— *Joint ancestral property.*—It was held that a Hindu widow was entitled to be supported out of the joint ancestral estate of the family of which her husband was a member. LALTI KUAR *v.* GANGA BISHAN [7 N. W., 261

92. ———————— *Right of widow to maintenance from relations with assets of husband.*—Although the relations of the husband of a Hindu woman, deserted by him, may not be under a personal liability to support her, yet, if they have property of the husband in their hands, his wife is entitled to be maintained out of the husband's estate to the extent of the proceeds of one-third thereof. RAMABAI *v.* TRIMBAK GANESH DESAI [9 Bom., 283

93. ———————— *Relatives of husband—Ancestral property—Mitakshara law.*—*Held* by the Full Bench that a Hindu widow is not entitled under the Mitakshara to be maintained by her husband's relatives, merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of ancestral property. *Held,* on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immoveable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him. GANGA BAI *v.* SITA RAM [I. L. R., 1 All., 170

94. ———————— *Relatives of husband—Ancestral property—Widow voluntarily living apart from husband's relatives.*—In the Island or Presidency of Bombay, a Hindu widow, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death, nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands. The doctrine, that in certain relationships and independently of the possession of ancestral estate, maintenance is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed. *Semble*—A Hindu widow, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from the family estate, a further allotment, or a money allowance for maintenance. *S,* a Hindu widow, voluntarily living apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance. *Held* that such suit was unsustainable for either of the two following reasons, *viz.,* (1) that the defendant was separated in estate from the plaintiff's husband at the time of his death; (2) that at the institution of the suit the defendant had not in his hands any ancestral estate, or any estate which had belonged to the plaintiff's husband. Decisions of the Bombay Sudder Adawlat on the right to maintenance reviewed. *Bai Lakshmi* v. *Lakhmidas Gopaldas, 1 Bom., 13; Chandrabhagabai* v. *Kashinath, 2 Bom., 323;* and *Timmappa* v. *Parmeshriamma, 5 Bom., A. C., 130,* disapproved. *Udaram Sitaram* v. *Sonkabai, 10 Bom., 483,* considered. *Rujjomoney Dossee* v. *Shibchunder Mullick, 2 Hyde, 103; Khetramani Dasi* v. *Kashinath Dàs, 2 B. L. R., A. C., 15;* and *Gangabai* v. *Sitaram, I. L. R., 1 All., 170,* approved and followed. SAVITRIBAI *v.* LUXIMIBAI . I. L. R., 2 Bom., 573

95. ———————— *Relatives of husband—Ancestral property.*—In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage,—*Held* (following the case of *Savitribai* v. *Luximibai, I. L. R., 2 Bom., 573*) that the defendant was not liable, inasmuch as he was not in possession of any ancestral property and had not received any property from the plaintiff's husband. APAJI CHINTAMAN *v.* GUNGABAI [I. L. R., 2 Bom., 632

96. ———————— *Obligation of brothers to maintain widow of a brother who predeceased their father whose property they have inherited.*—The principle that an heir succeeding to property takes it for the spiritual benefit of the late proprietor, and is therefore under a legal obligation to maintain persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal school. It is immaterial whether the property so inherited is moveable or immoveable. In each case it must be determined whether, having regard to the relationship, the means, and various other circumstances of the party claiming maintenance, the late proprietor was, according to the principles of the Hindu law and to the usages and practice of the Hindu people, morally bound to maintain that party. The above principle is applicable to the case of a widow claiming maintenance from her husband's brothers who had inherited her father-in-law's property, her own husband having predeceased his father. *Janki* v. *Nandram, I. L. R., 11 All., 194,* followed. Provided, therefore, that there is nothing to show that she was not a dependent member of her father-in-law's family within the meaning of the rule of Hindu law enjoining a moral obligation on a person to maintain such members of his family, such a widow was entitled to maintenance. KAMINI DASSEE *v.* CHANDRA PODE MONDLE [I. L. R., 17 Calc., 373

97. ———————— *Right of a widow to receive maintenance from her husband's brothers and nephew—Death of the plaintiff's*

HINDU LAW—MAINTENANCE—*continued*

5 RIGHT TO MAINTENANCE—*continued.*

that the property in suit, though inherited by the defendants, could not, so far as the plaintiff's rights were concerned, be correctly described as "ancestral property" in the defendants' hands from which she would be entitled to maintenance; inasmuch as during the father's lifetime, it was not in any sense ancestral, and the sons had no co-parcenary interest in it, but merely the contingent interest of taking it on their father's death intestate, and in the case of *the plaintiff's husband, such interest, by reason of his* predeceasing his father, never became vested *Adhibai* v *Cursandas Nathu I L R, 11 Bom., 199,* dissented from on this point *Savitribai* v. *Luximibai, I L R, 2 Bom, 573,* referred to. *Held,* however, that the father was under a moral, though not a legal, obligation not only to maintain his [illegible] ...e, but also [illegible] property [illegible] that such [illegible] reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by suit against that son (who took the estate not for his own benefit, but for the spiritual benefit of the last proprietor) and against the property in question *Adhibai* v *Cursandas Nathu, I. L R., 11 Bom, 199, Ganga Bai* v *Sita Ram, I L R, 1 All, 170, Kalu* v *Kashibai, I L R, 7 Bom, 127, Khetramani Dasi* v *Kashi Nath Das, 2 B L R, A C, 15, Rajjomoney Dossee* v *Shibchunder Mullick, 2 Hyde, 103;* and *Tulsha* v *Gopal Rai, I L R, 6 All, 632,* referred to JANKI *v* NAND RAM . I. L. R., 11 All., 194

83 ———— Son's widow—*Self acquired* [illegible]

[illegible] property inherited from a maternal grandfather is not self acquired, the rule of non-liability for main[illegible]

[illegible] on his death the force of a right [illegible] his self acquired assets in the hands of his heir; and that a testamentary disposition of such self acquired assets made in favour of volunteers by a person morally bound to provide maintenance, cannot affect the position of a party whose moral claim has become a legal right. *Annalamma* v *Appu I L R, 11 Mad., 91,* considered RANGAMMAL *v* ECHAMMAL [I. L. R., 22 Mad., 305

84. ———— *Claim of daughter-in law against self-acquired property of her father-in law in hands of his heirs* —The widow of a predeceased son, who lived in union with his father, has a legal right to maintenance from her mother in-law out of the self-acquired property of the father-in law to which his widow has succeeded as his heir A son's widow has no legal claim for maintenance against self-acquired property in the hands of her father in-law, but when such property devolves upon his heirs, the daughter in law has a *claim against it in their hands for maintenance if her* husband had lived in union with his father YAMUNABAI *v* MANUBAI I. L. R., 23 Bom., 608

(m) STEP-MOTHER

85. ———— Obligation of step-son to support step mother—*Family property* —Under the Hindu law, there is no legal obligation upon a step-son to support a step-mother independently of the existence in his hands of family property BAI DAYA *v* NATHA GOBINDLAL [I. L. R., 9 Bom., 279

86. ———— Step-mother and step sister —*Liability of zamindari property for, after partition* —A suit was brought for maintenance by the step-mother and step-sister of a zamindar to be paid out of the income of the zamindari The defendant contended that a partition having taken place of all [illegible]

[illegible] partible property which he had obtained upon the partition, but also out of the income of the zamindari SIVANANANJA PERUMAL SETHURAYER *v* MEENAKSHI AMMAL . . . 5 Mad., 377

(n) WIDOW.

87. ———— Nature of widow's right—*Maintenance to widow not expressed* [illegible]

[illegible] equivalent to a provision for maintenance JOITARA *v.* RAMHARI SIRDAR I. L. R., 10 Calc., 638

88. ———— Widow, Right of, to be maintained.—A Hindu widow has a right to be treated with kindness and suitably maintained. RAMNATH ROY CHOWDHRY *v* ANNEE KALLY DEBIA [W. R., 1864, 177

89. ———— *Mitakshara law—Widow with sons* —A Hindu widow has simply a right to be maintained out of her husband's property by Mitakshara law, where there are sons. MEHTERAN SINGH *v* SHEO KOONWER, 1 Agra, 106

90. ———— *Destitute widow* —A Hindu widow, if destitute of the means of

108. ———— *Right to select residence.*—By the Hindu common law the right of a widow to maintenance is one accruing from time to time according to her want and exigencies. A statute of limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable. In a suit brought by the widow against the eldest son for maintenance, it was pleaded that under the will of the husband it was a condition precedent to the plaintiff's right to maintenance that she should live under the same roof and in joint family with the defendant. It was further pleaded that there having been no demand and refusal of maintenance the plaintiff had no cause of action. *Held* that there was no condition in the will making the plaintiff's right to maintenance dependent upon her living under the same roof with the defendant, and that she was therefore left in the ordinary position of a Hindu widow, in whose [illegible] from the ancestral home would not [illegible] her to maintenance suitable to her rank and position. NARAYANRAO RAMCHANDRA PANT *v.* RAMABAI

[I. L. R., 3 Bom., 415
L. R., 6 I. A., 114

109. ———— *Right to select residence—Separate maintenance.*—A Hindu widow is not bound to reside with the family of her husband, and, if he were in union with them at the time of his death, she is entitled to a separate maintenance where the family property is sufficiently large to admit of an allotment of separate maintenance to her. Where, however, the plaintiff, a Hindu widow, was satisfied for several years with the maintenance, *viz.*, R16 per annum, fixed in an agreement executed by her and the defendant, and where the family of the husband was large and the family property small, the defendant being willing to maintain her in his house like the other members, the High Court declined to increase the amount, but gave the widow the right to elect between taking that sum and living separately, or accepting the defendant's offer to receive and maintain her in his own house in the same manner as the other members of his family. RAMCHANDRA VISHNU BAPAT *v.* SAGUNABAI

[I. L. R., 4 Bom., 261

110. ———— *Right of a widow to maintenance, although living apart from her husband's family.*—A Hindu widow does not forfeit her right to maintenance out of family property chargeable therewith by reason of non-residence with the family of her husband, except such non-residence be for unchaste or immoral purposes. Where there is family property available for maintenance, it lies upon the parties resisting the claim to separate maintenance to show that the circumstances are such as to disentitle the widow thereto, *e.g.*, that she resides separately from her husband's family for immoral purposes, or that the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance. KASTURBAI *v.* SHIVAJIRAM DEVKURNA . I. L. R., 3 Bom., 372

111. ———— *Separate maintenance and residence—Family property too small to admit of allotment of separate maintenance.*—Where the family income was too small to admit of an allotment to a widow of a separate maintenance, and there was no family house, but a small portion of land which was the site of a house,—*Held* that the widow was not entitled to a separate maintenance, but might be allowed, if she so desired, to occupy during her lifetime a portion of the land, not exceeding one-third. GODAVARIBAI *v.* SAGUNABAI

[I. L. R., 22 Bom., 52

112. ———— *Suit against father-in-law—Defence that plaintiff was provided for by her husband's will—Effect of direction in husband's will that widow should reside in family house.*—The plaintiff, after the death of her husband *A*, sued her father-in-law for maintenance. *A*, although not adopted, had always been treated by his maternal grandfather *N* as his son. They lived together, and after *N*'s death, in 1873, *A* and his wife (the plaintiff) continued to live occasionally with *N*'s widow *M*. *A* died in 1876 without issue, leaving the plaintiff, his widow, who was then a minor of the age of fourteen. *A* left a will and appointed *M* his executrix. In his will he spoke of himself as the adopted son of *N* (which he was not), and he purported by it to dispose of *N*'s property. He bequeathed ornaments of the value of R2,000 to his wife, and he directed that, if she resided in the house of his father (the defendant) or in the house of *M*, she should be paid R10 a month as maintenance by *M*; but if she went to live elsewhere, that only R7 a month should be paid to her. *M* proved the will. In 1879 the plaintiff left *M*'s house and went to live with her mother; and in 1889 she filed this suit against her father-in-law, the defendant, for maintenance. The defendant pleaded that the plaintiff was provided for by her husband's will, and further that the plaintiff had failed to obey her husband's direction to reside either in *M*'s house or the defendant's house, and that therefore she was not entitled to a separate maintenance. *Held* that the plaintiff was not bound to enforce her claim under her husband's will in lieu of claiming maintenance from her father-in-law. In answer to plaintiff's claim, the defendant was bound to show that she was possessed of property out of which she could maintain herself, and he did not discharge that onus by showing that by suing *M* she might possibly recover the maintenance provided for her by the will. *Held* also that the plaintiff was entitled to separate maintenance from the defendant. The general rule of law is that a Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere, unless she goes elsewhere for an improper purpose. *Quære*—Whether that rule applies if she goes to reside elsewhere notwithstanding a direction in

HINDU LAW—MAINTENANCE
—continued

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husband prior to his father's death —In a joint Hindu family governed by the Mitakshara law, the property of *S*, the father, consisted, at any rate partly, of [illegible] three sons and [illegible] *A*, another [illegible], leaving his [illegible] against the brothers and the *nephew* of her husband for maintenance, in which she claimed R100 a month,—*Held* that, as the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's lifetime, enforced partition of *that property*, and as *the Hindu law provides that* the surviving co-parceners should maintain the widow of a deceased co-parcener, the plaintiff was entitled to maintenance *Khetramani Dasi* v *Kashinath Das, 2 B L R, A C., 15 ; 10 W R, F. B., 89, Laljeet Singh* v *Raj Coomar Singh, 12 B L R, 373 20 W. R, 337, Suraj Bansi Koer* v. *Sheo Persad Singh, I L R, 5 Calc, 148, Janki* v *Nand Ram, I L R, 11 All, 194, Kamini Dassie* v. *Chandra Pode Mondle, I L. R, 17 Calc, 373*, and *Adhibai* v *Cursandas Nathu, I L R 11 Bom, 199*, referred to. DEVI PERSAD v. GUNWANTI KOER . . I. L. R., 22 Calc., 410

98 ——————— *Execution of decree for maintenance of widow—Liability of ancestral estate* —Maintenance decreed to a co-parcener's widow by reason of her exclusion from succession in a joint family cannot be regarded as a charge on the family estate, or the decree treated as a decree against the managing member of the family for the time being MUTTIA v VIRAMMAL [I. L. R., 10 Mad, 283

99. ——————— *Right of main-* [illegible]

v. VENKATACHARI . I. L. R., 20 Mad., [illegible]

100 ——————— *Private agreement, Effect of, on right—Widow residing in family house—Waiver of right to maintenance* —A right to maintenance bequeathed to a person is not affected by any private arrangement entered into by the members of the testator's family, who are liable to pay the maintenance as a charge on the testator's estate A plaintiff, however who has resided in and been supported by the family for twelve years after the testator's death without claiming the maintenance bequeathed to her is presumed to have waived her right. RAM LALL MOOKERJEE v TARA SOONDREY DEBIA . . . . . W. R., 1864, 3

101. ——————— *Obligation of husband's brother—Separation of widow.—Held* that a Hindu widow is entitled to maintenance from her husband's brother, whether separated or not, notwithstanding the non-receipt by the latter of her husband's assets There is nothing in the Hindu law to prevent the Court in its discretion awarding a widow separate maintenance Former decision commented on. TIMMAPPA BHAT v PARMESHRIAMMA [5 Bom, A. C, 130

102 ——————— *Widow leaving husband's house* —A widow's right to maintenance does not cease on her leaving her husband's house. SREERAM BHUTTACHARJEE v. PUDDOMOOKHEE DEBIA 9 W. R., 152

103 ——————— *Widow leaving husband's house* —A Hindu widow who, for no improper purpose, leaves her husband's family, does not thereby forfeit her right to maintenance. AHOLLYA BHAI DEBIA v LUKHEE MONEE DEBIA [6 W. R., 37

104. ——————— *Widow leaving husband's house* —Where the maintenance of a Hindu widow was not made by her deceased husband dependent upon her living with his family, she is entitled to it, notwithstanding she leave the house of *his family and go to that of her father* [illegible] MOYEE DASSEE v GOPAUL LALL DOSS [Marsh., 407

105. ——————— *Widow leaving husband's house—Widow in needy circumstances —Semble*—Separation from her husband's family does not deprive a Hindu widow of her right to claim maintenance from them if she happens to be in needy circumstances. CHANDRABHAGABHAI v KASHINATH VITHAL 2 Bom., 341: 2nd Ed., 323

106 ——————— *Widow leaving husband's house and family* —Although the Shastras impose on a Hindu widow the duty of living with her deceased husband's relatives the duty has been regarded by the British Courts as a moral duty which they will not lend their aid to enforce, and of which the non-performance does not deprive the widow of her right to inherit By consent of the parties and for the protection of the estate, which consisted of cash, the Court ordered the amount to be invested [illegible]

v. KIDERNATH GHOSE 3 Agra, 18[illegible]

107. ——————— *Widow leaving husband's house and family—Separate residence —* The widow of a coparcener in a Hindu family is not entitled to separate maintenance in the absence of special circumstances necessitating her withdrawal from the family and separate residence Authorities on the subject reviewed. The widow of a coparcener is not in Bombay entitled, as in Bengal, to her husband's share to use at her discretion for life. All she can strictly demand is a suitable maintenance when necessary, and whatever is required to make such a demand effectual [illegible] VINAYAK [illegible] YAMUNABAI . . . I. L. R., 3 Bom.,

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

Held therefore, where a husband in his lifetime made a gift of his entire estate leaving his widow without maintenance, that the donee took and held such estate subject to her maintenance. JAMNA *v.* MACHUL SAHU . . . I. L. R., 2 All., 315

123. ——— *Husband's property—Gift of his property by a husband in fraud of his widow's right to maintenance—Nature of wife's interest in her husband's property—Right to partition—Transfer by her of her interest—Release to her husband—Arrears and future maintenance a charge on property of deceased husband.*—A Hindu husband cannot alienate, by a deed of gift to his undivided sons by his first and second wives, the whole of his immoveable property, though self-acquired, without making for his third wife, who is destitute and has not forfeited her right to maintenance, a suitable provision to take effect after his death. After the husband's death, she is entitled to follow such property in the hands of her step-sons to recover her maintenance her right to which is not affected by any agreement made by her with her husband in his lifetime. A Hindu wife has no property or co-ownership in her husband's estate, in the ordinary sense, which involves independent and co-equal powers of disposition and exclusive enjoyment. Her right is merely an inchoate right to partition which she cannot transfer or assign away by her own individual act; and, unless such right has been defined by partition or otherwise, it cannot be released by her to her husband. NARBADABAI *v.* MAHADEO NARAYAN . I. L. R., 5 Bom., 99

124. ——— *Husband's property—Charge on property alienated by heirs.*—*Held* that the widow's right to maintenance being a charge on the property forming her deceased husband's estate remains claimable out of the property, notwithstanding its alienation by the heirs, unless she bargains to forego it. HEERA LALL *v.* KOUSILLAH [2 Agra, 42

TARUNGINEE DASSEE *v.* CHOWDRY DWARKANATH MUSSANT . . . . . 20 W. R., 196

125. ——— *Liability of heir.*—The heir who takes and becomes possessed of the estate of the deceased must be held to continue to be primarily responsible, both in person and property, for the maintenance of the widow, even though he should have fraudulently transferred that estate, or otherwise have improperly vested it, and the widow is bound to look to the heir for her maintenance and to claim it from him primarily rather than from the estate transferred or wasted, which may nevertheless be in the last resort answerable to her claim. RAMCHURN TEWAREE *v.* JUSSODA KOONWER [2 Agra, 134

126. ——— *Nature of charge.*—The maintenance of a widow is by Hindu law a charge upon the whole estate, and therefore upon every part thereof. RAMCHANDRA DIKSHIT *v.* SAVITRIBAI . . . 4 Bom., A. C., 73

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

127. ——— *Family property.*—A Hindu widow's maintenance is a charge upon the family estate in whosesoever hands the estate may fall. KHUKROO MISRAIN *v.* JHOOMUCK LALL DASS . . . . . 15 W. R., 263

128. ——— *Family property—Mitakshara law—Moveable ancestral property—Property liable for maintenance—Immoveable property purchased with profits.*—Under the Mitakshara law, moveable ancestral property which remains in the hands of a father, and has not been partitioned among his sons, is to be regarded as a fund chargeable with the maintenance of those members of the family who under Hindu law have claims for maintenance on the undivided estate of the family. All ancestral property is, while it remains undisposed of and unpartitioned, charged with the maintenance of all persons who are entitled to maintenance from the estate. Immoveable property purchased with the capital or profits of ancestral moveable property does not retain the character of ancestral moveable property, but those incidents attach to it which ordinarily attach to immoveable property acquired by and inherited from an ancestor. A Hindu widow with a minor son is as much entitled as a childless widow to maintenance. Where a husband dies leaving separate estates and also an undivided share in joint family property, the widow's maintenance should be met first out of the profits of the separate estates; but if these are insufficient, there is nothing in the circumstance that the husband left separate estates which would debar the widow from having recourse to the joint estate to meet the deficiency. SHIB DAYEE *v.* DOORGA PERSHAD . 4 N. W., 63

129. ——— *Right of widow to follow property into hands of purchaser—Liability of heir.*—Under the Hindu law, property purchased from the heir with notice that a widow is entitled to be maintained out of it continues, while in the hands of the purchaser, to be charged with that maintenance. Before following properties from which she is entitled to obtain her maintenance in the hands of the purchaser, a Hindu widow is not bound in all cases to attempt recovering her maintenance from the heir-at-law. GOLUCK CHUNDER BOSE *v.* OHILLA DAYEE . . . . . 25 W. R., 100

130. ——— *Suit for arrears of maintenance—Charge on estate of husband in hands of co-parcener.*—In a suit by the widow of one undivided brother against the survivor for maintenance on the question of past maintenance,—*Held* that the husband's estate in the hands of the survivor was that to which the charge attached, and that the husband's death was the period from which the Act of Limitation began to run against the claim. SUBBRAMANIA MUDALIAR *v.* KALIANI AMMAL [7 Mad., 226

131. ——— *Widow's right to have maintenance charged on inheritance.*—A Hindu widow entitled to maintenance may have the payment thereof secured by a charge on part of

HINDU LAW—MAINTENANCE
—continued

5 RIGHT TO MAINTENANCE—*continued*

her husband s will that she should reside in the family house GOKIBAI v LAKHMIDAS KHIMJI
[I L. R. 14 Bom , 490

113 ——— *Residence in family house directed by husband* —A Hindu widow, whose husband has directed that she shall be maintained in the family house is not entitled to maintenance if she reside elsewhere without cause GIRIANNA MURKUNDI NAIK v HONAMA
[I. L R., 15 Bom , 236

114 ——— *Widow directed by the husband to be maintained in the family house—Just cause for not living in family house—Imputation of unchastity* —A Hindu widow who is directed by her husband to be maintained in the family house, is not entitled to maintenance if she resides elsewhere without a just cause J a Brahmin resided at Kava and died there in 1874 while his wife (the plaintiff) was living with her parents at Dabhoi By his will he devised the greater part of his property to his nephew M, and bequeathed a house and certain other property to his wife "if she came to live at Kava" In 1883 the plaintiff sued M and his brother for arrears of maintenance alleging that they were in possession of her deceased husband s property and therefore were liable for her maintenance The defendants pleaded that the plaintiff led an immoral life and had therefore forfeited her right to maintenance They further contended that she was not entitled to maintenance, unless and until she came to reside at Kava as directed by [illegible] ... [illegible] ... ken her ... *Held* [illegible] hat the [illegible] with the defendants MULJI BHAISHANKAR v BAI UJAM
[I. L. R., 13 Bom , 218

[illegible] to maintenance out of her husband s estate by going to reside elsewhere unless she leaves her husband s house for the purpose of unchastity or for any other improper purpose PIRTHEE SINGH v RAJ KOOER
[12 B L. R., 238
20 W. R., 21
L. R., I. A , Sup Vol., 203

Affirming decision of Court below in
[3 N. W., 170

116 ——— *Act XXI of 1850—Unchastity—Loss of caste—Forfeiture of rights of property* —Since Act XXI of 1850 came into force mere loss of caste does not occasion a forfeiture of rights of property A Hindu widow entitled to a bare or starving maintenance under a decree made in a suit brought by her for maintenance against the representatives of her deceased husband, is not [illegible] the [illegible] incor[illegible] B I[illegible] v T[illegible]

117 ——— *Unchastity* — An unchaste widow is not entitled to a bare maintenance *Honamma v Timannabhat I L R , 1 Bom , 559* followed. VALU v GANGA
[I. L. R., 7 Bom., 84

118 ——— *Decree liable to be set aside or suspended for unchastity* —A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by her husband s relatives either in a suit brought by them expressly for the purpose of setting aside the decree or in answer to the widow's suit to enforce her right VISHNU SHAMBHOG v MANJAMMA
I. L. R., 9 Bom., 108

119 ——— *Suit on a consent decree to recover arrears of maintenance—Unchastity of widow—Starving maintenance* —A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by the husband's relatives either in a suit brought by them expressly for the purpose of setting aside the decree or in answer to the widow's suit to enforce her right Upon proof of such subsequent unchastity the widow is entitled to no maintenance whatever *Bishnu Shambhog v Manjamma I L R , 9 Bom 108* and *Rama Nath v Rajonimoni Dasi, I L R 17 Calc 674* approved. DATTA KUARI v MEGHU TIWARI
I. L. R., 15 All., 382

120 ——— *Forfeiture of widow's right to maintenance by reason of unchastity* —The unchastity of a widow deprives her wholly of her right to maintenance and the fact that there has been an agreement as to maintenance make no difference *Valu v Ganga, I L R , 7 Bom., 84* and *Vishnu Shambhog v Manjamma I L R., 9 Bom , 108*, followed NAGAMMA v VIRABHADRA
[I. L. R., 17 Mad , 392

121. ——— **Charge on property for maintenance**—*Sale of estate* —A Hindu widow's claim to maintenance upon an estate does not necessarily render the sale of the property subversive of her right for even if there be no other property out of which that maintenance can be derived, there is nothing to prevent her from suing to establish her right to make her maintenance a charge upon the property sold. ANUND MOYEE CHOWDHRY v GOPAL CHUNDER BANERJEE
W. R., 1864, 310

122. ——— *Husband's property* —A wife is under the Hindu law in a restricted sense a co-owner with her husband; he cannot alienate his property or dispose of it by will in such a wholesale manner as to deprive her of maintenance

HINDU LAW—MAINTENANCE —continued.

5. RIGHT TO MAINTENANCE—*continued.*

can be made against the purchaser of a portion of the joint property. If the widow, on the other hand, is not accepting support from the co-parcener, if she lives apart, and if the estate is small and insufficient, it is the vendee's duty, before purchasing, to enquire into the reason for the sale, and not by a clandestine transaction to prevent the widow from asserting her right against the intending vendor. It is in this connection that the doctrine of notice becomes of importance. The knowledge of collateral rights created by agreement in equity frequently qualifies those acquired by a purchaser. The widow's right to maintenance is a right maintainable against the holders of the ancestral estate in virtue of their holding no less through the operation of the law than if it had been created by agreement, and so when the sale prevents its being otherwise satisfied, it accompanies the property as a burden annexed to it in the hands of a vendee with notice that it subsists, though equity as between the vendee and the vendor will make the property retained by the latter primarily answerable. Whether such a claim by a widow against the estate of her deceased husband in the hands of a purchaser is enforceable or not, does not depend upon whether the remainder of the estate in the hands of the heir has been exhausted. What was honestly purchased is free from her claim for ever. What was purchased in furtherance of a fraud upon her, or with knowledge of a right which would thus be prejudiced, is liable to her claim from the first. The relations of the parties are determined once for all at the moment of the sale. There is no authority for the doctrine which makes the claim of widows not entitled to a share of property, in case of partition, a real charge on the inheritance, and ranks the claim of widows who are so entitled as a mere moral obligation. In all cases it is a claim to maintenance merely, not interfering (so long as it has not been reduced to certainty by a legal transaction) with the right of the actually participant members to deal with the property at their discretion, provided this dealing is honest and for the common benefit. The reduction of the number of surviving co-parceners to a single person makes no difference in the widow's legal position. The rights and obligations of the original co-parceners fall at last to the sole survivor. The widows must be maintained by him out of the property, but he may still deal with the estate at his discretion in the absence of actual fraud or of a decree which has converted some widow's claim into an actual right *in re.* The purchaser from him takes a perfectly good title, and one which, if good at the time, cannot be impaired by subsequent changes in the circumstances of the vendor's family. Authorities on the subject of Hindu widow's maintenance reviewed. LAKSHMAN RAMCHANDRA *v.* SATYABHAMABAI . . I. L. R., 2 Bom., 494

See DALSUKHRAM MAHASUKHRAM *v.* LALLUBHAI MOTICHAND . . I. L. R., 7 Bom., 282

137. ———— *Widow's maintenance—Right of maintenance charged on property left by testator—Sale of such property in fraud of widow's right of maintenance—Right of widow as against purchaser—Transfer of Property Act (IV of 1882), s. 39—Notice.*—A testator, by his will, gave his widow's maintenance out of the income of his immoveable estate, subject to a limited power of sale or mortgage conferred upon his executrix for a special purpose. It was found by the lower Courts that a large part of the property was sold by the executrix with the object of defeating the claim of the plaintiff, who was one of the testator's widows, and that the purchaser was aware of the fraud. *Held* that the plaintiff wase ntitled to recover her maintenance out of the property in the hands of the purchaser. The purchaser having been aware of the fraud, the plaintiff's right to maintenance against the property in his hands remained unaffected, whether under s. 39 of the Transfer of Property Act or the law previously in force and irrespective of the possibility of her claim being satisfied from other property. BEHARILALJI BHAGWATPRASADJI *v.* BAI RAJBAI [I. L. R., 23 Bom., 342

138. ———— *Transfer of Property Act (IV of 1882), s. 39—Transferee for consideration and without notice—Mortgagee—Decree declaring charge on immoveable property for maintenance—Notice of charge—Constructive notice—Vendor and purchaser.*—S. 39 of the Transfer of Property Act does not protect a transferee for consideration, when the immoveable property transferred has already been declared by a decree of Court, subject to a charge in favour of a Hindu widow for her maintenance. The fact that the maintenance claimed accrued due subsequent to the transfer does not affect the liability of the property transferred to be sold in execution of a decree for the maintenance so claimed. KULODA PROSAD CHATTERJEE *v.* JOGESHAR KOER I. L. R., 27 Calc., 194

139. ———— *Hindu widow—Right to maintenance—Sale of property in respect of which the widow's right to maintenance might be enforceable—Transfer of Property Act (IV of 1882), s. 39.*—The maintenance of a Hindu widow is not a charge upon the estate of her deceased husband until it is fixed and charged upon the estate by a decree or by agreement; and the widow's right is liable to be defeated by a transfer of the husband's property to a *bond fide* purchaser for value even with knowledge of the widow's claim for maintenance, unless the transfer has further been made with the intention of defeating the widow's claim. *Sham Lal* v. *Banna, I. L. R., 4 All., 296,* and *Lakshman Ramchandra Joshi* v. *Satyabhamabai, I. L. R., 2 Bom., 494,* referred to. RAM KUNWAR *v.* RAM DAI I. L. R., 22 All., 326

140. ———— *Notice by possession of widow of her right to maintenance—Sale of family property to discharge previous mortgage.*—Immoveable property of a joint Hindu family was sold by a member of the family and his two sons to the plaintiff, and the purchase-money was expended in redeeming a mortgage. The character of the

HINDU LAW—MAINTENANCE
—*continued.*

5 RIGHT TO MAINTENANCE—*continued.*

the inheritance in the hands of the heir. MAHALAKSH MAMMA *v.* VENKATARATNAMMA
[I. L. R., 6 Mad., 83

132. ———— ———— Charge of ancestral land encumbered with debt of family and redeemed with self-acquired funds by one member.—A Hindu widow is entitled to charge on account of her maintenance a piece of land in the possession of her father in law (the defendant), which formed a portion of the ancestral property of the family, and had been allotted on partition to defendant, encumbered with a mortgage-debt of the family to the full value, and which had, subsequently to the partition in the lifetime of the plaintiff's husband, been redeemed by the defendant with self and separately acquired funds. VISALATCHI AMMAL *v.* ANNASAMY SASTRY
[5 Mad., 150

133. ———— *Purchaser for value, and bonâ fide right of widow against.*—The maintenance of a Hindu widow is not a charge on any ancestral property in the hands of a *bonâ fide* purchaser from her late husband's successors any more than the payment of unsecured debts due by the family. The proposition in *Ramchurn Tewaree v. Jasooda Koonwer, 2 Agra, 134* that the liability of family property in the hands of a purchaser for the maintenance of a widow depends on the ability of her husband's heir to support her, dissented from LAKSHMAN RAMCHANDRA *v.* SARASVATIBAI
[12 Bom., 69

134. ———— *How far maintenance is a charge on husband's estate—Notice.*—As against one who takes as heir, a Hindu widow has a right to maintenance out of the property in his hands. She also has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir. By the law of Bengal she has no lien on the property for her maintenance against all the world irrespective of such notice. BHAGABATI DASI *v.* KANAI LALL MITTER
[8 B. L. R., 225: 17 W. R., 433 note

JUGGERNATH SAWUNT *v.* ODHIRANEE NARAIN KOOMAREE . . . 20 W. R., 126

See NISTARINI DASI *v.* MAKHUNLALL DUTT
[9 B. L. R., 11: 17 W. R., 432

135. ———— *Lien on estate of husband—Notice of lien—Bonâ fide purchaser.*—The lien of a Hindu widow for ...
of the estate of ...
on that estate ...
irrespective of ...
before she can ...
against propert...
hands of a purchaser from his heir, must show that there is no property of the deceased in the hands of the heir. Debts contracted by a Hindu take precedence of his widow's claim for maintenance, and *semble* that, if a portion of his property is sold after his death to pay such debts, the widow cannot enforce her charge for maintenance against such property in the hands of the purchaser. *Quære*—Whether a Hindu widow, by obtaining against her husband's heir a personal decree for maintenance unaccompanied by any declaration of a charge on the estate, does not lose her charge upon the estate. ADHIRANEE NARAIN COOMARY *v.* SHONA MALEE PAT MAHADAI . I. L. R., 1 Calc., 365

136. ———— *Charge on estate in the hands of purchaser with notice—Notice.*—In a suit for maintenance brought by a Hindu widow against her husband's brother, who was the sole surviving member of that husband's family, and against *bonâ fide* purchasers for value from him (the defendant) of certain immoveable ancestral property of the family. *Held* the mere circumstance that such purchasers had notice of her claim is not conclusive of the widow's rights against the property in their hands. If the property were sold in order to pay debts (not incurred for immoral purposes) of her husband, or his father, or grandfather, or for the benefit of the undivided family, or to satisfy a former decree obtained by the plaintiff herself against the same defendant for maintenance, such sale would be valid against her, whether or not the purchasers had notice of her claim. *Per* WEST, J.—According to the Mitakshara, sons must, from the moment of their father's death, be regarded as sole owners of the estate, yet with a liability to provide for the maintenance of their father's widow, and with a competence on the widow's part to have the estate made answerable. If the sons make a division of the estate, they must allot to their mother an equal share, and the same to any sonless widow of their father. The widow has no proprietorship in the estate before its partition, but she has an equity to a provision which the Court will enforce to guard her against attempted fraud. The debts of the deceased ...
c...
f...
s...
r...
I... claim to a separate provision out of the paternal property, resides with her sons or step-sons, and is maintained by them, she must submit to their dealing with the estate. A fraudulent alienation for the purpose of defeating her claims will not be supported, but the particular assignee for value acquir...

... there is an ample estate left, out of wh... to provide for the widow, or, if knowing of a pro... sale, she does not take any step to secure her own interest, no imputation of bad faith, or of abetting

HINDU LAW—MAINTENANCE—*continued.*

5. RIGHT TO MAINTENANCE—*continued.*

150. ———— *Wife compelled to leave husband's house on account of misconduct of husband.*—A Hindu kept a Mahomedan mistress, and by such conduct compelled his wife under her religious feelings to leave her house. She went and resided with her mother and continued to live in chastity. *Held* the husband was bound to give maintenance to his wife. LALA GOBIND PRASAD *v.* DOWLAT BATTI

[6 B. L. R., Ap., 85: 14 W. R., 451

151. ———— *Justification for wife leaving husband—Unkindness or neglect—Cruelty—Criminal Procedure Code, 1872, s. 536.*—Under Hindu law, mere unkindness or neglect short of cruelty would not be a sufficient justification for a wife in leaving her husband's house. Reference being had to the first Code of Criminal Procedure (XXV of 1861) and to the existing Code (X of 1872), s. 536, unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to maintenance while living apart from her husband. SITANATH MOOKERJEE *v.* HAIMABUTTY DABEE . . . . 24 W. R., 377

152. ———— *Wife leaving her husband's protection—Cruelty of husband.*—A Hindu wife is justified in leaving her husband's protection, and is entitled to separate maintenance from his income, when he habitually treats her with cruelty and such violence as to create the most serious apprehension for her personal safety. *Sitanath Mookerjee v. Haimabutty Dabee, 24 W. R., 377,* referred to. MATANGINI DASI *v.* JOGENDRA CHUNDER MULLICK . . . I. L. R., 19 Calc., 84

153. ———— *Adulteress living apart from her husband.*—A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned. ILLATA SAVATRI *v.* ILLATA NARAYAN NAMBUDRI . . . . . . 1 Mad., 372

154. ———— A woman divorced for adultery who had continued in adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance out of the property of her deceased husband according to Hindu law. MUTTAMMAL *v.* KAMAKSHY AMMAL

[2 Mad., 337

155. ———— *Wife's right of maintenance among Sudras—Continued unchastity and misconduct.*—In 1887, a suit was instituted against a Sudra by his wife, and a decree was passed for her maintenance. The judgment-debtor now sued to have that decree set aside, alleging that his wife had since committed adultery and given birth to an illegitimate child. The wife denied the adultery and stated that her husband had become reconciled to her, and that her child was legitimate. It was found that the plaintiff's case was established, and that the defendant's misconduct had been recent, open, and continuous. *Held* that the decree in the previous suit should be set aside, and that the defendant was not entitled to a bare maintenance. *Quære*—Whether apart from the other circumstances in the case, the fact of having given birth to an illegitimate child would have constituted a bar to the wife's claim to bare maintenance. KANDASAMI PILLAI *v.* MURUGAMMAL . I. L. R., 19 Mad., 6

156. ———— *Aliyasantana law—Liability of husband to maintain wife.*—A female, who is a member of a family governed by the Aliyasantana system of law, living apart from the family with her husband, is not entitled to a separate allowance for maintenance out of the income of the family property. *Semble*—The husband is bound to maintain his wife out of his self-acquired means so long as she continues to live with him. SUBBU HEGADI *v.* TONGU . . . . 4 Mad., 196

157. ———— *Sagai wife—Marriage, Validity of.*—*Quære*—Whether a Sagai wife is entitled to maintenance. JHUBHOO SAHOO *v.* JUTODA KOOER . . . 17 W. R., 230

158. ———— *Daughter's right—Residence—Marriage expenses—Hindu embracing Mahomedanism.*—J, a Hindu, embraced the Mahomedan religion and married a Mahomedan woman whom he took to live with him. At the time of his conversion he had a Hindu wife, who, together with her minor daughter, now instituted a suit against him, praying (1) for an allowance by way of maintenance; (2) that the allowance might be fixed as a charge on specific property belonging to the defendant; (3) for an order compelling the defendant to provide the plaintiffs with a separate house for their residence; and (4) that a sum of R4,000 might be awarded to them to defray the marriage expenses of the minor plaintiff. *Held* that the defendant ought not to be compelled to provide residence for the plaintiffs, inasmuch as the allowance awarded to them should cover all such expenses as maintenance and house-rent, and that the claim of R4,000 for the minor plaintiff's marriage expenses should be rejected; since it was not shown that any marriage expenses had been incurred or were at present required for her, and since if she lived to reach a marriageable age, the matter would then be in the hands of her guardian. *Held,* further, that the right of the wife and daughter to be maintained out of the husband's and father's property was undoubted, and that, when the Court has made an order directing a sum to be paid by way of maintenance, it has undoubtedly the power to ensure the enforcement of its order, and this could best be done by fixing the allowance to be a charge on specific property. *Jamna v. Machul Sahu, I. L. R., 2 All., 315; Ramabai v. Trimbak Ganesh Desai, 9 Bom., 283; Sham Lal v. Banna, I. L. R., 4 All. 296;* and *Mahalakshamma Garu v. Venkatacatnamma Garu, I. L. R., 6 Mad., 83,* referred to. MANSHA DEBI *v.* JIWAN MAL . . . . . I. L. R., 6 All., 617

159. ———— *Woman living in adultery—Right to maintenance from paramour.*—A woman living in adultery formed a temporary

HINDU LAW—MAINTENANCE
—*continued*

5. RIGHT TO MAINTENANCE—*continued*

mortgage-debt was not shown In a suit by the plaintiff for possession it appeared that the property in question had been in the exclusive possession of another member of the family, and after his death in that of his widow, for more than 26 years, and that neither of them had concurred in the sale to the plaintiff, it was also found that the widow was entitled to possession on account of maintenance *Held* that the separate possession of the widow was notice to the plaintiff of her interest in the land, and that he was not entitled to defeat it. IMAM *v* BALAMMA
[I. L. R, 12 Mad., 334

141. ———————— *Charge on husband's estate—Bonâ fide purchaser for value without notice* —The maintenance of a Hindu widow is not, until it is fixed and charged on her deceased husband's estate by a decree or by agreement, a charge on such e[illegible] a *bonâ fide* purc[illegible] out notice Wh[illegible] widow has been [illegible] estate, a portion of such estate will be liable to such charge in the hands of a purchaser, even if it be shown that the heirs to such estate have retained enough of it to meet such charge, but such estate will not be liable if its transfer has taken place to satisfy a claim for which it is liable under Hindu law and which under that law takes precedence of a claim of maintenance SHAM LAL *v* BANNA
[I. L. R., 4 All., 296

142 ———————— *Charge for, on ancestral property—Liability of purchaser for arrears of maintenance*—A decree obtained by a Hindu widow for maintenance directed that certain ancestral property, which *D* and *S* had purchased, should be liable in their hands for the payment of the maintenance allowance *Held* that the widow was not entitled, by virtue of such decree, to recover arrears of the allowance from *D* and *S* personally, after such property had left their hands. DHARAM CHAND *v* JANKI . I. L. R., 5 All., 389

143 ———————— *Property sold in execution of decree for maintenance—Subsequent suit to recover maintenance, and to follow property in hands of auction purchaser* —A Hindu widow's right to recover maintenance is subject to the right of a purchaser of a portion of the family estate for valid consideration *A* obtained a personal decree against *B* for maintenance, at the sale in execution of this decree a portion of the family property was sold and purchased by *C* At this sale the widow gave notice that she claimed a right to recover maintenance from the family property In a subsequent suit by *A* against *B* and *C* to recover arrears of maintenance, *A* sought to follow the property in the hands of *C*. *Held* that the fact of such notice being given at the time of the auction-sale would not affect the rights of the auction purchaser *C*, he having purchased at an auction sale held under a decree obtained in satisfaction of a valid family debt SOORJA KOER *v* NATH BUKSH SINGH
[I. L. R, 11 Calc, 102

144.———————— *Maintenance, Right to, out of confiscated property* —A Hindu widow held not entitled to maintenance out of property belonging to her husband which had become forfeited to Government on his conviction for rebellion GUNGA BAEE *v* HOGG
[2 Ind. Jur., N. S, 121

(*o*) WIFE

145 ———— **Wife's right to maintenance** —*Separate maintenance—Ground for living apart from husband* —Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence or other justifying cause she is compelled to live apart from him SIDLINGAPA *v* SIDAVA
[I L R 2 Bom., 634

146 ———————— *Wife leaving husband's house without sanction* Under the Hindu law, a wife who, without her husband's sanction, leaves him to live with her own family has no right to ask maintenance from her husband KULLYANESSUREE DEBEE *v* DWARKANATH SURMA
[6 W R., 116

147 ———————— *Wife leaving* [illegible] that, as she was desirous of returning, and the husband declined to maintain her she was entitled to maintenance NITYE LAHA *v* SOONDAREE DASSEE
[9 W R., 475

148 ———————— *Deed of separation—Agreement for separate residence and maintenance — Consideration — Right to enforce such* [illegible] would warrant the wife under the Hindu law in claiming a separate residence and maintenance from her husband he promised to pay her for a separate residence and maintenance *Held*, in a suit for arrears of maintenance, that there was no consideration moving from the wife, it was a mere voluntary arrangement on the part of the husband, and not enforceable by suit RAJLUKHY DABEE *v* BHOOTNATH MOOKERJEE . . 4 C W. N., 488

149 ———————— *Husband's second marriage* —A Hindu wife is not entitled to maintenance if she leaves her husband without a justifying cause The husband's marrying a second wife is not such justifying cause Where, therefore, a Hindu husband married a second wife and his first wife thereupon left him —*Held* that the first wife had no implied authority to borrow money for her support. VIRASVAMI CHETTI *v*. APPASVAMI CHETTI . . . . 1 Mad., 375

HINDU LAW—MARRIAGE—*continued.*

2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT—*continued.*

5. ———— *Marriage of a girl without her father's consent—Husband and wife—Suit by the father to declare such marriage void—Factum valet.*—The plaintiff, a Hindu father, sued for a declaration that the marriage of his daughter, which had been celebrated by his wife without his consent, was null and void. It appeared that the plaintiff had for about eight years voluntarily given up residence with his wife and daughters, and that he had several times been requested by his wife to get their daughter, aged eleven years, married, but had neglected to do so. The plaintiff's wife accordingly, having procured a suitable husband for their daughter, informed the plaintiff of the intended marriage; but the plaintiff, instead of approving the course taken by his wife, filed a suit, and obtained an injunction restraining his wife from celebrating the marriage. The marriage nevertheless was solemnized with due ceremonies. The Court of first instance declared the marriage void. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiff to the High Court, —*Held*, confirming the decree of the lower Appellate Court, that the marriage should be supported, under the circumstances of the case, on the principle of *factum valet*, there being no express authority in the Hindu law-texts, making the consent of the parents and guardians of a girl a condition precedent to the validity of a marriage. The plaintiff, having been informed of his wife's intention to marry their daughter, made no *bonâ fide* attempt to marry her, and, after entirely foregoing his claim to all control over his daughter for many years, merely attempted to assert his right without any regard to her interests, and with the sole object of annoying the mother, from whom he had been long separated with his own consent. *Quære*—Whether Civil Courts would set aside a marriage if a clear case was established of fraud, by both the parties intermarrying, on the rights of the father as guardian of his daughter for the purposes of marriage. KHUSHALCHAND LALCHAND *v.* BAI MANI . . . I. L. R., 11 Bom., 247

6. ———— *Custody—Guardianship—Right of father to give his daughter in marriage—Conduct of father forfeiting such right—Suit by a father to restrain his wife from giving their daughter in marriage without his consent.*—The plaintiff and *R*, the second defendant, were husband and wife belonging to the Prabhu caste, and lived together in the house of the first defendant, who was *R*'s father, until the year 1880. In 1877 a daughter *S* had been born to them. In 1880 the plaintiff was convicted of theft, and sentenced to two years' imprisonment. At the end of his term of imprisonment he did not return to live with his father-in-law, but went to reside in his own father's house, where in 1884 he requested his wife *R* to join him with their daughter *S*. *R* refused, and she and *S* continued to live in the house of the first defendant, her father. The plaintiff then married a second wife. In November 1885, *S* having attained nine years of age—an age at which it is customary for Prabhus to seek husbands for their daughters—demanded his daughter *S* from the defendants, who, however, refused to deliver the girl to the plaintiff. In May 1886, the plaintiff filed this suit against the defendants, complaining that they were about to have his daughter *S* married to her cousin without his (the plaintiff's) consent. He prayed that he might be declared entitled to the custody of his daughter, and for an injunction against her marriage without his consent. On filing this suit, he obtained a rule *nisi* for an injunction against the defendants. *Held* that, pending the hearing of this suit, he was entitled to the injunction asked for. NANABHAI GANPATRAV DHAIRYAVAN *v.* JANARDHAN VASUDEV

[I. L. R., 12 Bom., 110

7. ———— *Alleged improper marriage of minor threatened pending application for guardianship—Injunction against person not party to application and out of jurisdiction—Guardian and Wards Act (VIII of 1890), ss. 11, 12—Civil Procedure Code (Act XIV of 1882), s. 622.*—During the pendency of an application for guardianship of a minor girl, it was alleged on behalf of the applicant, the mother, that an improper marriage of the girl was going to be performed by the father, and an injunction was prayed for to restrain various persons (including the present petitioner, who was not a party to the proceeding) from marrying or allowing the marriage of the minor. The lower Court had granted the injunction. *Held* that s. 12 of the Guardian and Wards Act authorizes the Court to make such order for the temporary protection of the person of the minor as it thinks proper, and this power is not exercisable only after the production of the minor. *Held*, further, that the mere fact that a person resides outside the jurisdiction of the Court is not *per se* sufficient to prevent the Court from granting an injunction to restrain him from committing an act in a case such as the present. *Held* also that this was not a case in which the High Court ought to interfere under s. 622, Civil Procedure Code. HARENDRA NATH CHOWDHURY *v.* BRINDA RANI DASSI

[2 C. W. N., 521

8. ———— *Marriage of a girl without her father's consent—Suit by father to have marriage declared void—Factum valet—Applicability of the doctrine to marriage.*—Under the Hindu law, a duly solemnized marriage cannot be set aside in the absence of fraud or force on the ground that the father did not give his consent to the marriage. The texts relating to the eligibility of persons who can claim the right of giving a girl in marriage are directory, and not mandatory. MULCHAND KUBER *v.* BHUDHIA . . . I. L. R., 22 Bom., 812

9. ———— *Guardianship—Paternal relatives—Their authority to give a girl in marriage—Civil Court's jurisdiction to interfere with this authority.*—The general authority, failing the father, of the paternal relatives to dispose of a girl in marriage is recognized by the Hindu law as a part of the guardianship which is correlative as a right

HINDU LAW—MAINTENANCE —concluded

5 RIGHT TO MAINTENANCE—*concluded*

connexion with a man by whom she had a son *Held* that she could not maintain a suit for maintenance against her paramour SIKKI *v* VENCATASAMY GOUNDEN 8 Mad, 144

160 ——— *Woman marrying again in lifetime of husband—Right to maintenance*—Among the Sompara Brahmins a widow who has re-married in the lifetime of her first husband without his consent cannot be regarded as the lawful wife of her second husband but she is entitled to maintenance as his concubine KHEMKOR *v* UMIA SHANKAR RANCHHOR 10 Bom, 381

161 ——— *Charge on husband's estate—Transfer of estate for payment of debts*—The *bonâ fide* purchaser for value of the estate of a Hindu husband sold in order to satisfy the husband's debts, does not take such estate subject to the wife's maintenance, even if such maintenance is fixed and charged on the estate *Jamna v Machul Sahu I L R, 2 All 315* and *Sham Lal v Banna, I L R, 4 All 296, referred to* GUR DAYAL *v* KAUNSILA I. L. R., 5 All, 367

162 ——— *Right of maintenance against purchaser at sale for pay*

chaser, it is not so in a case in which the sale took ... which it was the ... family to pay

I. L. R., 2 Mad., 126

HINDU LAW—MARRIAGE.

See DIVORCE ACT s 7
[I. L. R., 17 Mad., 235

See CASES UNDER HINDU LAW—CUSTOM—MARRIAGE

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP 23 W. R., 178
[I. L. R., 1 All., 549
I. L. R., 13 Bom., 110

HINDU LAW—MARRIAGE—*continued*

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN
[I. L. R., 25 Calc., 354

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—RE-MARRIAGE

1 INFANT MARRIAGE, THEORY OF

1 ——— **Infant marriages** *Presumption of age—Age of discretion*—The foundation for ...

had returned after the celebration of the marriage ceremony, for that of her husband. The presumption therefore, is that the husband when called upon to receive his wife for permanent cohabitation has attained the full age of adolescence and also the age which the law fixes as that of discretion JUMOONA DASSYA *v* BAMASUNDARI DASSYA
[I. L. R., 1 Calc., 289 25 W. R., 235
L. R., 3 I. A., 72

2 RIGHT TO GIVE IN MARRIAGE, AND CONSENT

...

LAMEE GOPEE GHOSE *v* JUGGESSUR GHOSE
[3 W. R., 193

3 ——— *Guardian of daughters*—The plaintiff, the divided brother of the defendant's deceased husband sued to obtain a declaration of his independent legal right to betroth ...

of her daughters and possessor of her husband's property, which however, presented still stronger ... of objection to the plaintiff's claim NAMASIVAY PILLAY *v* ANNAMMI UMMAL 4 ...

4 ——— **Consent of guardian to** ... **riage**—*Effect of want of consent*—The want of a guardian's consent will not invalidate a ... otherwise legally contracted and performed with the necessary ceremonies. MUDDOOSOODUN ... JEE *v* JADUB CHUNDER BANERJEA , 3 W.

HINDU LAW—MARRIAGE—*continued.*

3. BETROTHAL—*continued.*

that the contract had been thereby determined; that she had been willing to renew it, and had proposed that a younger son of hers (*J*) should be accepted as the husband of *U*, but that the plaintiff had declined this offer. In proof of her allegation that the contract was a reciprocal contingent contract, the first defendant relied upon the following clause in the agreement: "At the time when the marriages are to take place the marriages of the two girls are to be performed together. When you shall give your daughter in marriage, I also am at the same time to give my daughter in marriage." *Held* that the agreement of betrothal was not a reciprocal contingent contract; and that the first defendant had committed a breach of the agreement by not giving her daughter *K* in marriage to the second plaintiff; and that the plaintiffs were entitled to recover from the first defendant the value of the ornaments and the R700 paid by the plaintiffs as upariyaman together with R600 damages for the breach of contract. The second defendant, being a minor, was held not liable, and the suit as against her was dismissed. MULJI THAKERSEY *v.* GOMTI

[I. L. R., 11 Bom., 412

14. ———— **Suit against father of betrothed girl to have betrothal declared void and for damages for breach of contract**—*Contract of marriage—Kapole Bania caste.*—The plaintiff, who had been betrothed to the defendant's daughter *K*, sued for a declaration that, unless the defendant was willing that the marriage should be performed before the expiration of the month of Baisakh 1952 (May-June 1896), the contract for the marriage should no longer be binding on the plaintiff, and that the betrothal was void, and for R25,000 damages for breach of the contract of betrothal and marriage. The defendant pleaded that his daughter *K* was not willing to marry the plaintiff within the period mentioned, and that he had no right to force his daughter against her will. At the trial *K* stated that she was unwilling to be married for three or four years. The Court found that in the Kapole Bania caste, to which the parties belonged, marriages ordinarily took place when the bride was between twelve and fifteen years of age. *K* was born on the 2nd May 1881, so that she was nearly fifteen at the date of suit (16th January 1896). Before filing the suit, the plaintiff had called upon her and the defendant (her father) to fix a date for the marriage, but the defendant had declined to do so on the ground that his daughter did not wish to marry at that time, and that he would not force her to marry against her will. *Held* that the plaintiff was entitled to the declaration prayed for. The marriage of Hindu children is a contract made by the parents, and the children themselves exercise no volition. This is equally true of betrothal, and there is no implied condition that fulfilment of the contract depends on the willingness of the girl at the time of marriage. It was contended that plaintiff could not obtain damages; that defendant had not broken the contract, the plaint assuming that the contract of betrothal was still in force, and the defendant having a *locus pœnitentiæ* until Baisakh 1952. *Held* that the plaintiff was entitled to damages. There was practically a repudiation of the betrothal. The plaintiff's willingness to marry *K* at any time before the end of Baisakh did not disentitle him to damages, seeing that *K* had declared her unwillingness to be married to plaintiff then, and the defendant had declared that he could not compel her to change her mind. PURSHOTAMDAS TRIBHOVANDAS *v.* PURSHOTAMDAS MANGALDAS . . . I. L. R., 21 Bom., 23

4. CEREMONIES.

15. ———— **Boring of the ears**—*Necessary ceremonies—Sudras.*—The boring of the ears is not one of the ten initiatory ceremonies of marriage; it is unnecessary even for a twice-born Hindu: and all ceremonies except that of marriage are dispensed with in the case of Sudras. MONEEMOTHONATH DEY *v.* AUSHOOTOSH DEY . 1 Ind. Jur., O. S., 24

16. ———— **Ceremony of rasee bibaho**—*Custom.*—The question whether the ceremony of rasee bibaho was a part of the marriage ceremony during the continuance of which gifts to the bride came under the denomination of yautuka, was held in this case to depend on the custom of the district in the caste to which the parties belonged. BISTOO PERSHAD BURRAL *v.* RADHA SOONDUR NATH

[16 W. R., 304

17. ———— **Ceremony of nandimukh or bridhi-shradh**—*Restitution of conjugal rights—Consent of lawful guardian—Presumption of validity of marriage—Non-performance of ceremonies.*—The ceremony of nandimukh or bridhi-shradh is not an essential of Hindu marriage, nor would the want of consent by the lawful guardian necessarily invalidate such marriage. In a suit for restitution of conjugal rights the fact of the celebration of marriage having been established, the presumption, in the absence of anything to the contrary, is that all the necessary ceremonies have been complied with. BRINDABUN CHUNDRA KURMOKAR *v.* CHUNDRA KURMOKAR . I. L. R., 12 Calc., 140

18. ———— **Consummation ceremony**—*Marriage—Consummation.*—According to Hindu law, a marriage between Brahmans is binding, although the consummation ceremony or consummation never takes place. ADMINISTRATOR GENERAL, MADRAS *v.* ANANDACHARI I. L. R., 9 Mad., 466

19. ———— **Gandharva marriage, Necessary ceremonies for.**—In order to constitute a valid marriage in Gandharva form, nuptial rites are essential. BRINDAVANA *v.* RADHAMANI

[I. L. R., 12 Mad., 72

20. ———— **Presumption as to completion of marriage ceremonies.**—If there is sufficient evidence to prove the performance of some of the ceremonies usually observed on the occasion of a marriage, a presumption is always to be drawn that they were duly completed until the contrary is shown. BAI DIWALI *v.* MOTI KARSON

[I. L. R., 22 Bom., 509

HINDU LAW—MARRIAGE—*continued.*

2 RIGHT TO GIVE IN MARRIAGE, AND CONSENT—*concluded*

and a duty to her dependence both as a female and as an infant But those who seek the aid of the Civil Courts, in order to give effect to this authority, may not improperly be put upon terms which may appear necessary in order to prevent the authority from being abused to the injury of the infant Where a father or mother is the guardian, the intervention of a law Court can seldom be necessary or desirable In the case of very gross misconduct and disregard of paternal duty, the Court may interfere even in the case of a father A Hindu died, leaving a widow and an infant daughter named *B* After his death, his widow was forced, through the unkindness of her mother-in-law, to seek refuge at her parents' house There she died about eighteen months after her husband's death The orphan *B* was then brought up by her maternal uncles, *S* and *G* When *B* became ten or eleven years old, her paternal uncle and paternal grandmother sought, under Act IX of 1861, to take possession of the minor *B* from the custody of her maternal uncles *This application* was resisted by *S* and *G*, on the ground that the petitioners had no right to give the girl in marriage, and that their object was to marry the girl to an old Bhatia in Bombay for a large sum of money The Court found that several *Bhatia girls of* Dharangaon, where the parties resided, had of late been married to old Bhatias in Bombay, the girls relatives receiving large sums of money. And as the girl had never lived with the petitioners the Court ordered that she should, for the present, continue to live with her maternal uncles until the petitioners found a suitable husband for her, to be approved by [illegible]

[illegible] to give the girl in marriage to this person, and directing the girl to be made over into the petitioner's custody a month before the day fixed for the marriage Against this order *S* and *G* appealed to the High Court *Held* that the petitioners, as paternal relatives of the girl, had, under the Hindu law, a preferential right to dispose of the [illegible]

[illegible] be forced into marrying a person whom she did not like SHRIDHAR *v* HIRALAL VITHAL

[I. L R., 12 Bom., 480

3 BETROTHAL.

10. ———— Betrothal how far treated as marriage.—*Semble*—That according to Hindu law, a betrothal is not to be treated as an actual and complete marriage UMED KIKA *v* NAGINDAS NAROTUMDAS . 7 Bom., O. C., 122

HINDU LAW—MARRIAGE—*continued*

3 BETROTHAL—*continued*

11. ———— Nor does it by Hindu law amount to a binding irrevocable contract of which a Court would give specific performance. IN THE MATTER OF GUNPUT NARAIN SINGH

[I L R., 1 Calc., 74

GUNPUT NARAIN SINGH *v*. RAJANI KOER

[24 W R., 207

12 ———— Betrothal, Suit to enforce—*Ceremonies of betrothal* —The plaintiff, on behalf of her infant son sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that under the Hindu law, betrothment was the same as marriage and could not be repudiated, and that the defendant had, on demand refused to give up *M B* The defendant pleaded, *inter alia* that the betrothment had been repudiated, as the family to which the plaintiff belonged were guilty of female infanticide and that it would be illegal, under the Hindu law to enter into relationship with it *Held* that, as according to Hindu law a betrothment is effected by the bride and bridegroom walking seven steps hand in hand during a particular recital and the contract is perfected upon their arriving at the seventh step, and may be enforced by the husband on completion of the time, and as the evidence adduced did not show, nor was it alleged or pretended that any betrothment had been effected or perfected in the way above described, the suit was unmaintainable NOWBUT SINGH *v* LAD KOOER 5 N. W., 102

13 Breach of promise of marriage—*Reciprocal contingent contract Damages —Upariyaman—Halai Bhatia caste* The plaintiffs alleged that by a written agreement, dated the 18th March 1882, the first defendant and her deceased son *L* agreed that the second defendant *K*, who was the daughter of the first defendant should be given in marriage to the second plaintiff who was the son of plaintiff No. 1 and that the marriage of these two persons to take place accordingly The agreement was executed by the said *L* as eldest male member of his family, in the name of his deceased father In pursuance of this agreement, the plaintiffs paid to the first defendant R700 as upariyaman, and they presented *K* with ornaments and clothes of considerable value The plaintiffs complained that the first defendant subsequently refused to carry out the contract of marriage, and had married her daughter *K* (defendant No 2) to another person They claimed in this suit to recover the ornaments and clothes, together with the R700 paid to the first defendant as upariyaman and R10,000 as damages The first defendant was sued both in her personal capacity and as heir and legal representative of her son *L* The first defendant pleaded that neither she nor the second defendant were bound by the [illegible] agreement as they were not parties to it; that the contract had been a contingent contract, [illegible] as her son *L* had agreed to give *K* (defendant No [illegible]) in marriage to the second plaintiff only on condition that he (*L*) should obtain in marriage *C*, the daughter of the third plaintiff, and that *L* and *C* were accordingly betrothed, that *L* had died in 1884 [illegible]

HINDU LAW—MARRIAGE—*continued.*

3. BETROTHAL—*continued.*

that the contract had been thereby determined; that she had been willing to renew it, and had proposed that a younger son of hers (*J*) should be accepted as the husband of *U*, but that the plaintiff had declined this offer. In proof of her allegation that the contract was a reciprocal contingent contract, the first defendant relied upon the following clause in the agreement: "At the time when the marriages are to take place the marriages of the two girls are to be performed together. When you shall give your daughter in marriage, I also am at the same time to give my daughter in marriage." *Held* that the agreement of betrothal was not a reciprocal contingent contract; and that the first defendant had committed a breach of the agreement by not giving her daughter *K* in marriage to the second plaintiff; and that the plaintiffs were entitled to recover from the first defendant the value of the ornaments and the R700 paid by the plaintiffs as upariyaman together with R600 damages for the breach of contract. The second defendant, being a minor, was held not liable, and the suit as against her was dismissed. MULJI THAKERSEY *v.* GOMTI

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[I. L. R., 22 Bom., 509

HINDU LAW—MARRIAGE—*continued.*

5 VALIDITY OR OTHERWISE OF MARRIAGE

21. [illegible]

tinct castes (*e g*, Domes and Harees), local custom can alone sanction it MELARAM NUDIAL *v* THAKOORAM BAMUN . . 9 W. R., 552

22. ——————— *Sudras—Custom —Per* MITTER, *J*—Marriage between parties in different sub divisions of the Sudra caste is prohibited unless sanctioned by any special custom, and no presumption in favour of the validity of such a marriage can be made, although long cohabitation has existed between the parties. *Per* MARKBY, *J.*—*Quære*—Whether there is any legal restriction upon such a marriage NARAIN DHARA *v* RAKHAL GAIN [I. L. R, 1 Calc., 1: 23 W. R., 334

23. ——— **Marriage of widow with husband's brother**—*Jats in North-Western Provinces*—Among the Jats of the North-Western Provinces kurao dureecha, or the marriage of a widow with the brother of a deceased husband, is common and is recognized as lawful, and the children of such marriage are legitimate and entitled to inherit an equal share of the estate of their father as his other sons POORUNMULL *v* TOOLSEE RAM [3 Agra, 350

24. ——— **Marriage with daughter of wife's sister.**—A marriage between a Hindu and the daughter of his wife's sister is valid. RAGAVENDRA RAU *v* JAYARAM RAU [I. L. R., 20 Mad., 283

25. ——— **Inter-marriage between persons of different sections of the Sudra caste, Validity of.**—There is nothing in Hindu [illegible]

Ammal v *Kulanthai Natchiar, 14 Moore's I A*, *346*, referred to UPOMA KUCHAIN *v* BHOLARAM DHUBI . I. L. R., 15 Calc, 708

26. ——— **Marriage between members of different sects of Lingayets**—*Burden of* [illegible]

persons making such allegation, of proving that such marriage is prohibited by immemorial custom. FAKIRGAUDA *v* GANGI . I. L. R., 22 Bom., 277

27. **Brahmin bride given in marriage by her mother without her father's consent**—*Injunction*—A Vaishnava Brahmin girl was given to the plaintiff in marriage by her mother without the consent of her father, who subsequently repudiated the marriage It appeared that the mother falsely informed the Brahmin, who solemnized the marriage, that the father had consented to

HINDU LAW—MARRIAGE—*continued.*

5 VALIDITY OR OTHERWISE OF MARRIAGE —*continued*

it *Held* that the plaintiff was entitled to a declaration that the marriage was valid and to an injunction restraining the parents from marrying the bride to any one else. VENKATACHARYULU *v* RANGACHARYULU . . I. L. R., 14 Mad., 316

28 ——— **Marriage without consent of the father of the girl**—Under the Hindu law, if a girl is given in marriage by her mother and all the necessary rites are duly performed and there is no question of force or fraud and no other legal impediment to the marriage the marriage will not be invalid, merely because the consent of the girl's father has not been obtained *Baee Kulyat v Jey Chund Kewul, 1 Morley's Dig*, *181*, and *Venkatacharyulu v Rangacharyulu, I L. R, 14 Mad, 316* referred to. GHAZI *v* SUKRU I. L. R., 19 All., 515

29 ——— **Conditional marriage**—*Restitution of conjugal rights—Husband and wife —Kudwa Kanbi caste—Custom Public policy*— [illegible]

that the marriage was a sata (exchange) marriage, and that by the contract the plaintiff's father was bound, as a condition of his obtaining the second defendant's daughter for his son, to provide a girl to be married to the second defendant's son They alleged [illegible] of the [illegible] had been [illegible] further [illegible] father, [illegible] tion, had [illegible] being a minor) to defendant No. 2 (the father of defendant No. 1) giving up all claims to defendant No. 1, that a dispute having subsequently arisen after the plaintiff had attained his majority the matter was referred [illegible]

the marriage in 1927 (1870) between the plaintiff and defendant No. 1 was only a conditional marriage; that the release of 1935 (1879) operated to [illegible]

established his right to the restitution of defendant No. 1 as his wife The alleged custom was not contrary to public policy According to the custom relied on, there was no complete and binding marriage within the intention of the parents of the parties though the ordinary religious ceremonies were formed Such a transaction could not be regarded immoral from any point of view. The Hindu [illegible] leaves it entirely to the parents to marry their daughters, and although, according to the strict [illegible]

DU LAW MARRIAGE—*continued.*

ALIDITY OR OTHERWISE OF MARRIAGE —*continued.*

. a marriage is complete when the religious ceremy has been performed, there would seem to be no licient reason for refusing to recognize a custom, at y rate among the lower castes, by which such transtions, rendered necessary by the paucity of women n the caste, although performed with religious ceremonies, are still regarded by the parents on both sides as incomplete and conditional marriages. BAI UGRI r. PATEL PRESHOTTAM BHUDAR [I. L. R., 17 Bom., 400

30. ———— Marriage of a minor in disobedience of Court's order—*Doctrine of factum valet—Guardian and Wards Act (VIII of 1890), s. 24—Court's power to make order as to marriage of minor.*—A Hindu widow, who was appointed guardian of the person of her minor daughter eight or nine years old, married the minor in disobedience of the order of a Civil Court directing her to make over the minor to her paternal uncle for the purpose of getting her married. *Held* that the principle of *factum valet* applied. Neither the disobedience of the Court's order, nor the disregard of the preferable claims of the male relations, would invalidate the marriage. *Quære*—Whether the marriage of a minor eight or nine years old can be regarded as falling within the scope of s. 24 of Act VIII of 1890, especially when the marriage of a minor female terminates the power of the guardian of the person? BAI DIWALI r. MOTI KARSON [I. L. R., 22 Bom., 509

31. ———— Asura form of marriage—*Nagar Visa Vania caste—Palu, Giving of.*—The Hindu law, at least as evidenced by usage, though it permits the Asura form of marriage among the mercantile and servile classes, does not prohibit to those classes the more approved forms of marriage. The form of marriage in use among the Nagar Visa section of the Vania caste corresponds to one or other of the approved forms, and not to the Asura, and the giving of palu does not constitute a purchasing of the bride. IN THE GOODS OF NATHIBAI. JAIKISONDAS GOPALDAS r. HARKISONDAS HULLOCHANDAS [I. L. R., 2 Bom., 9

32. ———— *Hindus of Bhandari and other inferior castes.*—Amongst Hindus of the Bhandari and other inferior castes, the Asura form of marriage (probably derived from a form in use amongst the inhabitants of Hindustan before the introduction of the Brahminical religion) is more customary than the four approved forms of marriage. The principal characteristic of the Asura form is the giving by the bridegroom of dez, or a money payment, to the father of the bride. VIJIARANGAM r. LAKSHUMAN [8 Bom., O. C., 244

33. ———— Marriage by "gandharp" form—*Legitimacy of children.*—*Held* that a marriage by the "gandharp" form is nothing more or less than concubinage, and has become obsolete as a form of marriage giving the status of wife and making the offspring legitimate. BHAONI r. MAHARAJ SINGH [I. L. R., 3 All., 738

34. ———— *Custom of Tipperah.*—According to the law and custom of marriage prevailing at Tipperah, the Rajah can legitimatize his children born of a kachooa by going through a marriage ceremony with the mother. Assuming that no marriage ceremony is necessary to institute a gandharp marriage, mere cohabitation, without any intent and mutual agreement to enter into a binding contract of marriage, is not sufficient. CHUCKRODHUJ THAKUR r. BEER CHUNDER JOOBRAJ . . 1 W. R., 194

35. ———— Marriage between legitimate children of illegitimate parents—*Illegitimate children—Sudras.*—According to the Hindu law prevalent in Madras, legitimate children of illegitimate parents of the Sudra caste can contract legal and valid marriages. The marriage between persons of different sections of the Sudra caste is valid and legal. INDERAN VALUNGYPULY TAVER r. RAMASWAMY PANDIA TAVER 3 B. L. R., P. C., 1 [12 W. R., P. C., 41: 13 Moore's I. A., 141

Affirming S. C. in PANDAYA TELAVER v. PULI TELAVER . . . . . 1 Mad., 478

36. ———— Pat marriage—*Marriage among Mahrattas—Inheritance—Sons of twice-married woman.*—The custom of Pat marriage among the Mahrattas, and Natra amongst the inhabitants of Gujarat, referred to, and the authorities bearing on the subject considered and discussed. The sons of a Punarbhu (twice-married woman) by a duly-contracted Pat marriage,—*i.e.*, in accordance with the custom of the caste,—are legitimate, and, as to the right of inheritance and extent of shares, rank on a par with the sons by lagna marriage. RAHI v. GOVINDA WALAD TEJA . . . I. L. R., 1 Bom., 97

37. ———— Polygamy—*Prohibition against plurality of wives.*—*Semble*—The prohibition against a plurality of wives, save under certain circumstances, is merely directory, and not imperative. VIRASVAMI CHETTI r. APPASVAMI CHETTI [1 Mad., 37

38. ———— Sagai marriage—*Custom* A man who is a member of the Hulwaee caste m contract a marriage in the sagai form with a wid even if he has a wife living, provided, in the la case, that he is a childless man. *Quære*—Whe a married woman may not contract a sagai mar notwithstanding that her husband is living, i punchayet has examined the case, and reported her husband is unable to support her. CHURN SHAW v. DUKHEE BIBEE [I. L. R., 5 Calc., 692: 5 C. L. I

39. ———— Sagai and Shung riages—*Widow re-marriage—Custom.*—A a childless widow in the lifetime of her fat afterwards contracted a Shunga marriage, a marriage she had two sons. On the dea father, *A*'s claim to succeed to his prop heir was disputed. It having been prov re-marriage of widows was customary a Nomosudras, the caste to which the part

HINDU LAW—MARRIAGE—*continued.*

5 VALIDITY OR OTHERWISE OF MARRIAGE.

21 ———— **Marriage between persons of different castes**—*Custom* —The general Hindu law being against a marriage between persons of distinct castes (*e g*, Domes and Harees), local custom can alone sanction it MELARAM NUDIAL *v* THAKOORAM RAMUN . 9 W. R., 552

22 ———— *Sudras—Custom* —*Per* MITTER *J* —Marriage between parties in different sub divisions of the Sudra caste is prohibited unless sanctioned by any special custom, and no presumption in favour of the validity of such a marriage can be made, although long cohabitation has existed between the parties. *Per* MARKBY, *J*—*Quære*—Whether there is any legal restriction upon such a marriage NARAIN DHARA *v* RAKHAL GAIN [I L. R, 1 Calc., 1 23 W. R., 334

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[illegible]

Narain Dhara v Rakhal Gain, I L R, 1 Calc, 1, Inderun Valungypooly Taver v Ramasammy Talaver, 13 Moore's I A 141, and *Ramamani Ammal v Kulanthai Natchiar, 14 Moore's I A, 346*, referred to. UPOMA KUCHAIN *v* BHOLARAM DHUBI I. L. R, 15 Calc., 708

26. ———— **Marriage between members of different sects of Lingayets**—*Burden of proof of invalidity of marriage* —According to the Lingayet religion as well as according to Hindu law, marriages between members of different sects of the [illegible]

27. ———— **Brahmin bride given in** [illegible]

HINDU LAW—MARRIAGE—*continued*

5 VALIDITY OR OTHERWISE OF MARRIAGE—*continued*

it *Held* that the plaintiff was entitled to a declaration that the marriage was void and to an injunction restraining the parents from marrying the bride to any one else VENKATACHARYULU *v* RANGACHARYULU . I. L. R., 14 Mad., [illegible]

28 ———— **Marriage without consent of the father of the girl.**—Under the Hindu [illegible] if a girl is given in marriage by her mother and the necessary rites are duly performed, and there [is] no question of force or fraud and no other legal [im]pediment to the marriage the marriage will not [be] invalid, merely because the consent of the girl's fat[her] has not been obtained *Baee Rulyat v Jey C[hund] Kewul, 1 Morley's Dig 181*, and *Venkata karyulu v Rangacharyulu, I L R 14 Mad, 316* refe[rred] to GHAZI *v* SUKRU I. L. R., 10 All., [illegible]

29 ———— **Conditional marriage**—*Restitution of conjugal rights—Husband and wife—Kudwa Kunbi caste—Custom Public po[licy]* The plaintiff, a member of the Kudwa Kunbi [caste,] sued in 1890 for restitution of conjugal rights, a[lleg]ing that he had been married to the first defendan[t in] 1927 (1870) The defendants alleged that at the [time] of the marriage the parties were only a month [old,] that the marriage was a sata (exchange) marr[iage,] and that by the contract the plaintiff's father [was] bound, as a condition of his obtaining the second de[fen]dant's daughter for his son, to provide a girl [to be] married to the second defendant's son They all[eged] that such conditional marriages were a custom o[f the] caste, and they denied that the condition had [been] performed by the plaintiff's father They [also] alleged that in 1936 (1879) the plaintiff's [father,] finding that he could not perform the condition, passed a release (the plaintiff himself then [a] minor) to defendant No. 2 (the father of de[fendant] No 1) giving up all claims to defendant No. 1; a dispute having subsequently arisen after the [plain]tiff had attained his majority the matter was r[illegible]

[illegible]

the marriage in 1927 (1870) between the [plain]tiff and defendant No. 1 was only a co[nditional] marriage; that the release of 193[6] (1879) [illegible] cancel the marriage, and that in any case the [illegible] failure to find a girl for the second defendant's [illegible] accordance with the decision of the caste, [illegible] the marriage *Held* that the plaintiff [had] established his right to the restitution of d[efendant] No. 1 as his wife The alleged custom was [con]trary to public policy According to the [custom] relied on, there was no complete and binding [marriage] within the intention of the parents of the p[arties,] though the ordinary religious ceremonies [were per]formed. Such a transaction could not be [illegible] immoral from any point of view The H[indu law] leaves it entirely to the parents to marry the[ir daugh]ters, and although, according to the strict

HINDU LAW—MARRIAGE—*continued.*

8. RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE.

48. ———— Injunction to restrain marriage pending suit—*Medical examination—Impotency.*—In a suit against a Hindu who had been outcasted for offering his daughter in marriage to an old and impotent man, the Court granted an injunction to restrain the marriage pending the suit, and held that the lower Courts properly refused to cause the intended husband in this case to be medically examined as to his alleged impotency, he not being a party to the suit, and there being no provision of law authorizing such a procedure. KANAHI RAM *v.* BIDDYA RAM . . . **I. L. R., 1 All., 549**

49. ———— Loss of caste, Effect of, on marriage tie—*Caste, Question of.*—While the Courts have generally accepted the decisions of properly-constituted punchayets on questions of caste, they have accepted them, subject to the qualification that the decision of the punchayet does not estop the Courts from enquiring into the civil rights of any member of the caste, and securing to him the enjoyment of such rights if he be found not to be precluded from the enjoyment of them by the shastras or the particular usages of his caste. It would be extremely inconvenient to hold that by a deprivation of caste, which may be temporary, a member of a caste loses his marital rights, so as to confer on his wife the power of contracting a second marriage. It is a general principle of Hindu law that the degradation of the husband from caste does not dissolve the marriage tie. BISHESHUR *v.* MATAGHOLAM **[2 N. W., 300**

See, however, SINAMMAL *v.* ADMINISTRATOR GENERAL OF MADRAS . **I. L. R., 8 Mad., 169**

50. ———— Change of religion—*Divorce—Degradation—Death of husband while outcast—Dissolution of marriage—Suit by widow to recover husband's estate.*—In 1850 *K* married *S*, both being Brahmins. *K* subsequently became a convert to Christianity. In 1881 *K* died and *S* claimed his estate. *Held* that, according to Hindu law, *K* died an outcast and degraded, and that, as his degradation was unatoned for, the marriage became absolutely dissolved, and no right of inheritance remained to *S*. SINAMMAL *v.* ADMINISTRATOR GENERAL OF MADRAS **[I. L. R., 8 Mad., 169**

51. ———— Divorce—*Restitution of conjugal rights, Suit for—Custom.*—Where a Hindu husband sued his wife for restitution of conjugal rights, and the defendant pleaded divorce, it was held that, though the Hindu law does not contemplate divorce, still in those districts where it is recognized as an established custom, it would have the force of law. KUDOMEE DOSSEE *v.* JOTEERAM KOLITA **[I. L. R., 3 Calc., 305**

52. ———— Illegitimacy of parties to marriage—*Convert to Mahomedanism—Apostate.*—*R*, originally a Hindu woman and the illegitimate offspring of Chattri parents, was duly married according to the Hindu rites to *D*, who was also by caste a Chattri. After the marriage *R* became a convert to Mahomedanism. *Held* that illegitimacy is under the Hindu law no absolute disqualification for marriage, and that, when one or both the contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. *Held* also that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that, so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law which regards it as indissoluble, and that accordingly the marriage between *R* and *D* was not under the Hindu law dissolved by her conversion to Mahomedanism. *Rahmed Beebee* v. *Roheya Bebee, 1 Norton's L. C. on Hindu Law, 12,* dissented from. IN THE MATTER OF RAM KUMARI **[I. L. R., 18 Calc., 264**

HINDU LAW—PARTITION.

See CASES UNDER HINDU LAW—JOINT FAMILY—NATURE OF INTEREST IN PROPERTY.

HINDU LAW—MARRIAGE—*continued*

5 VALIDITY OR OTHERWISE OF MARRIAGE —*concluded*

—*Held* that such a custom was valid and that *A* was entitled to succeed as heir to her father, under the Hindu law HURRY CHURN DASS *v* NIMAI CHAND KEYAL

[I. L. R., 10 Calc, 138 : 13 C. L. R., 207

40 ———— Re-marriage—*Presumption of legality of marriage Act XV of 1856* —*L* sued [illegible]

the contrary was shown,—*i e*, until the defendants had established that, according to the custom of the caste of Gaur Rajputs, the marriage of a cousin with his deceased cousin's widow was prohibited LACHMAN KUAR *v* MURDAN SINGH

[I. L. R., 8 All., 143

41. ———— *Re-marriage in husband's lifetime without his consent—Sompura Brahmins.*—Among the Sompura Brahmins a widow, who has re-married in the lifetime of her first husband without his consent cannot be regarded as the lawful wife of her second husband, but is entitled to maintenance, as his concubine, from his property *Quære*—Whether consent of her first husband would have rendered the second marriage valid KHEMKOR *v*. UMIASHANKAR RANCHHOR 10 Bom., 381

42. ———— *Lingaits—Desertion of wife* —According to custom obtaining among the Lingaits of South Canara, the re-marriage of a wife deserted by her husband is valid VIRASANGAPPA *v* RUDRAPPA I. L. R., 8 Mad., 440

43. ———— Karao marriage—*Jats—Right of children.*—A "Karao" marriage among the Jats is valid, and the offspring of such a union are entitled to inherit. QUEEN *v* BAHADUR SINGH

[4 N. W., 128

44. ———— *Lodh caste—Consent of brotherhood* —The custom of "Karao" [illegible]

KESHARRE *v* JANARDHAN . . 5 N. W., 64

HINDU LAW—MARRIAGE—*continued*

6 EVIDENCE AS TO, AND PROOF OF, MARRIAGE

45. ———— Evidence of marriage—*Inference and probabilities weighed against direct testimony* —Upon a widow's claim for maintenance the question was whether the relation between her and a person, deceased many years before her suit, whom she alleged to have been her husband, had been the relation of marriage or of concubinage The decision of this question, one way or the other, rested on considerations whether the substantial testimony of witnesses who gave their testimony to the fact of the marriage in their presence, was, or was not, outweighed and negatived in judicial estimation by the antecedent and inherent improbability that such a marriage, under the circumstances of the parties alleged to have entered into it would have taken place The oral evidence was however, corroborated by inferences drawn from several facts well established The present suit was defended by the successor in estate of the deceased and it was common ground between this defendant and the plaintiff that there had been cohabitation between the deceased and the latter This narrowed the effect of the condition and circumstances of the deceased at the time of the alleged marriage upon the question whether it was a fact The ordinary criteria afforded by conduct contributed but little aid to remove doubt In the result, the conclusion of the Judicial Committee was that the direct oral testimony had not been overborne, but should prevail against the improbability presented by the case that such a marriage should have taken place The affirmative of it was maintained, and the widow's claim allowed LUCHMI KOER *v* ROOHU NATH DAS I L R, 27 Calc., 971

[L. R, 27 I. A, 142

4 C. W. N., 685

7 LEGITIMACY OF CHILDREN

46. ———— Procreation before marriage—*Legitimacy of children* —Under Hindu law, it is not necessary, in order to render a child legitimate, that the procreation as well as the birth should take place after marriage OOLAGAPPA CHETTY *v*. ARBUTHNOT COLLECTOR OF TRICHINOPOLY *v* LEKAMANI PEDDA AMANI *v* ZAMINDAR OF MARUNGAPULI . 14 B. L. R., 115 · 21 W. R, 358

[L R., 1 I. A., 268, 282

47 [illegible]

dence will be required to show that the law denied to such children their presumable legal status on the ground of their mother's incapacity to contract a marriage The legal presumption in favour of a child who was born in his father's house of a mother lodged and apparently treated as a wife who was treated as a legitimate child by his father and whose legitimacy was disputed after the father's death was a safe and proper one to be made, and the opposing case had not, as it ought to have been, strictly proved RAMAMANI AMMAL *v* KULANTHAI NATCHEAR

[17 W. R., 1: 14 Moore's I. A., 346

HINDU LAW—PARTITION—*continued.*

1. REQUISITES FOR PARTITION—*continued.*

10. ———— *Effect of deed as creating or not creating partition.*—*A*, the son of a deceased zamindar, sued *B* and *C*, his widow and brother, for possession of the zamindari, which was impartible. In order to prove that *C* was divided from the late zamindar, *A* filed and proved a deed of partition executed by them in respect of their moveable property and of a house, which concluded as follows: "There shall be connection only by relationship, but there shall be no pecuniary connection between us." *Held* that the deed effected only a partial partition, and that the last clause must be referred to the co-parcener's right in partible property described in the instrument, and did not operate as a release of any right of succession to impartible property. PARVATHI *v.* THIRUMALAI

[I. L. R., 10 Mad., 334

11. ———— *Effect of agreement to divide.*—To constitute a partition, there need not be an actual partition by metes and bounds. An agreement to divide is sufficient to constitute partition. Two brothers drew up a memorandum of partition, whereby they agreed to divide the family property in equal shares, and provided that, if at any future time their sons did not agree and there were any partition, they should exercise ownership in accordance with this document; neither was to take more than was mentioned in the document. *Held* that this agreement constituted a partition between the brothers, and was binding on their descendants. ANANTA BALACHARYA *v.* DAMODHAR MAKUND

[I. L. R., 13 Bom., 25

12. ———— *Agreement to hold separately.*—To effect a partition of ancestral property, there must be, in the absence of division by metes and boundaries, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property. ASHABAI *v.* TYEB HAJI RAHIMTULLA

[I. L. R., 9 Bom., 115

13. ———— *Unequivocal act or declaration of intention to separate—Suit for declaration of right by one member of joint family.*—Though partition by metes and bounds is not necessary to effect a separation of a joint Hindu family, there must be some unequivocal act or declaration on the part of the family of their intention to be separate. *Held* that a suit for declaration of his right by one of the members, without stating that he asked for a divided or undivided share, was not a sufficient declaration of such intention. IN RE PHUL KOERI *alias* GHINA KOERI

[8 B. L. R., 388 note

S. C. DEBI PERSHAD *v.* PHUL KOERI *alias* GHINA KOERI . . . . 12 W. R., 510

MUKTAKASI DEBI *v.* UBABATI

[8 B. L. R., 396 note : 14 W. R., 31

14. ———— *Held* on the evidence that there was sufficient evidence that the family had separated. IN RE NOWLAKHU KUNWARI

[8 B. L. R., 389 note

S. C. CHINTAMUN SINGH CHOWDHRY *v.* NOWLAKHU KUNWARI . . . 13 W. R., 469

IN RE SAMANDRA KUNWAR

[8 B. L. R., 390 note

S. C. SUMUNDRA KOONWAR *v.* KALEE CHURN SINGH . . . . . . 13 W. R., 199

IN RE PURNAMASI DAYI . 8 B. L. R., 395 note

15. ———— *Partition effected without taking into account a minor co-parcener—Invalid partition.*—A partition effected without reserving any share for a minor member of the family and without the consent of some one authorized to act on his behalf is invalid as against the minor. Three brothers, *S*, *L*, and *K*, were members of a joint Hindu family. In 1862, *S* and *L* divided the whole of the family property between them without reserving any share for their brother *K*, who was then a minor. *K* lived with *L* as a member of his family. *L* died in 1867, leaving a childless widow, with whom *K* continued to live till his death in 1876. *K* left an infant son (the plaintiff), only a year old. Subsequently *S* died in 1887, leaving two widows without issue. In 1889 the plaintiff, being still a minor, sued by his next friend to recover either the whole or one-third of the family property in the possession of the widows of *L* and *S*. The principal defences to this suit were (1) that it was time-barred, and (2) that the plaintiff was not entitled to claim more than one-third of the property in suit. *Held* that the partition made by *S* and *L* in 1862 was invalid, as it was made without reserving any share for their minor brother *K* and without taking him into account. *K*'s son was therefore entitled to recover the whole of the ancestral property as the sole surviving male member of the family. KRISHNABAI *v.* KHANGOWDA . I. L. R., 18 Bom., 197

16. ———— *Separate appropriation, holding, and enjoyment—Mitakshara law—Minor—Joint family.*—Where there was a separate appropriation, as well as a separate holding and enjoyment of distinct shares, it was held sufficient to constitute a legal partition under Mitakshara law, following *Apporier* v. *Rama Subba Aiyan*, *11 Moore's I. A.*, 75. The fact of one of the members of the family being a minor is not sufficient to render the partition invalid, provided the interests of the minor are properly represented as by a manager appointed under s. 12, Act XL of 1858. Every member of a joint undivided family has a right to demand a partition of his own share DEWANTI KUNWAR *v.* DWARKANATH 8 B. L. R., 363 note

[10 W. R., 273

17. ———— *Mitakshara law—Deed declaring each member entitled to definite share of property.*—By a deed of sharakatnama the members of a Hindu family, governed by the Mitakshara law, declared that each of the members was entitled to a definite fractional part of the whole estate. *Held* that this was not sufficient to constitute a valid partition according to the Hindu law. *Apporier* v.

HINDU LAW—PARTITION—*continued*

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY

1 REQUISITES FOR PARTITION

1 ———— Necessaries to create partition—*Definition of shares—Independent enjoyment* —Under the Hindu law two things at least are necessary to constitute partition the shares must b defined and there must be distinct and independent enjoyment SHEO DYAL TEWAREE v JUDOONATH TEWAREE SHEO DYAL TEWAREE v BISHONATH TEWAREE SHIB DYAL TEWAREE v BISHONATH TEWAREE JUDOONATH TEWAREE v BISHONATH TEWAREE 9 W R, 61

2 ———— Evidence of partition—*Partition without actual division* —Under the Mitakshara law, there may be a partition in estate without any actual division of the lands into parcels and allotment of those parcels to the different sharers to be held by them in severalty JOSODA KOONWAR v GOURIE BYJONATH SAHAE SINGH 6 W R, 139

LALLA SHEERPERSHAD v AKOONJOO KOONWAR [7 W R, 488

HURDWAR SINGH v LUCHMUN SINGH [3 Agra, 41

UBLUKH RAI v SHEO NUNDUN SINGH [3 Agra, 80

MUHESH DOOBEY v KISHUN DOOBEY [1 N W, Ed 1873, 42

BADARUTH TEWARY v JAGARNATH DASS [1 N. W, Ed 1873, 75

SOBHA KOOERREE v HURDEY NARAIN MOHAJUN [25 W R, 97

3. ———— Intention to divide ... d bounds ... ds s not ... property ... undivided family agree among themselves with regard to particular property that it sh ll henceforth be the subject of ownership in certain defined shares then the

4 ———— *Declaration of intention to divide—Partition without division by metes and bounds —Quære*—Is a mere signification of intention on the part of a joint Hindu famil sufficient to constitute a separation without an actual partition by metes and bounds? SADABART PERSHAD SAHOO v LOTF ALI KHAN PHOOLBAS KOOER v LALL JUGGESSUR SAHI BIKRAMJEET LALL v PHOOLBAS KOOER RAM DHYAN KOONWAR v PHOOLBAS KOOER 14 W R., 340

Review of S C rejected 18 W R., 48

HINDU LAW—PARTITION—*continued*

1 REQUISITES FOR PARTITION—*continued*

5 ———— *Declaration of intention to divide* —According to Hindu law, the declaration of an intention to become divided in estate amounts to a valid separat on though not immediately perfected by an actual partition of the estate by metes and bounds VATO KOER v ROWSHUN SINGH [8 W R, 82

6 ———— *Intention of parties* —In ascertaining whether property once joint has become divided and separate regard must be had to the act and intentions of the co-sharers but when the character of the property has once been ascertained the law fixes the course of succession A partition between surviving co sharers and the widow of a deceased co-sharer may operate as a complete severance of the joint property RAM PERSHAD v CHAINERAM 1 N W, 11 Ed 1873, 10

7 ———— *Arrangement by deed to effect separation* —An arrangement contained in a deed duly executed by the members of a joint Hindu family, to effect a separation of the property, is sufficient *prima facie* evidence of a valid separation under Hindu law, and in such a case an actual division by metes and bounds is not necessary KULPONATH DASS v MEWAH LALL 8 W. R, 302

8 ———— *Agreement to di-*

therefore the agreement of a family to divide the proceeds of the joint property among its members in definite shares with the intention that each should hold his allotted share in severalty severs the joint interes and extinguishes the rights springing from united family ownership RAMKISSEN SINGH v SHEONUNDUN SINGH 23 W R, P C, 412

S C in High Court [9 B L. R, 310 note 16 W. R, 142

property is sufficient to constitute a division of the family so as to entitle the widow of a deceased brother to succeed to his share of the ancestral property in preference to the survivin brothers The fact of the family having separate house and field is according to the Mitakshara sufficient evidence of partition The onus of proving re union is upon the party pleading that there has been a re union after partition SURANENI VENKATA GOPALA NARASIMHA ROY v SURANENI LAKSHMI VENKAMA ROY [3 B L R, P C, 41 12 W R, P C, 40 13 Moore's I A, 113

Confirming decision in Court below SURANENY LAKSHMY VENKAMA ROW v SARANENY VENKATA GOPALA NARASIMHA ROW 3 Mad., 40

HINDU LAW—PARTITION—*continued.*

1. REQUISITES FOR PARTITION—*continued.*

brother, to be zamindar of P. This instrument recited that by the death of *R*, his uncle, without male issue, *V* had become entitled to succeed to his estates, unless *R*'s widow, then pregnant, should be delivered of a son. The instrument then provided that, in the event of the said widow giving birth to a son, *V* should retain the zamindari P, but that, if she gave birth to a daughter, *V* and his offspring should have no interest in the said zamindari, of which *M* should be sole zamindar, allowing maintenance to *C*, the third brother. *R*'s widow gave birth to a daughter. *V* entered on possession of *R*'s estates, and *M* took over the zamindari P. *C* died without issue. *M* died in 1835, and was succeeded by his only son *D*, who died in 1861, leaving a widow, but no sons. In a suit instituted in 1873 by *S*, a son of *V*, to recover certain villages belonging to the zamindari P from defendants in possession and claiming as purchasers for value from *D*.—*Held* by the Judicial Committee, reversing the judgments of the Courts below, that the instrument of 1829 was a renunciation by *V* for himself and his descendants of all interest in P, either as the head or as a junior member of the joint family, and that its effect was to make P, with its incidents of impartibility and peculiar course of succession, the property of the brothers *M* and *C*, as effectually as if, in the case of an ordinary partition between the elder brother on the one hand and the two younger brothers on the other, a particular property had been assigned to the latter: and that consequently, as between *D* and the defendants of *V*, the zamindari was the separate property of the former, whose rights, if he left any undisposed of, passed on his death to his widow, notwithstanding the undivided status of the family, in accordance with the rule of succession affirmed in the *Shivagunga case*, 9 *Moore's I. A.*, 539. SIVAGNANA TEVAR *v.* PERIASAMI I. L. R., 1 Mad., 312

S. C. PERIASAMI *v.* PERIASAMI

[L. R., 5 I. A., 61

25. ———————— *Definement of shares—Intended separation—Separate enjoyment of profits.*—Definement of shares in joint ancestral property recorded as separate estate in the revenue records in pursuance of an alleged intended separation between the members of a joint and undivided Hindu family does not necessarily amount to such separation, which must be shown by the best evidence, *viz.*, separate enjoyment of profits, or an unmistakeable intention to separate interests which was carried into effect. AMBIKA DAT *v.* SUKHMANI KUAR

[I. L. R., 1 All., 437

26. ———————— *Evidence of separation—Definement of shares in ancestral property.*—A four-anna ancestral share in a zamindari village was owned by two brothers in which the share of *H*, son of one of the brothers, was one-half, the remaining half being the share of the plaintiffs, the descendants of the other brother. In the village records there had been a definement of shares followed by entries of separate interest in the revenue records, and since 1264 Fasli the two plaintiffs had each been recorded as the owner of a one-anna share and *H* of a two-anna share thereof. The entire four-anna share had been in the possession of mortgagees from the year 1844 excepting the sir lands of which *H* held separately his own share, *viz.*, 10 bighas. On the 7th July 1883, *H* executed a deed of gift of his two-anna share in favour of the defendants and caused mutation of names to be made in their favour, surrendering to them at the same time possession of the sir land. *H* died on 21st January 1884, leaving neither son, widow, nor daughter, and the plaintiffs were his heirs-at-law. They brought this suit to set aside the deed of gift and for possession of the sir land from the defendants. The suit was dismissed by the Court of first instance, and on appeal the District Judge affirmed the decree, holding that the four-anna share was not joint and undivided property between the co-sharers, and that *H* was in separate possession of the two-anna share of which the defendants were the donees. On second appeal it was contended that, inasmuch as since 1844 there could have been no separate enjoyment of the four-anna share which was in the possession of the mortgagees, the evidence afforded by separate registration could not prove actual separation. *Held* that from evidence of definement of shares followed by entries of separate interest in the revenue records, if there be nothing to explain it, separation as to estate may be inferred. Joint family property in the hands of mortgagees may be separated in estate, although there could be no separate enjoyment of the shares so separated. *Ambika Dat* v. *Sukhmani Kuar*, *I. L. R.*, *1 All.*, *437*, discussed. RAM LAL *v.* DABI DAT

[I. L. R., 10 All., 490

27. ———————— *Execution of document intended to operate as a severance—Power of father to alter status of family.*—A partition made by the father is binding on the sons not only in respect of the father's share, but also of their own shares, provided that it is made subject to the restrictions mentioned in the Hindu law. It becomes obligatory by the will of the father as regulated and restrained by the law, *irrespective of the consent* of the sons. When a father having five sons, three by one wife and two by another, executed in his last illness a document whereby, after retaining a small portion for himself, he directed that the family property should be divided into three-fifths and two-fifths shares, with the manifest intention that from the date of the execution of the document it should operate as a severance (1) of the interest of his sons by one wife from that of his sons by the other, and (2) of the interest of all his sons from his own during his life; but neither the guardian of the infant sons nor the eldest son, who was of age, were parties to the instrument,—*Held* that this was not a will, but a partition; that it was competent to the father thus to alter the status of his sons; that the question was whether the transaction was *bonâ fide* and in conformity with Hindu law, and not one of contract as in the case of a partition between brothers. KANDASAMI *v.* DORAISAMI AYYAR

[I. L. R., 2 Mad., 317

HINDU LAW—PARTITION—*continued.*

1 REQUISITES FOR PARTITION—*continued*

Rama Subba Aiyan, 11 Moore's I A, 75, and *Suraneni Venkata Gopala Narashima Roy v. Suraneni Lakshmi Venkama Roy, 13 Moore's I A, 113,* distinguished IN THE MATTER OF THE PETITION OF PHULJHARI KOOER
[8 B. L R., 385 : 17 W. R., 102

18 ——— — *Agreement to se*

shares the profits of which shares they severally enjoy and appropriate JEONEE v. DHURUM KOOER
[3 N. W., 108

MOHROO KOEREE v. GUNSOO KOEREE
[8 W R., 385

MUNSOOROODDEEN v. MAHOMED SUFDAR
[23 W R., 259

19 ——— *Construction of deed—Intention of parties—Alteration of status of parties.*—In all cases of division of joint property not carried out by a partition by metes and bounds the question whether the status of the family has been thereby altered is a question of intention of the parties, to be inferred from the instruments which they have executed and the acts which they have done to effect such division An ikrarnama, which did not recite a previous status of indivision and did not in terms declare that the parties thereto

L R., 1 I. A., 55

S C in High Court LALLA MOHADEER PERSHAD v. KUNDUN KOOAR
8 W. R., 116

20. ——— *Deed of settlement—Joint carrying on of business—Separation of interest*—Where four joint sharers made a deed by which they were entitled to the lands and profits of the kothi in equal fourth shares, and they were each in possession of one fourth share of the lands, and contributed in those shares to payment of revenue,

which had been carried out,—*Held* that the deed constituted a partition in interest among them as to their shares, though under the deed they were jointly carrying on the business of the kothi JACKSON, J, doubting *Apporier v. Ram Subba Aiyan, 11 Moore's I A, 75,* followed LALLAH MOHADEER PERSHAD v. KUNDUN KOONWAR
[2 Ind. Jur, N. S., 312
8 W. R., 116

HINDU LAW—PARTITION—*continued.*

1 REQUISITES FOR PARTITION—*continued.*

21. ——— *Intention to divide*—Where a widow sued to recover from the brothers of her deceased husband a share of property which remained undivided at his death, a division of

husband, an intention to divide without more not being evidence of partition The doctrine propounded in s 291 of *Strange's H L*, dissented from. TIMMI REDDY v. ACHAMMA
2 Mad., 325

22 ——— *Decision of punchayet as to division—Evidence of partition*—In a suit in which the question was whether there had been a division, the sole evidence of division was the deci-

23 ——— *Agreement to hold in defined shares*—Suit by a widow to recover

equally, and obtain separate pottahs We hold no

right to receive and to enjoy in severalty, although the property itself has not been actually divided. *Apporier v. Rama Subha Aiyan, 11 Moore's I A, 75,* followed NARAIN AYYAR v. LAKSHMI AMMAL
[3 Mad., 280

SUBANENY LAKSHMY VENKAMA ROW v. SUBANENY VENKATA GOPALA NARASIMHA ROW
[3 Mad., 40

S C on appeal to Privy Council
[3 B L R., P. C, 41 : 12 W. R., P. C, 40
13 Moore's I. A., 113

LALLA SREE PERSHAD v. AKOONJO KOONWAR
[7 W. R., 488

SHIB NARAIN BOSE v. RAMNIDHEE BOSE
[9 W. R., 87

24. ——— *Deed of relinquishment effecting partition—Impartible estate—Inheritance*—P, an impartible zamindari descendible

HINDU LAW—PARTITION—*continued.*

1. REQUISITES FOR PARTITION—*continued.*

34. ———— *Decree for partition—Decree awarding plaintiff's share, but postponing possession thereof till plaintiff attained majority Effect of such decree.*—On the 21st February 1894, a decree in a partition suit provided as follows: "Plaintiff is a minor twelve years old; until he attains twenty-one years, *N* (defendant) should for the next nine years annually deliver to him twenty maunds of paddy, and for this year ten maunds; after that plaintiff should be given one-sixth of the family lands; until then defendant is not to alienate the lands." The minor died, and in 1897 his widow, *S*, as his heir, applied for execution of the decree, claiming seventy maunds of paddy, being the amount due at the rate specified in the decree. It was objected that she was not entitled to execute, inasmuch as the decree had not effected a partition, and that the property at his death still remained joint family property, which passed to the male survivors of the family, and that she was only entitled to maintenance. *Held* that the effect of the decree was to make the applicant's husband a divided member of his family. It awarded him a one-sixth share of the family estate, and assigned to him a separate allowance. The mere fact that it postponed the actual possession of the share until he had attained the age of twenty-one years made no difference. The share vested in him from the date of the decree, and descended to his heirs. LAKSHMAN SARKA *v.* NARAYAN LAKSHMAN . **I. L. R., 24 Bom., 182**

35. ———— *Death of plaintiff subsequent to decree for partition—Right of survivorship—Effect on vested right of plaintiff's representative.*—A decree for partition operates as a severance of the joint ownership. Where, therefore, *M*, a minor and only son, by his next friend sued his father and certain alienees of the family property for partition and obtained a decree, and subsequent to decree and pending appeal the plaintiff died, and *M*'s mother was brought on the record as deceased plaintiff's legal representative,—*Held* that the rights of *M*'s representative were not affected, as they would have been had the plaintiff died before decree; the right of survivorship which the defendant then possessed being extinguished by the decree. SUBBARAYA MUDALI *v.* MANIKA MUDALI

[I. L. R., 19 Mad., 345

36. ———— *Distribution of family estate, followed by separate possession, equivalent to informal partition.*—The Courts below found that a distribution of ancestral estate among the members of a family had taken place in former years, and had been followed by continuous possession, without their having any intention to re-adjust or to hold on behalf of the family. The right of an individual member to claim another partition was therefore negatived. The parties, who had long discontinued joint residence, were members of a family consisting at the time of the distribution of four sons left by a Sikh Dewan, deceased. The son of one brother now claimed from the son of another, joining a third who still survived, partition of the property which had descended from the grandfather, with the increment since his time. That an actual partition had been effected, although probably no formal document of partition had been executed, appeared to their Lordships to be a just inference from the evidence. BUDHA MAL *v.* BHAGWAN DAS

[I. L. R., 18 Calc., 302

37. ———— *Arrangement for separate enjoyment.*—A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons and died. The plaintiff, a female, the sole surviving member of the testator's family, sued to recover so much of the property as she might be entitled to. In deciding what was the extent of the property which the plaintiff was entitled to inherit, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA . . . **I. L. R., 14 Mad., 289**

38. ———— *Separate enjoyment of portions of family property for several years—Entries in survey records—Dealings with portions of property—Sole enjoyment of a certain property by a branch of the family—Separate acquisition.*—In a partition suit, it being found that the several branches of a Hindu family had lived separate for forty or fifty years, had enjoyed during that period separate and distinct portions of the family property or portions of the property in regular rotation, and had dealt with the separate portions in every respect as their own property, and that in the survey records the lands were entered in the names of the several branches in respect of their separate shares,—*Held* that the evidence as to the mode of enjoyment by the several branches of a family during so long a period ought to be taken as establishing a tacit agreement of enjoyment according to their shares. There being no evidence on the record to show when and by what member of the family certain property in the possession of a particular branch of the family was acquired, and the entry in the survey records with respect to it being different from that of the ancestral fields, that is, the entry being in the name of the representative of that particular branch with no sub-division of shares, and the party seeking partition of such property having failed to give evidence to rebut the presumption arising from the sole enjoyment of the particular branch and the entry in the survey records. *Held* that such property was the separate acquisition of that particular branch. *Moro* v. *Ganesh, 10 Bom., 444; Appoovier* v. *Rama Subba Aiyan, 11 Moore's I. A., 75,* and *Bannoo* v. *Kashee Ram, I. L. R., 3 Calc., 315,* referred to. MURARI VITHOJI *v.* MUKUND SHIVAJI NAIK . . **I. L. R., 15 Bom., 201**

39. ———— *Award of arbitrators as to division of property followed by division of some of it—Decree in suit to enforce award—Date from which partition operates.*—Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided. In

HINDU LAW—PARTITION—*continued*

1 REQUISITES FOR PARTITION—*continued*

28. ———————— *Intention as to joint or several ownership*—No right vests in any member of a joint Hindu family to a specific share in the family property until some act has been done which has the effect of turning the joint ownership into a several ownership This may be done by signification of intention It is by such signification of intention taking place, having the effect of making the share of each member both several and defined, that a member of a joint Hindu family is enabled to dispose of his own share by sale whilst the family remains joint RAGHUBANUND DOSS v SADHU CHURN DOSS

[I. L R, 4 Calc., 425 : 3 C. L R., 534

BULAKEE LALL v INDURPUTTEE KOWAR

[3 W. R, 41

29. ———————— *Ascertainment and definition of shares—Income enjoyed in distinct shares*—In order to show separation in a Hindu family, it is not necessary to establish a partition of the joint estate into separate shares or hold

ance and destruction of the joint tenancy, so to speak, and to convert it into a tenancy in-common *Appovier v. Rama Subba Aiyan, 11 Moore's I A, 75*, followed *Held* therefore, where, although the ancestral property of a Hindu family had not been formally and completely partitioned by metes and bounds, the income of it had been enjoyed by the different members of it in distinct and defined shares, that the family was not a joint and undivided Hindu family ADI DEO NARAIN SINGH v DUKHARAN SINGH I. L R, 5 All, 532

30. ———————— *Intention—Suit for separate share of joint estate*—Although a suit by a member of a joint Hindu family against his co-sharers for a separate share of the joint estate be not in terms a suit for partition, yet, if it appear that the intention of the plaintiff was to obtain the share which he would be entitled to on a separation, and the decree passed in the suit assigns him that share, such decree does in fact effect a partition, at all

31. ———————— *Specification and registration of shares under the Land Registration Act (Beng. Act VII of 1876)*—*B*, a Hindu governed by the Mitakshara law, died, leaving two minor sons, *J* and *K*, and also a widow, *L*, and two minor sons by her, the mother of *J* and *K* having predeceased him On *J*'s attaining majority, the Court of Wards which had taken possession of all the property, withdrew from the management, and *L* then applied under Act XL of 1858 and obtained a certificate with respect to the shares of A and her two minor sons and the names of the four brothers were recorded under the Land Registration Act with the specification of the shares of each *Held* that neither the granting of the certificate to *L* nor the registration of the specific shares of each of the co-owners under the provisions of the Land Registration Act amounted to a partition such as to justify the Court in granting the certificate asked for HOOLASH KOER v KASSEE PROSHAD I. L R., 7 Calc., 369

32. ———————— *Mitakshara law*

KALEE KOER I. L R., 12 Calc, 96

33 *Decree effecting partition—Separate estate*—In a suit brought by the younger of two Hindu brothers against his elder brother for the partition of lands belonging to an ancestral joint estate and against other defendants,

the interests claimed by these defendants, except in so far as such interests might be valid as against the plaintiff under the Hindu law, the Court passed an

become so, and consequently ... would not pass to the ... terest in the property in suit ... as joint estate ... defendant his elder brother, as ...

HINDU LAW—PARTITION—*continued.*

2. PROPERTY LIABLE OR NOT TO PARTITION—*continued.*

46. ———— **Division of compound**—*Inconvenience to co-sharers.*—Where one of several joint owners desires to have a division of a compound hitherto held in common, mere inconvenience to the others is not a sufficient obstacle to such division. RAM PERSHAD NARAIN TEWAREE *v.* COURT OF WARDS . . . . . 21 W. R., 152

47. ———— **Dwelling-house**—*Right to partition.*—Partition of a dwelling-house may be claimed as of right by a Hindu. HULLODHUR MOOKERJEE *v.* RAMNATH MOOKERJEE [Marsh., 35 : 1 Hay, 71

48. ———— *Suit by member of family or purchaser.*—A suit for partition of a family dwelling-house may be brought either by one of the members of the family or by a purchaser from such member. JHUBBOO LALL SAHOO *v.* KHOOB LALL . . . . . 22 W. R., 294

49. ———— **House built on family site by one member at his own expense**—*Right of co-parceners.*—Where a member of a joint Hindu family built (at his own expense, with borrowed money) a house upon ground belonging to the family, it was held that each of the co-parceners was entitled to a share in the house and the site upon which it was built equal in value to his share of the site. VITHOBA BAVA *v.* HARIBA BAVA 6 Bom., A. C., 54

50. ———— **Office of dignity or pattam.**—The pattam, or office of dignity in a family governed by the Aliyasantana law, is indivisible, and whether the family be divided or not, the pattam, no special arrangement having been made about it, descends to the eldest male of the surviving members of the family. The passage set out in a note to the case of *Munda Chetti* v. *Timmaju Hensu, 1 Mad., 380,* is not a correct interpretation of the original Canarese text of Bhutala Paudiya's work. TIMMAPPA HEGGADE *v.* MAHALINGA HEGGADE . 4 Mad., 28

51. ———— **Hereditary, secular, and religious office**—*Mode of partition of such offices.*—Hereditary offices, whether religious or secular, are no doubt treated by the Hindu text-writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property by means of a performance of the duties of the office and the enjoyment of the emoluments by the different coparceners in rotation. MANCHARAM *v.* PRANSHANKAR . . . . I. L. R., 6 Bom., 298

MITTA KUNTH AUDHICARRY *v.* NEERUNJUN AUDHICARRY . . . . 14 B. L. R., 166

52. ———— **Trust property**—*Joint trustees of temple—Suit for partition of rights as trustees.*—*Held* that rights as joint trustees to the management of, and superintendence of worship at, certain temples, none of the trustees having any personal pecuniary interest in the temples or their income, could not be made the subject of partition by a Civil Court, that is to say, that a Civil Court was not competent to grant a decree declaring that each of such trustees in rotation should for a certain definite period enjoy exclusively the rights of management and superintendence. *Mitta Kunth Audhicarry* v. *Neerunjun Audhicarry, 14 B. L. R., 166; Mancharam* v. *Pranshankar, I. L. R., 6 Bom., 298; Limba bin Krishna* v. *Rama bin Pimplu, I. L. R., 13 Bom., 548; Anund Moyee Chowdrain* v. *Boykant Nath Roy, 8 W. R., 193; Pranshankar* v. *Prannath, 1 Bom., 12;* and *Ram Soondur Thakoor* v. *Taruck Chunder Turkoruttun, 19 W. R., 28,* referred to. RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ . . I. L. R., 19 All., 428

53. ———— **Inam villages granted by Government**—*Ancestral estate.*—Inam villages, granted by Government to the grantee and his male heirs for services rendered to the State, are not, by the Hindu law in force in the Southern Mahratta country, distinguishable from other ancestral real estate, and are divisible among the heirs of the grantee. BODHRAO HUNMONT *v.* NURSING RAO [6 Moore's I. A., 426

54. ———— **Nuptial gifts to one member of family**—*Marriage expenses defrayed out of common funds.*—Nuptial gifts to a member of a joint Hindu family do not, by reason of the marriage expenses having been defrayed out of the common fund, fall into and form part of the common fund so as to be subject to partition. SHEO GOBIND *v.* SHAM NARAIN SINGH . . . . . 7 N. W., 75

55. ———— **Places of worship and sacrifice**—*Division by giving turns of worship.*—Under the Hindu law, places of worship and sacrifice are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship; and any infringement of the right to a turn in the worship can be redressed by a suit. ANAND MOYEE CHOWDHRAIN *v.* BOYKANTNATH ROY [8 W. R., 193

56. ———— **Religious offices**—*Custom—Right to turn of worship.*—According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns and of allowing alienation within certain restrictions. TRIMBAK RAMKRISHNA RANADE *v.* LAKSHMAN RAMKRISHNA RANADE . I. L. R., 20 Bom., 495

57. ———— **Property acquired at charge of patrimony.**—Whatever is acquired at the charge of the patrimony is subject to partition. JUDOONATH TEWAREE *v.* BISHONATH TEWAREE. SHEO DYAL TEWAREE *v.* JUDOONATH TEWAREE. SHEO DYAL TEWAREE *v.* BISHONATH TEWAREE. SHIB DYAL TEWAREE *v.* BISHONATH TEWAREE . 9 W. R., 61

58. ———— **Property acquired by Hindu while drawing income from his family**—*Alteration of mode of investment.*—Property acquired by a Hindu while drawing an income from his family is liable to partition, and the quality of the fund cannot be altered by the mode of its

pursuance of the award, part of the moveable property was divided Subsequently one of the members of the family died The plaintiff, another member of the family, now sued to enforce the award and obtained a decree *Held* on appeal that the partition should be considered to have taken effect not

40. ——————— *Effect of award and record at settlement of widow's estate for life as establishing partition—Land Revenue Act, Central Provinces (XVIII of 1881), s 87* —Where a Hindu and his widow had successively held the

the widow was recorded under an a ard by the Collector in the settlement records as owner of an

REWA PRASAD SUKAL *v.* DEO DUTT RAM SUKAL
[I. L R, 27 Calc, 515
L R., 27 I A, 39
4 C. W. N., 582

41. ——————— *Possession of one member of joint family at a time—What constitutes partition—Evidence as to impartibility—Compromise—Right of suit—Limitation* —A zamindari granted by the Government in 1803 to a Hindu descended in his family, possession being held by one member at a time The estate, however, was not

ister's claim being settled, again, that in 1871, the ourth zamindar having died pending a suit brought gainst him to establish the fact of an adoption by

him, an arrangement was made for the maintenance of his daughter and two widows who survived him, the previous grant for maintenance of his brother holding good, the adoption being admitted, and the suit compromised *Held* that there was nothing in the above which was inconsistent with the zamindari, remaining part of the common family property, and that the course of the inheritance had not been altered. *Held* also that the claimant was not precluded by the family compromise of 1871, or in any way, from maintaining this suit and that it was not barred by limitation VIRAVARA THODHRAMAL RAJYA LAKSHMI DEVI *v.* VIRAVARA THODHRAMAL SURYA NARAYANA DHATRAZU
[I L R, 20 Mad, 256
L. R, 24 I. A, 118

42. ——————— *Unsuccessful suit for general partition of estate—Estate consisting*

43 ——————— *Effect of an unexecuted decree for partition—Agreement to divide* —Where there is no indication of an intention to presently appropriate and enjoy in a manner inconsistent with the ordinary state of enjoyment of an undivided family, an agreement to divide without more is not of itself sufficient to effect a partition Nor is a direction to divide in a decree—which in principle is not distinguishable from a material agreement to divide—more than an inchoate partition insufficient to change the character of the property,

right to receive and enjoy in severalty BABAJI PARSHRAM *v* KASHIBAI I. L R, 4 Bom, 157

44. ——————— *Decree for partition—Severance* —A decree for partition does not operate as a severance so long as it remains under appeal SAKHARAM MAHADEV *v* HARI KRISHNA
[I. L. R, 6 Bom., 113

2 PROPERTY LIABLE OR NOT TO PARTITION.

45 ——— Liability to partition—*Onus probandi* —*Primâ facie* all property is subject to partition, and the onus of proof is on the party seeking to except any property from the general rule of partition according to Hindu law LUXIMON ROW SADASEW *v* MULLAR ROW BAJEE
[5 W. R., P. C., 67

HINDU LAW—PARTITION—*continued.*

2. PROPERTY LIABLE OR NOT TO PARTITION—*continued.*

46. ———— **Division of compound**—*Inconvenience to co-sharers.*—Where one of several joint owners desires to have a division of a compound hitherto held in common, mere inconvenience [illegible] others is not a sufficient obstacle to [illegible] of the RAM PERSHAD NARAIN [illegible], and the lands, WARDS [illegible] consequently property [illegible] and not separate property as **47** [illegible] by his widow. KRISHNASAMI AYYAN- [illegible] RAJAGOPALA AYYANGAR

[I. L. R., 18 Mad., 73

3. PARTITION OF PORTION OF PROPERTY.

65. ———— **Partial partition**—*Arrangement between members of family.*—It is very doubtful whether, under the Hindu law, any partial partition of the family property can take place except by arrangement. RADHA CHURN DASS *v.* KRIPA SINDHU DASS

[I. L. R., 5 Calc., 474 : 4 C. L. R., 428

66. ———— *Suit for partition—Right to sue for partition of portion of property.*—A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore, where in a suit for partition it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that thereupon the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. PADMAMANI DASI *v.* JAGADAMBA DASI

[6 B. L. R., 134

67. ———— *Suit for partition of portion of joint property.*—A member of an undivided family cannot sue his co-sharers for his share in a single undivided field, portion of the family property. He must sue for a general partition of all the property liable to partition. NANABHAI VALLABHDAS *v.* NATHABHAI HARIBHAI

[7 Bom., A. C., 46

CHYET NARAIN SINGH *v.* BUNWARI SINGH

[23 W. R., 395

68. ———— *Partition of part of family property—Suit for ejectment—Right of suit—Parties.*—A Hindu sued for possession of a one-third part of a house, a portion of his family property. Defendant No. 1 claimed title from the purchaser at a Court sale held in execution of a decree against the plaintiff's father; the other defendants were undivided brothers of the plaintiff. The title claimed by defendant No. 1 was supported by the other defendants, but the plaintiff alleged that the purchase at the Court sale had been made benami for him. *Held* that the suit was not maintainable, being a suit for partition of a specific item of the family property, but that the plaintiff might each of such trustees [illegible] his own brothers certain [illegible] VENKAYYA *v.* LAKSHMAYYA of [illegible]

[I. L. R., 16 Mad., 98

69. ———— *Omission to mention certain portion of property—Subsequent consent to divide omitted property.*—In a suit for partition plaintiff, when filing his plaint and schedules, made no mention of certain jewels in the possession of his wife. Defendant having filed a schedule in his written statement showing the existence of the said jewels, plaintiff admitted that they were with his wife, but declined to allow them to be divided unless a division were also made of the jewels which were in the possession of the defendants' wives and children. He, however, before the examination of witnesses, withdrew this condition and expressed his willingness to give defendant credit for half their value. *Held* that the suit was on these facts not one for partial partition. *Per* O'FARRELL, *J.*—That where a suit is brought for division of the whole of the family properties, an omission, whether accidental or fraudulent, to specifically include in the plaint certain of the joint properties, where such properties are ascertained and a decree can be given for partition, will not convert the suit into one for partial partition. VENKATA NARASIMHA NAIDU *v.* BHASHYAKARLU NAIDU

[I. L. R., 22 Mad., 538

70. ———— *Suit for partition of portion of joint property—Cause of action.*—In a suit between brothers who had been in joint possession of property of various kinds and carried on joint business until an alleged recent partition where the plaintiff sought to recover a proportion equal to his share of a sum of money said to have been taken by defendant from the joint funds,—*Held* that, unless the plaintiff could show that all the joint property had been divided excepting the sum in question or that all the property had been divided, and on an adjustment of accounts of past expenses there was a loss equal in amount to that item, he had no cause of action to sue for a moiety thereof. JUGOO LALL OOPADHYA *v.* MANOHUR LALL OOPADHYA

[19 W. R., 43

71. ———— *Partition of a portion of joint family property—Suit for partition of a portion only of joint family property.*—A suit will not lie for partition of a portion only of joint family property. JOGENDRA NATH MUKERJI *v.* JUGOBUNDHU MUKERJI I. L. R., 14 Calc., 122

72. ———— *Suit by purchaser of a co-sharer's interest for partition of a specific part of joint property—Right of defendant co-sharers to require a general partition—Rules as to partition, general and partial.*—Where a co-parcener or a purchaser of the rights of a co-parcener sues for partition, the partition must be general: a suit for a partial partition of a single property will not lie. SHIVMURTEPPA *v.* VIRAPPA

[I. L. R., 24 Bom., 128

HINDU LAW—PARTITION—*continued*

2. PROPERTY LIABLE OR NOT TO PARTITION—*continued*

investment RAMASHESHARAYA PANDAY *v.* BHAGAVAT PANDAY 4 Mad., 5

59. ———— Property acquired after agreement to divide—*Private partition, Effect of, as regards subsequently-acquired property*—

[1 Ind Jur., N S, 141. 10 Moore's I A, 329
5 W R., P C., 14

60. ———— Impartible estate—*Zamindari*.—In 1803, *G* being in possession of the zamindari of *M*, the permanent settlement was made with him and a sanad was granted to him as prescribed by Regulation XXV of 1802 In 1827 *C*, the only son of *G*, being in possession of the zamindari, got into debt, and the zamindari was sold in execution of a decree and bought by Government In 1835 the zamindari was granted to *A*, the son of *C*, by Government and a

renter. *J* and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided By an agreement between the plaintiffs and the Court of Wards all the moveable and immoveable property, except the zamindari talukh, was divided into four shares and distributed in 1874 between the plaintiffs and defendants In 1884 the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the zamindari talukh. The defendant pleaded that the estate was not partible *Held*, distinguishing the *Hunsapore case (12 Moore's I. A, 1)* and the *Shivagunga case (I L R, 3 Mad, 290)* and following the principle laid down in the *Nuzvid case (I L R, 2 Mad, 128)* that the zamindari was partible JAGANATHA *v.* RAMABHADRA

[I. L. R, 11 Mad, 380

61. ———— Saranjam—*Impartibility*—*Descent of saranjam*—A saranjam is ordinarily impartible, and descends entire to the eldest representative of the past holder NARAYAN JAGANNATH DIKSHIT *v.* VASUDEO VISHNU DIKSHIT

[I. L R., 15 Bom., 247

62 ———— ———— *Cash allowances payable from the Government treasury—Impartibility—Custom of the family as to partibility—Senior member of the family—Right of eldership—Amount set apart for the celebration of a festival—Separate celebration of the festival after division—Expenses of the separate celebration—Expenses of collecting the saranjam and pension incomes—Omission of the lower Court to pass a decree for partition among all the co-sharers—Decree for partition among the co-sharers passed in appeal*—Saranjams are *primâ facie* im-

family estate, which consisted both of incomes and saranjams,—*Held* that the Court was justified in concluding that the saranjams were either originally partible or had become so by family usage The plaintiff, an undivided member of a Hindu family, sued his co-sharers for division of saranjam and other family property The defendant No 1 contended that the saranjam was impartible In any case, he claimed to retain certain sums in his capacity as the eldest representative of the family for the performance of certain offices *Held* that, the parties having effected division of the saranjams on previous occasions, the saranjams were either originally partible or had
further that, t
having lost its
it was impartib
representative o
partition a certain sum was claimed by the eldest representative of the family for the purpose of celebrating a certain festival,—*Held* that, the branches of the family being completely separated each branch would celebrate the festival apart and would necessarily require funds for its separate celebration, and that therefore the sum claimed by the eldest representative for the celebration of the festival could not be left undivided The Court of first instance having omitted to decree the shares of the defendants other than defendant No 1, who demanded partition, their shares were declared and allowed in appeal *Ramchandra* v. *Venkatrav, I. L R, 6 Bom, 598*, and *Bhujangrai* v *Malojirav, 5 Bom, A C, 161*, referred to MADHAVRAV MANOHAR *v* ATMARAM KESHAV . . I. L. R., 15 Bom., 519

63. ———— Sheri lands—*Lease by Government for term of years*—The general Hindu law as to partition, which lays down that, except in certain special cases determined by family custom or usage, partition of all family property can be made, is equally applicable to sheri lands leased by Government for a certain number of years, there is no Act of Legislature which excludes lands leased by Government from its operation DATTRATRAYA VITHAL *v* MAHADAJI PARASHRAM

[I. L. R., 16 Bom., 528

64 ———— Proceeds of sale of a coparcener's share—*Claim of co-parceners to proceeds—Joint or separate property*—In a suit for partition of family property it appeared that one of the deceased co parceners had sold to a stranger his undivided share in almost all the immoveable property of the family, and with part of the proceeds had discharged some debts, and with

family property liable to partition at the time. *Narayan Babaji* v. *Pandurang Ramchandra, 12 Bom., 148,* followed. KRISTAYYA v. NARASIMHAM [I. L. R., 23 Mad., 608

82. ——————— *Effect of partition of portion of property—Separate enjoyment.*—Where the members of an undivided Hindu family have divided a portion of the estate and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property has not been divided. A partition of joint property is valid as between the members of a Hindu family, although it has not been sanctioned by the Board of Revenue, it being shown that for several years after the partition the members of the family had separately enjoyed the shares which fell to them by the partition. HOOLAS KOONWAR v. MAN SINGH [3 Agra, 37

83. ——————— *Partition of share of estate—Widow—Possession of estate for maintenance.*—The proprietary right to a share in an undivided estate which includes and carries with it a right to claim and enforce a partition of that share must be a right of an absolute and unlimited nature, and does not belong to a Hindu widow who has been placed in possession of her deceased husband's share for her maintenance; consequently, where the widow is not an absolute proprietor, but simply an assignee of the profits for a maintenance, she cannot claim partition of the share so assigned. BHOOP SINGH v. PHOOL KOWER . . 2 Agra, Part II, 168

84. ——————— *Partition by father and sons—Partition among joint owners—Divisibility of portion remaining undivided.*—The doctrine that when, after a partition of a joint family estate, a portion of the estate remains undivided, the portion which remains undivided cannot afterwards be partitioned, refers to a partition made by a father amongst his sons and their co-heirs. It does not refer to the case where a partition has been made by the joint owners amongst themselves. SHAMASOONDERY DASSEE v. KARTICK CHURN MITTRA [Bourke, O. C., 326

4. RIGHT TO PARTITION.

(*a*) GENERALLY.

85. ——— **Right of member of joint family to separate share.**—Members of a joint family residing in joint premises are entitled, on the occurrence of a dispute between them and their co-sharers, to come into Court and ask to have their proper share assigned. The fact of their not having been in possession of a particular portion of the premises is no bar to a claim for such portion. BIMOLA v. DANGOO KANSAREE . . 19 W. R., 189

86. ——— **Member of family more than four degrees removed from acquirer—** *Remote relative.*—Partition can effectually be

demanded by a Hindu more than four degrees removed from the acquirer or original owner of the property sought to be divided, provided he is not more than four degrees removed from the last owner, however remote he may be from the original owner thereof. *Devala's text Aribhakta Vibhaktanaon,* discussed. MORO VISHVANATH v. GANESH VITHAL [10 Bom., 441

87. ——— **Member of family governed by law of Aliyasantana.**—Division of family property cannot be enforced by one of the members of a family governed by the law of Aliyasantana. MUNDA CHETTI v. TIMMAJU HENSU [I Mad., 380

88. ——— **Inheritance of talukhdari estate in Oude**—*Sanad recognizing primogeniture, Effect of, as to existing rights of inheritance —Shares held by members of family—Mesne profits on specific and definite shares.*—The ordinary rule is that, if persons are entitled beneficially to shares in an estate, they may have partition. Although in a suit for the partition of joint family estate, where the head of the joint family does not account for the profits under the ordinary Hindu law, mesne profits are not recoverable, it is not so where the family has been living under a clear agreement that the members are entitled not as an ordinary Hindu family, but in specific and definite shares. If the enjoyment of those shares is in any way disturbed, the right to sue for profits will arise, as well as the right to partition. A talukhdari estate which, before and after annexation, was subject to the common Hindu law of Oude, *viz.,* the Mitakshara, was restored after the general confiscation of 1858 to the family, which received a sanad recognizing the shares of its members. At the same time, a grant was made to the head of the family as talukhdar of two other villages, and to him afterwards in 1861 was issued a primogeniture sanad of the above talukhdari estate. This sanad could not prevail against the family rights of inheritance; and effect was given to family arrangements, with the same results as regards the two villages. On the contention that the family, by the effect of the sanads, was to have one head and sole manager in the talukhdar, who being accountable to the junior members for their shares of the profits was alone to hold the entire estate by primogeniture,—*Held* that this kind of managership was entirely unknown to the common Hindu law of Oude; and that apparently the Oude Estate Act, 1869, did not contemplate any such thing. At all events, there must be clear arrangements, such as were not found here, to establish and prove its existence. Partition was accordingly decreed to the members of the family suing for it. *Pirthi Pal Sing* v. *Jawahir Singh, L. R., 14 I. A., 37 : I. L. R., 14 Calc., 493,* as to the right to partition of a talukhdari estate, referred to and followed; also the same case in regard to profits, where the members of a family are entitled to specific and definite shares not as members of an ordinary joint family. SHANKAR BAKSH v. HARDEO BAKSH [I. L. R., 16 Calc., 397
L. R., 16 I. A., 71

HINDU LAW—PARTITION—*continued*

2 PROPERTY LIABLE OR NOT TO PARTITION—*continued*

73 ——— RAMASHESHARAYA PANDAY *v.* BHAGA ... *tition of portion of joint property* ... 4 Mad, 5

would not lie HARIDASS SANYAL *v.* PRAN NATH SANYAL I L R, 12 Calc, 566

74 ——— *Separation of one member of family Effect of*—The separation of one member of a joint Hindu family does not neces

75 ——— *Wrongful possession by one co sharer of portion of joint estate—Gift by father to one of several sons co sharers*—The wrongful possession of a portion of a joint estate in every portion of which the sharers have equal rights by one of them is no bar to the partition of the whole and does not warrant the exclusive assumption of another portion by another of them Assuming a co sharer's right in the family estate not to have been lost a deed of gift of a portion thereof to another co sharer is a violation of his right not justified by the circumstance that the first co sharer had wrongfully appropriated some of the joint property in which the others might have recovered their rights by an action at law A co-sharer s hereditary right does not however entitle him to claim a partition of a portion only of the ancestral property KALKA PERSHAD *v.* BUDREE SAH 3 N W, 267

76 ——— *Right to parti* ...

occupation of a portion of the ancestral ... house whether he had a right to the partition of the one without bringing the other into hotchpot RAM LOCHUN PATTUCK *v.* RUGHOOBUR DIAL [15 W R, 111

77. ——— *Partition of joint property situate in British India without taking into account other joint property situate outside British India*—A Court can grant partition of property belonging to a joint Hindu family situated in British India without taking into account other

HINDU LAW—PARTITION—*continued*

2 PROPERTY LIABLE OR NOT TO PARTITION—*continued*

pension incomes—Omission of the lower Court to pass a decree for partition among all the co-sharer ... *passed* ... *tion of* ... *Where* ... entire fa ... divided but the remaining portion is decla... the entire ble the family remains undivided in respect ... and latter portion *Satrucharla Jagannadha Ra u v. Satrucharla Samabhadra Ra u I L R 14 Mad, 240* referred to MALLIKARJUNA PRASADA NAIDU *v.* DURGA PRASADA NAIDU

[I. L R., 17 Mad., 362

79 ——— *Property left undivided at the time of partition—Suit to recover share of the produce—Amendment of plaint—Variance between pleading and proof*—The circumstance that there has been a partition between the members of a joint Hindu family does not in the

80 ——— *Right to partial partition*—A member of a joint Hindu family may enforce by suit his right to a partition of a portion only of the joint family property *Venkatachella Pillay v. Chinnaiya Mudaliar 5 Mad 166* approved and followed SUBRAMANYA CHETTYAR *v.* PADMANABHA CHETTYAR I. L R, 19 Mad, 267

81 ——— *Suit for partial partition—Family property available for partition at the time—Property mortgaged with possession to third party not included—Maintainability of suit*—One of two undivided brothers composing a Hindu family sold the whole of a house, which was in fact joint family property alleging family necessity in justification of the sale The other brother subse- ...

been mortgaged with possession to a third party and was not available for partition at the time On the plea being raised that the suit was one for partial partition and could not be sustained —*Held* that the suit was maintainable Inasmuch as the other house was mortgaged with possession to a third party and therefore no longer available for immediate partition the suit was one for partition of the whole of the

HINDU LAW—PARTITION—*continued.*

4. RIGHT TO PARTITION—*continued.*

See CHANDU *v.* KUNHAMED, distinguished on the ground that the parties there were governed by Mahomedan law of inheritance.

[I. L. R., 14 Mad., 324

98. ——— Purchaser from member of undivided Hindu family of share in the joint property.—Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to *P* and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and, having afterwards purchased the share of the elder brother and come to a settlement with *P*, brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor. *Held* that the contest being between strangers to the family, and the plaintiff having purchased the entire rights of the family in the land in question, the suit was maintainable without a claim for partition of the whole property of the family. SUBBARAZU *v.* VENKATARATNAM

[I. L. R., 15 Mad., 234

99. ——— Claim against vendor and widow of undivided brother.—A person who purchases the share of a co-parcener in family property is entitled to recover that share on his vendor's succession to the property as against the vendor himself and the widow of his undivided brother. *Udaram Sitaram* v. *Ranu Panduji, 11 Bom., 76*, distinguished. MANJAPPA HEGADE *v.* LAKSHMI

[I. L. R., 15 Bom., 234

100. ——— Suit for partition by a purchaser from a co-parcener—*Decree for share of co-parcener in specific property—Variance between pleading and proof.*—In a suit to recover possession of property purchased by the plaintiff, if it is found that the property is not separate property of the plaintiff's vendor, but belongs to the joint family of which plaintiff's vendor is a member, the plaintiff is not entitled to a decree for his vendor's share in that property, and the suit must be dismissed. *Venkatarama* v. *Meera Ladar, I. L. R., 13 Mad., 275*, followed. PALANI KONAN *v.* MASAKONAN

[I. L. R., 20 Mad., 243

101. ——— Alienation of share by co-parcener—*His position and rights after such alienation—Position and rights of purchaser—Subsequent birth or death of other co-parceners.*—The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position. The purchaser becomes a sort of tenant-in-common with the co-parceners, admissible as such to his distributive share upon a partition taking place. Such an alienation before partition does not deprive the alienating co-parcener of his rights in the joint family. As the purchaser does not, by the death of the vendor, lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. The purchasers, like his alienor, is liable to have his share diminished upon partition by the birth of other co-parceners, if he stand by and does not insist on immediate partition. GURLINGAPA SATWIRAPA GIDWIR *v.* NANDAPA CHANBASAPA SOLAPURI . . . I. L. R., 21 Bom., 797

102. ——— Purchase by stranger from one of two daughters jointly entitled to their father's property—*Decree for partition.*—A purchaser, having purchased certain property from one of two sisters jointly entitled to their deceased father's property, under the Hindu law, re-sold it, whereupon the other daughter sued for a declaration that such sales were invalid as against her, and that the property might be restored to her and her sister, or that there might be a partition of it. *Held* that, while one of two daughters cannot by any alienation alter the character of the daughters' estate so far as the right of survivorship or that of the reversioners is concerned, she may alienate her interest in the property, or have that interest taken and sold in execution of a decree against her. Also that, subject to the same condition, she may demand a partition of the property. KANNI AMMAL *v.* AMMAKANNU AMMAL

[I. L. R., 23 Mad., 504

(*h*) PURCHASER FROM WIDOW.

103. ——— Right of purchaser to sue for partition—*Assignee of widow.*—A Hindu widow being competent under the Hindu law to put in a claim to enforce partition as against her co-sharers, there is nothing to prevent a purchaser of her estate at a sale in execution of a decree from enforcing a like claim. RUGHOONATH PANJAH *v.* LUCKHUN CHUNDER DULLAL CHOWDHRY

[18 W. R., 23

104. ——— *Bengal school of Hindu law—Widow's estate—Joint widows.*—Where a Hindu governed by the Bengal school of Hindu law dies intestate, leaving two widows his only heirs him surviving, either of those widows may sell her interest in her deceased husband's property, and the purchaser thereof is entitled to enforce a partition as against the other widow. The partition, if decreed, should be effected in such a way as would not be detrimental to the future interests of the reversioners. JANOKINATH MUKHOPADHYA *v.* MOTHURANATH MUKHOPADHYA

[I. L. R., 9 Calc., 580: 12 C. L. R., 215

105. ——— *Alienation by Hindu widow of share in family dwelling-house.*—An assignee of a Hindu widow, though a stranger to the family, is in the same position as the Hindu widow, and is entitled to sue for partition of the joint family dwelling-house, and all that the Court has to see to is that the partition should be carried out in such a way as not to affect the rights of the reversioners. BEPIN BEHARI MODUCK *v.* LAL MOHUN CHATTOPADHYA . . I. L. R., 12 Calc., 209

HINDU LAW—PARTITION—*continued*

4 RIGHT TO PARTITION—*continued*

89 ———— Right to partition a second time after bonâ fide mistake in first partition—*Inclusion in first partition of property not subject to partition—Re partition* —The parties to a partition under a *bond fide* mistake included in the

his share was entitled to claim a re partit on. MARUTI *v* RAMA I. L R, 21 Bom, 333

(*b*) DAUGHTER.

90 ———— Right of daughters to partition—*Mother's property* —Though daughters

NAIKIN *v* ESU NAIKIN I L R, 4 Bom, 545

(*c*) GRANDMOTHER

91 ———— Right of grandmother to maintenance in competition with mortgagee selling the estate—*Right of residence secured on sale of house by mortgagee* —Although, according to the Mitakshara a grandmother may on partition, or if the estate is being wasted or her maintenance is not

to her, except that if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage the house must be sold subject to her right VENKATAMMAL *v* ANDYAPPA CHETTI I. L R, 6 Mad., 130

(*d*) GRANDSON

92 ———— Right of grandson to sue for partition

grandson may,
cumstances
for compulsor
perty NAGA
DALI

93 ———————— *Interest in ancestral property* —In a joint Hindu family governed by the Mitakshara law, a grandson has by birth a vested interest in ancestral property, which entitles him to enforce partition in the lifetime of his father and grandfather *Deendyal Lal* v *Jugdeep Narain Singh, I L R, 3 Calc, 198, Laljeet Singh* v *Rajcoomar Singh, 12 B L R, 373*, and *Nagalinga Mudali* v *Subbiramanya Mudali, 1 Mad, 77* JOGUL KISHORE *v* SHIB SAHAI [I. L R., 5 All., 430

HINDU LAW—PARTITION—*continued*

4 RIGHT TO PARTITION—*continued.*

(*e*) ILLEGITIMATE CHILDREN

94 ———— Illegitimate son—*Sudras* —

endangered by reason of the property being left under the management of the latter partition can be claimed during his minority THANGAM PILLAI *v* SUPPA PILLAI I L. R., 12 Mad, 401

(*f*) MINOR

95 ———— Suit by or on behalf of minor for partition—*Mithila school of law—Suit by mother and minor children for partition—Malversation* —A suit cannot be brought by or on behalf of a minor to enforce partition unless on the ground of malversation or some other circumstances which make it for his interest that his share should be set aside and secured for him DAMOODUR MISSER *v* SENABUTTY MISRAIN

[I. L R., 8 Calc, 537 · 10 C. L R., 401

96. ———— Suit by minors for partition—*In what cases there is a right of suit—Malversation* —Under the H

cener
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parceners and denied their rights or sets up his own independent title, or where the minors live separately and the adult co parcener does not support them, in all these cases it is in the interest of the minors that their share shall be partitioned and set apart The plaintiffs, who were minors sued by their next friend for a partition of their ancestral property in the possession of their step brother, the defendant It appeared that soon after their father's death disputes and differences arose between plaintiffs' mother and their step brother, which led to their separation in food and residence The defendant managed the family property, but did not support the minors out of the rents and profits thereof Hence the suit *Held* that though no malversation was alleged or proved the allegations in the plaint of disputes and separate residence and defendant's failure to support the plaintiffs were sufficient to justify the Court in permitting the plaintiffs to maintain the suit MAHADEV BALVANT *v* LAKSHMAN BALVANT . I L. R., 19 Bom, 99

(*g*) PURCHASER FROM CO PARCENER

97. ———— Sale by a co-parcener of his share in specific property—*Rights of the vendee—Transfer of Property Act s 44* —A purchaser from a member of an undivided Hindu family of that member's share in a specific portion of the ancestral family property cannot sue for a partition of that portion alone and obtain an allotment to himself by metes and bounds of his vendor's share in that portion of the property VENKATARAMA *v.* MEERA LABAI . I. L R, 13 Mad., 275

HINDU LAW—PARTITION—*continued.*

4. RIGHT TO PARTITION—*continued.*

declared every year from 1863. In 1870 he declined to work any longer without remuneration, and at a meeting of the shareholders he was appointed managing director and was granted a commission on all sales effected by the company. *Held* that the commission so received by the defendant was his self-acquired property. Under the circumstances, it might safely be inferred that he did not obtain the appointment of manager by the direct influence of the shares which he held in the company. The gratuitous services which he had for years rendered to the shareholders had influenced them in giving him the appointment, and such influence could not be said to have been created by the direct instrumentality of the ancestral property. In a suit for partition brought by a son against his father,—*Held* that the plaintiff was entitled to partition of the ancestral property as it subsisted at the date of suit. A custom alleged to exist among the Kapoli Bania caste, according to which a son is not entitled to the partition of ancestral property in his father's lifetime and against his father's will, held not proved. JAGMOHANDAS MANGALDAS *v.* MANGALDAS NATHUBHOY . . . I. L. R., 10 Bom., 528

112. ———— **Son, Partition by**—*Right of sons as against mortgagee of ancestral property.*—In a suit by four sons, members of a joint family, for determination of right and partition of family property which had been mortgaged by their father as security for a loan and had been sold in execution of a decree, the father being still alive, as well as his second wife, who was not incapacitated by age from bearing children,—*Held* that the mortgagee could not stand in a better position than the father against whom the sons had a right to require partition of the property so far as it was ancestral. LOCHUN SINGH *v.* NEMDHAREE SINGH . . 20 W. R., 170

113. ———— ———— *Right of sons to partition—Indebtedness of father—Minor sons.*—Under Mitakshara law, minor sons have rights in ancestral property, for a declaration of which by partition their mother can proceed against their father and his creditors. Partition in such a case might be ordered against the will of the father, without actually taking the property out of his hands. Even where sons, because of their minority, are incapable of signifying their intention of enforcing partition, it is open to a Court to discover whether there are special circumstances which would make a partition desirable. LEKHRAJ KOOER *v.* SIRDAR DYAL SINGH [25 W. R., 487

114. ———— **Illatom son-in-law.**—The question whether an illatom son-in-law can demand partition from his father-in-law is not a pure question of law, but one that depends upon custom and can only be determined upon evidence. CHINNA OBAYYA *v.* SURA REDDI . . I. L. R., 21 Mad., 226

115. ———— **After-born son**—*Property acquired subsequently to partition.*—A Hindu having two sons divided his property between them, reserving no share for himself. A third son was subsequently born, who now sued for a partition of the property which had been divided and other property subsequently acquired by his brothers by means of its proceeds. *Held* that the plaintiff was entitled to the relief claimed. CHENGAMA NAYUDU *v.* MUNISAMI NAYUDU . . I. L. R., 20 Mad., 75

116. ———— **Son born after partition**—*Right of such son to partition—Share of such son—Family arrangement—Limitation.*—In the year 1875 one V, having at that time three sons, *viz.*, defendants Nos. 1, 2, and 3, divided his property, allotting one-third to the first defendant and retaining the remaining two-thirds in his own possession in the interest of his other two sons (defendants Nos. 2 and 3), who were then minors. The latter continued to live with him, and he managed the property. The first defendant was the son of V's elder wife, and the second and third defendants were the sons of his younger wife. In 1880 the plaintiff was born, and in 1894 he brought this suit by his mother (the younger wife) as next friend for a partition of the whole of V's property, including that which in 1875 had been allotted to the first defendant. The plaintiff claimed a fourth share. *Held* that the plaintiff was not entitled to any part of the property which had been given to the first defendant in 1875. The family arrangement then made had been acquiesced in for more than twelve years, and could not be disturbed. The plaintiff could only claim against defendants Nos. 2 and 3, who lived with their father in union and with whom the plaintiff himself had lived as member of a joint family. GANPAT VENKATESH DESPANDE *v.* GOPALRAO VENKATESH DESPANDE [I. L. R., 23 Bom., 636

(*j*) SON-IN-LAW OF LUNATIC.

117. ———— **Partition of lunatic's estate**—*Joint property in Mitakshara family.*—The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and a guardian of his person under Act XXXV of 1858. The Court found that the application was made with a view to taking consequent proceedings for partition. *Quære*—Assuming the application to be made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had. IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY . I. L. R., 6 Calc., 539 [8 C. L. R., 30

(*k*) WIDOW.

118. ———— **Widow, Partition by**—*Ground for exclusion from right—Likelihood of re-marriage.*—There is no ground for the exclusion of a Hindu widow from a claim to partition, for, as the law now stands, she may re-marry and have issue. BIMOLA *v.* DANGOO KANSAREE . 19 W. R., 189

119. ———— *Power of widow to enforce partition.*—It is competent to the childless

HINDU LAW—PARTITION—*continued.*

4 RIGHT TO PARTITION—*continued*

(i) SON

106. ——— **Suit by son to enforce partition against father**—*Mitakshara law—Undivided Hindu family—Ancestral immoveable property*—In an undivided Hindu family the son has, under the Mitakshara, a right to demand in the life time, and against the will, of his father, the partition and possession of his share in the ancestral immoveable property of the family KALI PARSHAD *v*. RAM CHARAN . . . . I. L. R., 1 All, 159

107. ——— *Right to property not acquired by birth*—In a suit brought by a son against his father to compel a division of moveable and immoveable property inherited by the latter from his paternal cousin—*Held* that, as regards the jewels of which plaintiff required an account, the plaintiff had no right of complaint, although his father, the defendant, had made an unjust and partial distribution of them *Held* also that the suit to enforce a division of the immoveable property could not be maintained inasmuch as neither the plaintiff nor the defendant acquired any right of such property by birth RAYADUR NALLATAMBI CHETTI *v*. RAYADUR MAKUNDA CHETTI 3 Mad, 455

108 ——— *Moveable ancestral property—Ancestral business*—On the Bombay side of India a Hindu son has no right to enforce partition of ancestral moveable property in the hands of his father, or to claim a separate share in an ancestral business against his father's will, although the son alleges that his father is prejudiced against him and intends to deprive him of his succession to such property and business *Semble*—That a son [illegible]

[illegible] Bom, Ap, [illegible]

109. ——— *Suit for parti-* [illegible]

[illegible]

CHANDRA RAVJI KULKARNI . I L. R., 16 Bom., 29

110 ——— *Suit by sons and nephews against their father and uncles—Right of suit*—In a suit for partition of family property, the plaintiffs were the sons of one and nephews of others of the defendants who defended the suit *Held* that the suit was maintainable *Apaji Narhar Kulkarni* v [illegible] [illegible] Bom., [illegible]

[illegible] CHANDRA AYYAR [illegible] I. L. R., 13 Mad, 179

111 ——— *Right of a son to claim partition of moveable as well as immoveable property in his father's lifetime—Son's right to partition of property come to the* [illegible]

HINDU LAW—PARTITION—*continued*

4 RIGHT TO PARTITION—*continued*

of his father before the son's birth—Property acquired by litigation—Self acquired property devised by a father to his son is taken by the son under the will and is self acquired in his hands—Earnings of father as mill manager—Property left by testator to be held moveable or immoveable according to its condition at testator's death—Kapoli Bania caste Custom of as to partition—*Per* APPEAL COURT—There is no distinction between moveable and immoveable property as regards the right of a son in an undivided family governed by the Mitakshara law to partition in the lifetime of the father *Per* SCOTT J—Where the law of the Mayukha applies a son is entitled to demand partition of moveable as well as immoveable property in his father's lifetime Defendant's great grand- [illegible]

1808 *R*'s share was received in 1852 by the executors of his son, *N* (defendant's father), who had died in 1843 *Held* that this property came to the defendant by inheritance and was ancestral property, and was not capable of being given or willed away by him. Further that, as having regard to *M*'s will there was no apparent intention on the part of the testator to convert into money such of his property as consisted of lands and houses, the general rule of law applied, *viz*, that the property must be held to be real or personal according to the actual condition in which it existed at the testator's death *Held* also that the defendant's son had a right to claim partition of this property, although the defendant had no son born to him at the time (1852) he came into possession of it [illegible] property acquired out of the income of ancestral property is itself ancestral, whether acquired before or after the birth of a son In order to [illegible] parcener to hold, as property self-acquired [illegible] property which has been recovered [illegible] (*e g*, by litigation), such property [illegible] recovered from usurpers [illegible] family, the co parceners must have [illegible] rights, and where such [illegible] inference, the co-parceners [illegible] imputed must have been [illegible] son to whom his father [illegible] perty by will takes the [illegible] not by inheritance [illegible] is held by [illegible] property is [illegible] is not [illegible] *deceased* [illegible] in the [illegible] [illegible] son [illegible]

HINDU LAW—PARTITION—*continued*

4 RIGHT TO PARTITION—*continued*

wido v of a Hindu dying without other nearer heirs to enforce the actual divis on of the family property in which her husband at h s death was entitled to sl are when the separation of her husband has taken place and his share been ascertained though not actually set apart in specie RAM JOSHI v LAKSHMIBHAI

[1 Bom, 189

120 ———— *Discretion of Court—Widow with daughters and grandsons* —The question whether a Hindu widow is entitled to partition is one for the discretion of the Court in each particular case In this case where the plaintiff l ad daughters and grandsons and the share she was entitled to through her husband was considerable she was held entitled to a decree for partition SOUDAMINEY DOSSEE v JOGESH CHUNDER DUTT

[I L R, 2 Calc, 262

121. ———— *Settlement by co parcener on wife—Purchaser for value* —In pursuance of an ante nuptial agreement made in consideration of marriage with the father of *A*, his in

was entitled to recover ALAMELU v RANGASAMI

[I L R, 7 Mad, 588

122 ———— *Right of widows to partition or to separate enjoyment of joint property* —A claim by one of several widows to an ... to each ... A case ... dows to ... of the ... granted ... roperty

of the estate and private property of the Raja Subsequently the Government made over to the widows and daughter of the Raja the landed and personal property, having previously obtained the opinion of the Hindu law officers of the Sudder Court on a question put with the view of ascertaining tl e Hindu law as appl cable to the case The order of Government contained the following direction The estate will therefore be made over to the senior widow who will have the management and control of the property heirs of the late Raja if any will inherit the property ' In a suit by two of the widows against the senior widow and the 14th defendant the alleged adopted son of the late Raja for a division of the moveable property which had been made over to the senior widow by the Government of Madras and for the cancellation of the adoption of the 14th defendant —*Held* that the claim of the 14th defendant by right of adoption being as lineal heir to the Raja in preference to the widows would not be maintainable assuming the adoption to have been valid To that claim the absolute ownership of tl e Government in the interval from the death of the Raja until the act of State by which the transfer was made to the widows and daughters is fatal JIJOYIAMBA BAYI SAIBA v KAMAKSHI BAYI SAIBA BAI SAIBA v JIJOYIAMBA BAYI SAIBA

[3 Mad, 424

123 ———— *Co widows—Widows inheriting jointly—Order for separate possession and enjoyment* —Widows who take a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the estate between themselves But where from the conduct of one or more of their number separate possession of a portion of the inheritance is the only likely means to secure for each peaceful enjoyment of an equal share of the benefits of the estate an order for separate possession and enjoyment may be made *Jijoyimba Bayi Saiba* v *Kamakshi Bayi Saiba 3 Mad 424* referred to and approved GAJAPATHI NILAMANI v GAJAPATHI RADHAMANI

[I L R., 1 Mad, 290 1 C L R, 97 L R, 4 I A, 212

124 ———— *Co widows—Arrangement for separate enjoyment* —Although the two widows of one and the same husband may arrange for the enjoyment of the estate in separate portions there can be no compulsory partition converting the joint estate into an estate in severalty *The interest of one of two such co widows cannot be* sold KETHAPERUMAL v VENKABAI

[I L R., 2 Mad., 194

125. ———— *Co heiresses—Suit to enforce partition* —Two widows co-heiresses in joint possession of property by the Hindu law are in the nature of co parceners and one of them can enforce partit on against the other notwithstanding the limited character of their tenure and although such partition is not binding on the reversioners PADMAMANI DASI v JAGADAMBA DASI

[6 B L R, 134

126 ———— *Co-widows of estate left by their deceased husband* —Posses ... and was ... n, who ... d a son, ... estate ... *Held*

HINDU LAW—PARTITION—*continued.*

5. SHARES ON PARTITION—*concluded.*

(*i*) WIFE.

162. ———— Share of wife—*Mitakshara law—Distribution by mortgages and sales in execution.*—By vs. 1 and 2 of s. 7 of Ch. I of the Mitakshara, when a distribution of ancestral property is made during the lifetime of a father of a family subject to Mitakshara law, his wife is entitled to an equal share with her husband and her sons. *Held* in this case that the mortgages by *A* and the sales in execution which occurred during his lifetime must, as against the defendants, be taken to be a distribution within the meaning of those verses; and as possession was taken by the defendants during *A*'s lifetime, it must be considered a distribution made within that period, and therefore the widow was entitled to an equal share with her two sons. PURSID NARAIN SING *v.* HONOOMAN SING

[I. L. R., 5 Calc., 845 : 5 C. L. R., 576

BULDEO SINGH *v.* MAHABEER SINGH

[1 Agra, 155

163. ———————— *Mitakshara law—Ancestral property.*—Under the Mitakshara law, where partition of ancestral property takes place between a father and a son, the wife of the father is entitled to a share. *Mahabeer Persad* v. *Ramyad Singh, 12 B. L. R., 90; Laljeet Singh* v. *Rajcoomar Singh, 12 B. L. R., 373; Jodoonath Dey Sircar* v. *Brojonath Dey Sircar, 12 B. L. R., 385;* and *Pursid Narain Singh* v. *Honooman Sahay, I. L. R., 5 Calc., 845,* followed. SUMRUN THAKUR *v.* CHUNDERMUN MISSER

[I. L. R., 8 Calc., 17
9 C. L. R., 415

SUNDUR BAHU *v.* MONOHUR LALL UPADHYA

[10 C. L. R., 79

164. ———————— *Right to an account—Suit for partition referred to arbitration, but property not wholly partitioned—Infant's right to an account of his share of the property partitioned and unpartitioned.*—*A*, a member of a Hindu joint family, died leaving a widow and no issue. By his will he appointed *B*, *C*, and *D*, members of the joint family, his executors, and gave his widow power to adopt. In pursuance of that power, the widow adopted *E*. The executors instituted a suit for partition of the joint estates, and the suit was referred to the arbitration of *Z*. He died without having partitioned the whole of the property, and an application was then made to the Court to determine the partition. The Court granted the application, and the suit came on for trial. The infant *E* asked for an account to be taken of the dealings of the joint property, and of the rents and profits on behalf of the estate of his late father, from the death of his father up to the appointment of a receiver. *Held* that in respect of the properties remaining unpartitioned the infant was entitled to an account of the dealings of the joint property and of the rents and profits from the death of his father up to the time a receiver was appointed, but as to the properties already partitioned, he was not so entitled. SARAT CHUNDER SINGH *v.* NITYE SUNDER SINGH . . . I. L. R., 27 Calc., 1013

HINDU LAW—PARTITION—*continued.*

6. RIGHT TO ACCOUNT ON PARTITION.

165. ———— Right to account of past transactions—*Share in outstanding debts—Interest.*—A plaintiff entitled on partition to half the property in the hands of his brother is bound to bring into hotchpot any ancestral property, or property acquired from ancestral funds which may be in his own hands, but is not liable to account for money received by him from his father while living in commensality with him and his brother, the circumstances of such receipt not being of a kind to impute fraud. Members of an undivided Hindu family making partition are entitled, as a rule, not to an account of past transactions, but to a division of the family property actually existing at the date of partition. In a partition suit, the Court ought not to order an immediate money payment by the defendant to the plaintiff of his share in the outstanding debts due to the family estate, as if such outstanding debts had been recovered and the money were in the hands of the defendant. As a member of an undivided Hindu family is not bound to effect a partition by paying a certain sum of money to his co-parceners, the Court in a partition suit ought not to award interest on money decreed to be paid by the defendant to the plaintiff. LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. RAMACHANDRA NAIK *v.* LAKSHMAN DADA NAIK . I. L. R., 1 Bom., 561

S. C. on appeal to Privy Council

[I. L. R., 5 Bom., 48

166. ———————— *Account in partition suit.*—*Held* that, in the case of joint enjoyment by the members of the whole family, or enjoyment by different members, of different portions of the family property, the Court will not, except under special circumstances, order an account to be taken of past transactions, but will make division of the property actually existing at the date of partition. *Lakshman Dada Naik* v. *Ramchandra Dada Naik, I. L. R., 1 Bom., 561 : I. L. R., 5 Bom., 48,* followed. KONERRAV *v.* GURRAV

[I. L. R., 5 Bom., 589

167. ———— Account of mesne profits—*Infant ejected and excluded from enjoyment of family property.*—The rule which limits the right of members of a Hindu family seeking partition to a division of the family property existing at the date of division does not apply to the case of an infant who has been ejected by the manager from the family house and excluded from enjoyment of the family property. In such a case the manager is bound to account to the infant for mesne profits from the date of his exclusion. KRISHNA *v.* SUBBANNA

[I. L. R., 7 Mad., 564

168. ———— Liability of manager to account on occasion of partition—*Right of members who were minors at time of management to an account from manager—Manager also guardian of minors—Nature of account to be rendered by a manager on partition—Family idol and property appertaining thereto—Right of mother to a share of estate on partition.*—A manager of a Hindu family cannot refuse to render any account whatever

HINDU LAW—PARTITION—*continued.*

5. SHARES ON PARTITION—*continued*

H. L., p 64) referred to and approved. HEMANGINI DASI *v.* KEDARNATH KUNDU CHOWDHRY [I. L. R., 16 Calc., 758
L. R., 16 I. A., 115

155. ——— *Mother's right to a share in lieu of maintenance, on a partition*

No 1) transferred his share of the property, alleging it to be one sixth, to a third party, who was subsequently added as a party defendant to the suit. At the time of the transfer both the transferor and the transferee had notice of the said suit. On a question having been raised as to what share of the property the transferee was entitled to,—*Held* that, inasmuch as the suit for partition was instituted by one of the

share, the transferee could not get more than what the transferor was entitled to at the time of the transfer, *i.e.*, one-seventh share of the property. JOGENDRA CHUNDER GHOSE *v.* FULKUMARI DASSI [I. L. R., 27 Calc., 77

JOGENDRO CHUNDER GHOSE *v.* GANENDRA NATH SIRCAR . . . . . 4 C. W. N., 254

156. ——— *Mother's right to a share in lieu of maintenance on a partition—*

into existence. A purchaser from one of the sons has the same rights and takes it subject to the same liabilities as those of the person from whom he purchased

Dassi, I. L

LAL MITTER

(*g*) PURCHASERS

157. ——— **Suit by the purchaser of an undivided share of family property—** *Time when the share is ascertained.*—The purchaser from a member of a joint Hindu family of his share

that of the suit. It did not appear whether the house constituted the whole or only part of the property of the family, and no question was raised as to the competency of the plaintiff to sue for a partial partition. *Held* by the Full Bench that the share to be awarded to the plaintiff should be computed with reference to the state of the joint family at the date of the suit. *Held* by the Divisional Bench that the decree appealed against, by which the plaintiff was to recover the value of the share of the house computed as above and not the share itself, was right. RANGASAMI *v.* KRISHNAYYAN . . . . I. L. R., 14 Mad., 408

(*h*) WIDOW.

158. ——— **Share of widow—***Son of husband's half-brother—Widow of husband's father.*—The plaintiff, the widow and heiress of one *N*, brought a suit for partition of the estate of one *R* (her late husband's father) against *A*, a son of her late husband's half brother, and *K*, the widow

DOSSEE *v.* ASHUTOSH BOSU MULLICK [I. L. R., 13 Calc., 39

159. ——— *Bengal school of law—Partition of one item of joint family property by outside shareholder—Widow's share on* . . . *—The right of*

that it ceases to exist as a joint estate. Hence upon a partition enforced by a stranger in respect of pro- . . . the joint estate, . . . notwith- . . . remains . . . case that the widow was not entitled to such share. BARAHI DEBI *v.* DEBKAMINI DEBI [I. L. R., 20 Calc., 683

160. ——— *Mitakshara law—Joint undivided property.*—A Hindu widow, entitled by the Mitakshara law to a proportionate share with sons upon partition of the family estate, can claim such share, not only quoad the sons, but as against an auction purchaser at the sale in the execution of a decree of the right, title, and interest of one of the sons in such estate before voluntary partition. BILASO *v.* DINA NATH [I. L. R., 3 All., 88

161. ——— *Widow of deceased brother.*—Where there has been a general partition, but some of the property remains joint, the widow of a deceased brother will not participate in the undivided residue. RADAKOO KOOWAR *v.* WUZEER SINGH [1 Ind. Jur., N. S., 141 ; 5 W. R., 78

7. EFFECT OF PARTITION—*concluded.*

incurred by the father before partition—*Decree against father and execution proceedings against son's property in father's lifetime.*—In 1890 a person subject to the Hindu law incurred a debt for purposes that were neither illegal nor immoral. In 1891 he divided the family property with his son, and a house fell to the son's share under the division. In 1893 the creditors sued the father in respect of the debt, and, having obtained a decree, sought in the father's lifetime to make the son's house liable in execution thereof. *Held* that property taken by a son in partition cannot be seized in execution in respect of an unsecured personal debt of his father, even though the debt has been incurred before the partition, provided that the partition is not shown to have been made with a view to defraud or delay creditors. KRISHNASAMI KONAN *v.* RAMASAMI AYYAR . . . **I. L. R., 22 Mad., 519**

8. AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION.

172. ——— **Condition against partition**—*Effect of prohibition.*—Where a neumputro, executed by the father of a joint Hindu family many years before his death, declared that his four sons were not to divide the property; but that any single member of the family, desiring to make any particular arrangement, would be bound by the wishes of the others, and it happened eventually that one of the sons predeceased his father without issue, and another leaving two sons, who were not bound by the prohibition,—*Held* that, as these grandsons were parties having interest in the property, conditions which do not and cannot affect them ought not to be held to restrain the other co-sharers. *Quære*—Is such a provision in the deed as that which prohibits partition valid, or is it contrary to Hindu law, *ultra vires*, and null and void? JEEBUN KRISTO GOSSAMEE *v.* ROMANATH GOSSAMEE . **23 W. R., 297**

173. ——— **Agreement not to partition**—*Perpetuity—Invalid agreement.*—An agreement between co-parceners never to divide certain property is invalid by the Hindu law as tending to create a perpetuity. RAMLINGA KHANAPURI *v.* VIRUPAKSHI KHANAPURI **I. L. R., 7 Bom., 538**

174. ——— *Binding covenant.*—The members of a Hindu family, jointly and severally interested in a certain house and premises, covenanted for themselves, their heirs, and executors, that the said house and premises should never be partitioned, except by the unanimous consent of the contracting parties. *Held* by the lower Court, and confirmed on appeal, that whether valid or not as regards parties representatives by purchase, the covenant is binding upon those who are personally parties to the deed. RAMDHUN GHOSE *v.* ANUND CHUNDER GHOSE . . . . **2 Hyde, 93**

175. ——— *Purchaser of share of member of joint family—Alienation.*—The members of a joint Hindu family entered into an agreement not to partition their estate, which was to "continue in one joint undivided occupation as at present." *Held* that a purchaser at a Sheriff's sale of the share of one of the contracting parties was not bound by the agreement. Such an agreement does not prevent a party to it from alienating his interests in the estate. ANAND CHANDRA GHOSE *v.* PRANKRISTO DUTT

[3 B. L. R., O. C., 14: 11 W. R., O. C., 19

176. ——— *Dedication to idol—Mortgage.*—*R D*, a Hindu, died possessed of large property, both real and personal, and leaving surviving him two sons, *P D* and *A D*, his sole heirs, who after his death came to an amicable partition of some portion of the joint estate, but continued to hold jointly the family dwelling-house and the land thereto attached. On 26th November 1849, *P D* and *A D* executed a deed of trust of the joint family dwelling-house, among other properties, by which, after reciting that they had kept certain property joint, and that they had been performing the family ceremonies, etc., and that it was their intention that they should be performed in the same manner at the family dwelling-house, and after setting apart certain real property for the expenses thereof, it was agreed that "we will, during our lifetime, jointly perform the said acts after that manner and according to practice: on the death of one of us, the survivor and the executor or representatives of the deceased person will act after that manner and according to practice for a period of twenty years from the date of the death of him who shall die last; our executors or representatives will jointly perform, out of the proceeds of the aforesaid real property, the puja and so forth at our dwelling-house in Simla in Calcutta, and entertain strangers at the garden which once appertained to *R S B*. The said real property and our dwelling-house and the baitakhana in station Sulkea, etc., neither we nor our heirs or any of them will have the power to make a partition thereof during the said prescribed period. On the expiration of the said period, should our representatives wish to make a partition of all the said real property, etc., having made a division, they will have the power to perform the acts and ceremonies separately." The said dwelling-house was thereafter held jointly by *P D* and *A D* on the trust of the deed of 26th November 1849. *P D* in December 1849 died, leaving two adopted sons, *M D* and another, on the death of whom the plaintiff was adopted. *P D* also left a will, whereby he directed that the purport of the deed of 26th November 1849 should never be violated. *A D* died 30th January 1856, leaving a will, whereof he appointed the defendants *N D*, *C G*, and *S G*, executors, and thereby he devised all his property, subject to certain legacies, to *C G* and *S G*. By his will he charged his executors not to fail to carry out the agreement. The ceremonies continued to be performed as directed in the deed by the plaintiff and the defendants *M D*, *N G*, *C G*, and *S G*. By deed dated 14th July 1863, *N D*, *C G*, and *S G*, mortgaged, for valuable consideration, to the defendant *A B M*,

HINDU LAW—PARTITION—*continued*

6 RIGHT TO ACCOUNT ON PARTITION —*continued.*

of his management on the occasion of a partition or require the other members of the family to accept his *ipsi dixit* as to the property subject to partition What that account should be so as to discharge him from his liability to account as manager, and what objections the other members of the family can take to it, must depend on the conduct of the manager and the other members of the family, the nature of the property and the circumstances of the family, and cannot be stated in definite terms Members who were minors during the management cannot be taken to have consented to the management, and are entitled, when they attain their majority to h ld the manager liable not only for acts amounting

ment, has been

their interests,

in the absence o'

is such as it exists at the time of the suit for partition A brother sued his three brothers for partition of their father's estate which consisted of moveables and immoveables and a banking business As senior member of the family, he also claimed the rajseva (family idol) and the property appertaining to it The mother (*K*) of the first three defendants, and *M*, the widow of a deceased brother of the plaintiff, and *N*, his aunt, the widow of his father's brother, were also defendants to the suit The three brothers (defendant Nos 1, 2 and 3) alleged that their father had died in 1864, at which time they were minors, that the plaintiff had managed the estate ever since and had in 1865 obtained

minors, and they contended that they were entitled to an account from him of the property at the date of their father's death and of the proceeds income and profits from that date to the date of suit They contended that, as the plaintiff had been appointed administrator of their estate under Act XX of 1864 he was liable to account to them as a trustee, and was bound to show that all sales purchases, and other transactions entered into by him were necessary and for their benefit The lower

enlarge his liability to account, and that on the authorities the manager of a Hindu family was not

which the plaintiff should render of past transactions, that, having regard to the circumstances of the family and the nature of the family property, the plaintiff in producing the books of the firm since the father's death which contained an account of all transactions relating to the firm's property and of the moveable and immoveable property, had done all that he could be expected to do whether as the family manager or as certificated administrator of the defendants' interests in the family property *Held* also that the circumstance that the plaintiff had obtained a certificate of administration of the estate of the minors and sold their interests in certain houses without the consent of the Court, could not give them a counter claim against the plaintiff, unless they proved that they had been prejudiced by the sale As to ornaments purchased since the death of the father, it was directed that they should be brought into hotchpot by all the parties in making the partition As to remissions of tenants' rent and compromises of suits although a considerable loss was shown to have resulted from them it was held that the defendants had failed to show that they were improper or uncalled for and there was no evidence to make the plaintiff himself liable for them or to forbid their being transferred to the general account The losses in trade also were properly debited to the general business of the firm and the plaintiff was not personally liable for them *Held* also that the plaintiff was entitled to take the rajseva (family idol) and keep it with the property appertaining thereto as the family idol and the property thereof with liberty to such members of the family as are or shall become marjadas to have access to it for the purpose of worship *Held* also that *K* the mother of the first three defendants (step mother of the plaintiff) was entitled on this partition to a one fifth share in the estate DAMODARDAS MANEKLAL *v* UTTAMRAM MANEKLAL

[I L R, 17 Bom, 271

7 EFFECT OF PARTITION

169 — — **Finality of partition**—*Ground for re opening partition—Fraud—Mistake—Property subsequently recovered* —Partition once effected is final and cannot be re opened on the ground of the inequality of shares It can be reopened only in case of fraud or mistake, or subsequent recovery of family property MOW VISHWANATH *v* GONESH VITHAL **10 Bom, 444**

170 ———— **Apportionment of debt for which father was jointly liable**—*Effect of separation in estate* —A family having become separate in estate with apportionment of a debt, once joint, among its several members, the sons of one of the latter, on their father's decease are not liable for the whole debt for which he at one time was responsible jointly *with the rest of the family, but only* for his portion of the debt DURGA PERSHAD *v* KESHOPERSAD SINGH

[I L R, 8 Calc., 656. 11 C L R., 210
L R, 9 I.A, 27

171 ——— **Effect of partition on liability of a divided son where debt was**

HINDU LAW—PARTITION—*concluded.*

8. AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION—*concluded.*

after his death, and such a prohibition is not binding upon an assignee of the heir. *Anath Nath Dey* v. *Mackintosh, 8 B. L. R.*, 60, distinguished. *Held* also that there was a good gift of the family dwelling-house to the idol, and that the plaintiff was not entitled to any share therein. RAJENDER DUTT *v.* SHAM CHUND MITTER . I. L. R., 6 Calc., 106

179. ———— Clause restraining partition or enjoyment—*Otherwise absolute gift of property.*—Where a Hindu testator gave all his immoveable property to his sons, but postponed their enjoyment thereof by a clause that they should not make any division for twenty years,—*Held* that the restriction was void as being a condition repugnant to the gift, and that the sons were entitled to partition at once. MOKOONDO LALL SHAW *v.* GONESH CHUNDER SHAW . . I. L. R., 1 Calc., 104

180. ———— Land excluded from partition of family property and declared inalienable—*Land dedicated to family idol—Subsequent purchase from escheat department of Government—Sale in execution of decree.*—By a partition-deed by the six members of a Hindu family it was provided that part of the land of the family should be set apart for the maintenance of the family idol and should be inalienable, and the rest of the land was divided equally. Subsequently the Government claimed the dedicated land as an escheat, and sold it to the members of the family jointly, of whom one built a house on part of it—less than one-sixth with the consent of the others. The house and its site were sold in execution of a decree against the builder. *Held* that the other members of the family were not entitled to have the house removed or the sale cancelled. MALLAN *v.* PURUSHOTHAMA [I. L. R., 12 Mad., 287

HINDU LAW—PRESUMPTION OF DEATH.

1. ———— Person not heard of for more than twelve years.—According to Hindu law, a person who has not been heard of for more than twelve years is presumed to be dead. MANKEE KOER *v.* KHEDOO LALL . . 2 Hay, 623

2. ———— Disappearance—*Absence for twelve years.*—Where a Hindu disappears, and is not heard of for a length of time, no person can succeed to his property as heir until the expiry of twelve years from the date on which he was last heard of. JANMAJAY MAZUMDAR *v.* KESHAB LALL GHOSE [2 B. L. R., A. C., 134

JUNMAJOY MOJOOMDAR *v.* KESHUB LALL GHOSE [10 W. R., 484

BULBHUDDUR TEWAREE *v.* RAM TEWAREE [1 Agra, 159

3. ———— *Absence for twelve years.*—The rule of English law, that a period of seven years' absence without tidings is sufficient to raise a presumption of death, cannot be applied in

HINDU LAW—PRESUMPTION OF DEATH—*continued.*

the case of a Hindu. The Hindu law has a rule of its own, requiring the lapse of twelve years before an absent person of whom nothing has been heard can be presumed to be dead. SARODASUNDARI DEBI *v.* GOBIND MANI DEBI [2 B. L. R., A. C., 157 note

IN THE MATTER OF THE PETITION OF SHURNO MOYEE DOSSEE . . . . 8 W. R., 421

4. ———— *Absence for twelve years—Omission to perform ceremonies for death.*—Where the husband disappears for the prescribed number of years, the mere omission of ceremonies being performed by his wife will not prevent the presumption of death from arising. GHASEE *v.* JUSONDEE . . . . . . 2 Agra, 226

5. ———— Suit on bond against representatives of obligor—*Lapse of time to create presumption.*—In a suit upon a bond, the plaintiff having sued the defendants, not on the ground of their personal responsibility, but as the legal representatives of the obligor, who was supposed to be dead,—*Held* that the suit was not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there was proof of special circumstances which warrant the inference of his death within a shorter period. KARUPPAN CHETTI *v.* VERIYAL . . 4 Mad., 1

6. ———— Evidence Act, s. 108—*Suit for administration.*—The reversioners next after *J* to the estate of *S*, deceased, sued to avoid an alienation of *S*'s estate affecting their reversionary right made by his widow. *J* had not been heard of for eight or nine years, and there was no proof of his being alive. *Held* that his death might be presumed under the provisions of s. 108, Act I of 1872, for the purposes of the suit, although, in a suit for the purpose of administering the estate, the Court might have to apply the Hindu law of succession prescribed when a person is missing and not dead. PARMESHAR RAI *v.* BISHESHAR SINGH [I. L. R., 1 All., 53

7. ———— *Inheritance—Missing person—Claim after seven years—Co-owners—Absent co-owner—Claim to his share of property a question of evidence, not of succession.*—*D*, *G*, and *B* were co-owners of certain khoti villages. *B* disappeared, and was unheard of for more than seven years. In his absence, *D* received his (*B*'s) share of the rents and profits. *G* claimed to be entitled to a moiety of *B*'s share therein, and brought this suit against *D*. *Held* that *G* was entitled to such moiety. *B*, having been absent and unheard of for more than seven years, might be presumed to be dead under s. 108 of the Evidence Act (I of 1872); and *G*, as one of his two survivors, was entitled to a moiety of his property. Where the right of a party claiming to succeed to the property of another is based on the allegation that the latter has not been heard of for more than seven years, the question to be decided is one of evidence, and not a part of the substantive law of inheritance.

HINDU LAW—PARTITION—*continued*

8 AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION—*continued*

certain property, including an undivided share of the said dwelling house *A B M* afterwards instituted a suit on the mortgage against *N D*, *C G*, and *S G*, and by the decree in that suit it was on 14th April 1870 ordered that the defendants should be absolutely foreclosed of all equity of redemption in the said family dwelling house and other premises ... ings, ... *C G*, ... it of ... but unsuccessfully to have executed The present suit was brought to have the deed of trust of November 26th, 1849, established and to have the trusts thereof declared In 1854 two suits had been brought in the Supreme Court—one by *M D* and the present plaintiff, and the other by *A D*—in which suits decrees were made declaring the will of *P D* and the agreement of 26th November 1849 to be fully proved and established and binding on *A D* and his heirs and the representatives of *P D* It was found on the evidence in the present suit that the agreement of 26th November 1849 was not fraudulent, that when *A D* died the estate belonging to the representatives of *P D*, independently of the property set apart was more than sufficient to meet any claims against the ...

decrees of the Supreme Court *Held* that the family dwelling house was not absolutely dedicated by the deed of 26th November 1849 to the worship of the deities and performance of the ceremonies mentioned therein and therefore was not inalienable But the prohibition in the deed of 26th November 1849 against partition of the family dwelling house for twenty years after the death of the survivor of *P D* and *A D* implied also that there should be no alienation of it for twenty years. Until the end of the twenty years *A B M* was not entitled to possession in any shape ANATH NATH DEY *v* MACKINTOSH **8 B L R, 60**

177. ——————— *Joint property —Deed by joint owners of the family property appointing trustees for the management of the property, Effect of—Effect of deed by joint owners embodying an agreement not to partition the property* —By an instrument, purporting to be a deed of trust all the existing joint owners of the family property deputed the management of the property to trustees for the purposes of the family solely, giving the trustees certain specific directions with regard to the management of the property and the application of the funds. The beneficial rights of the owners was in no way aliened or altered by the ...

joint-owners consent to its being operative and no longer That it is not competent for owners of property in this country by any arrangement, made in their own discretion, to alter the ordinary incidents of the property which they possess, a joint property therefore cannot be made impartible in perpetuity by any such arrangement though the owners may, for sufficient consideration bind themselves to forego their rights for a specified time and definite purpose by a contract which could be enforced against them personally RADHANATH MUKERJEE *v* TARUCKNATH MUKERJEE **3 C W. N, 126**

178 ——— **Agreement restraining partition**—*Right of purchaser of share—Trust for idol* —By an agreement entered into between five brothers, who formed a joint Hindu family, it was provided that none of the parties nor their representatives, nor any person should be able to divide the real and personal property belonging to the family into shares, that while the male descendants of any of the brothers lived the sons of the daughter of the deceased persons should not be entitled to the real and personal properties, nor to the proceeds thereof, that none of the brothers nor any of their male descendants should be able to adopt a son that during the lifetime of the brothers or of the one of them who should be the last survivor their earnings should be regarded as joint property, and that if any brother or son of a brother separated himself from the family he should only get R20 000 as his share" The agreement further provided for the maintenance of widows and infant children and that the sum of two lakhs of rupees should be taken from the joint khatta for the purpose of carrying on certain business The family dwelling house had belonged to the mother of the brothers She made a gift by deed of the house and lands and houses appertaining thereto to an idol and appointed her sons managers and directed that they should live in the house, and should not have power to partition or alienate any portion of the properties settled The deed contained provisions as to the disposition of the profits arising from the lands and houses, *viz*, to provide accommodation for the families of the man- ...

the property,—*Held* that the general scheme of the arrangement between the brothers was such as could only be binding upon the actual parties to it no ...

upon trust for the maintenance of the members of the family born and to be born. This could not be done by a gift and what cannot be done by a gift cannot be done by the intervention of a trust The owner of property cannot by mere contract during his life prevent his heirs from partitioning property

HINDU LAW—REVERSIONERS
—*continued.*

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See CASES UNDER HINDU LAW—WIDOW—POWER OF ALIENATION.

See CASES UNDER LIMITATION ACT, 1877, ART. 141.

1. POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

1.——————Expectancy—*Sale or mortgage of reversionary right in ancestral property—Onus of proof in contracts by reversioners as to their expectant rights—Transfer of Property Act (IV of 1882) s. 6, cl. (a).*—The Hindu law which prevails in the N.-W. Provinces recognizes no power in a reversioner to sell or mortgage his interest in expectancy, even although he may be the heir apparent. It is necessary, when money-lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner, who, although of age at the time, was then still of tender years and without experience of business, for the Court, when the question is raised, to be satisfied that the reversioner understood the nature of the transaction and the effect of the contract which he was entering into, or that the reversioner of the family property, in which the reversioner had an estate in expectancy only, was liable for the debt in respect of which the mortgage is sought to be enforced, and that no unfair advantage was taken of the reversioner's youth and inexperience. ACHHAN KUAR *v.* THAKUR DAS

[I. L. R., 17 All., 125

Affirmed by Privy Council in SHAM SUNDER LAL *v.* ACHHAN KUNWAR . . I. L. R., 21 All., 71
[L. R., 25 I. A., 183

2. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

(*a*) WHO MAY SUE.

2.——————Suits by reversioners—*Suit to set aside alienations by Hindu widow—Suit to restrain Hindu widow from committing waste—Contingent reversionary interest.*—Persons having a contingent reversionary interest in lands, expectant on the death of a Hindu widow, though they cannot sue for a declaration of title to the lands as against third persons, may sue as presumptive heirs to set aside alienations of the property made by the widow, upon the ground of there being no legal necessity for such alienations, or to restrain her from committing waste. Unless such suits could be brought, it might be impossible, if the widow lived to a great age, to bring evidence after her death to prove that there was no legal necessity for the alienations. Nor would it be possible to prevent the widow from committing irremediable mischief to the estate. CHOTTOO MISSER *v.* JEMAH MISSER

[I. L. R., 6 Calc., 198 : 6 C. L. R., 588

Contra, RAM MONOHUR SINGH *v.* KOOLDEEP NARAIN SINGH . . . . . 11 W. R., 514

HINDU LAW—REVERSIONERS
—*continued.*

2. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued.*

3.——————*Alienation by female tenant for life—Waste—Ground for suit.*—A bill *quia timet* by a reversioner against the daughter of an intestate Hindu in possession of personalty dismissed. A Court of equity will not interfere, unless it is shown that there is danger from the mode in which the tenant for life in possession is dealing with the property. The mere fact of the tenant for life keeping in hand for about three months part of the corpus for the alleged purpose of an eligible investment does not amount to waste, nor is in derogation of the rights of those entitled in reversion. HURRY DOSS DUTT *v.* UPPOORNAH DOSSEE

[6 Moore's I. A., 433

4.——————*Sale by widow in excess of power—Suit by reversioners for share of land sold on payment of proportionate amount of sum properly lent—Decree for redemption.*—The widow of a Hindu sold to the defendants a portion of her husband's estate for less than its market value and for a sum in excess of what she was justified in raising by sale. The plaintiffs, two or three reversioners entitled to the estate, sued, on the death of the widow, to recover from the purchasers two-thirds of the land sold upon payment of two-thirds of the sum which the widow was justified in raising. *Held* that the plaintiffs were entitled to the relief claimed. SUBRAMANYA *v.* PONNUSAMI . I. L. R., 8 Mad., 92

5.——————*Declaratory decree, Suit for—Waste by Hindu widow—Suit to set aside compromise by Hindu widow.*—Where the next reversioner after a Hindu widow sues, during the lifetime of the widow, for a declaration that a compromise made by her is not binding on him, it is no sufficient ground for refusing the declaration that the plaintiff may not succeed for many years to the possession of the property, or that some of the property is of a perishable nature. UPENDRA NARAIN MYTI *v.* GOPEE NATH BERA

[I. L. R., 9 Calc., 817 : 12 C. L. R., 356

6.——————*Alienation by Hindu widow—Forfeiture of estate—Right of reversioners.*—A Hindu widow, entitled to a life-estate only, granted a patni of the lands. *Held, first,* that this did not work a forfeiture entitling the reversioners to enter. *Secondly* (STEER, *J.*, dissenting), that the reversioners were not entitled to have the patni set aside. *Thirdly*, that the patnidar, being a party to the suit, was entitled to appear against that part of the decree which declared that the act of the widow has caused a forfeiture of her estate, as well as against the part of it which set aside his patni. LALL SOONDAR DOSS *v.* HURRYKISSEN DOSS

[Marsh., 113 : 1 Ind. Jur., O. S., 32 : 1 Hay, 339

7.——————*Contingent reversioner.*—A person having only a contingent estate during the lifetime of a Hindu widow is permitted to sue simply on the ground of necessity that the contingent reversioner may be under of protecting his

HINDU LAW—PRESUMPTION OF DEATH—*continued.*

Parmeshar Rai v. *Bisheshar Singh, I L R, 1 All, 53,* concurred in. DHONDO BHIKAJI v. GANESH BHIKJI **I. L. R., 11 Bom., 433**

8. ——— **Evidence Act, ss. 107, 108**—*Presumption of date of death.*—Upon the death of a sonless Hindu, his separate estate devolved upon his two widows, the first of whom had a daughter, who had two sons, *G* and *S G*, having a son *D*. After the death of the first widow, the second came into sole possession of the property and so continued till her death in 1882. At that time *S* was still living, but *G* had not been heard of by any of his relatives or friends since 1869 or 1870. In 1884 a purchaser from *S* claimed possession of the whole estate, and was resisted by *D* on the ground that the estate had, on the death of the second widow, devolved on his father and *S* jointly, and *S* was not competent to alienate it. *Held* that the question whether the defendant's father was living at the time of the [illegible] question of evi- [illegible] of the Evidence [illegible] the defendant's [illegible] prior to the time [illegible] according to the [illegible] grandfather's [illegible]

[illegible] *R., 7 All., 297, Janmajay Mazumdar* v. *Keshab Lal Ghose, 2 B. L. R., A. C., 134; Guru Dass Nag* v. *Matilal Nag, 6 B. L. R., Ap., 16,* and *Parmeshar Rai* v. *Bisheshar Singh, I. L. R., 1 All., 53,* referred to. DHARUP NATH v. GOBIND SARAN. GOBIND SARAN v. DHARUP NATH **[I. L. R., 8 All., 614**

9. ——— *Validity of adoption depending on whether natural son alive or dead—Onus of proof—Deed or will conferring estate on a person described as adopted son—Person not heard of for seven years.*—Death is to be presumed [illegible] there is no [illegible] 577, [illegible] nephew) and executed a deed of adoption, which stated that he had no hope that his son Bala was alive, and that he had therefore adopted the plaintiff. The deed further declared the plaintiff to be the owner of all *S*'s property with all the rights of a natural son, but provided that, in the event of the lost son returning, he should have half. In 1892 the plaintiff, as *S*'s adopted son, brought this suit to recover some of *S*'s property, which was in the hands of the defendants, who claimed it as *S*'s heirs. They (*inter alia*) impeached the plaintiff's adoption. *Held* that, in order to recover the property as the adopted son of *S*, it lay on the plaintiff to prove a valid adoption. It was a condition precedent to prove that at the death of the adoption *S* was without a son. It was therefore for the plaintiff to prove that Bala was then dead. There was at that time no presumption that Bala was dead and there being no evidence on the point, it was impossible to say when he died or consequently that the adoption was valid. *Held*, however, that plaintiff was entitled to succeed as donee under the deed of adoption. It was clearly *S*'s intention to give the estate to the plaintiff as being his adopted son. But if the adoption was invalid, the gift had no effect. The onus here was on the defendants. It was for them to show that Bala was at that date alive and the adoption therefore invalid. That burden they had not discharged, and the plaintiff therefore was entitled to a decree. RANGO BALAJI v. MUDIYEPPA **[I. L. R., 23 Bom., 296**

HINDU LAW—RECOVERED PROPERTY.

——— **Decree for possession.**—The Hindu law on the subject of "recovered" property applies to cases in which the property has passed from the family to strangers and has been held by them adversely to the family, and not to cases where the [illegible] privity of the co-heir, must at least be *bonâ fide* and not in fraud or by anticipation of the intentions of the co-heir. BISSESSUR CHUCKERBUTTY v. SEETUL CHUNDER CHUCKERBUTTY **9 W. R., 69**

HINDU LAW—REVERSIONERS Col

See CASES UNDER DECLARATORY DECREE, SUIT FOR—REVERSIONERS

HINDU LAW—REVERSIONERS—*continued.*

2. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued.*

15. ——— *Suit by reversioner with consent of reversioner having right to sue.*—A suit by a reversioner to set aside an alienation is cognizable if the title of the reversioner has been injured by a distinct act of alienation, and if the widow who ought to have brought the suit has relinquished her life-interest and signified her assent to the suit proceeding. BHEEM RAM CHUCKERBUTTY *v.* HUREE KISHORE ROY . . 1 W. R., 359

16. ——— *Suit to set aside adoption—Right to sue.*—The mere possibility of succeeding to the estate held by a widow for life does not confer on the person having it the right to sue to contest an adoption alleged to have been made by the widow. Such a suit must be brought either by the presumptive heir, or in the case of his refusal to sue, or precluding himself by act or word from suing, or of his concurring in, or colluding with, the alleged adoption, by the next reversioner. In the latter case, the plaint must state why the presumptive heir does not sue, and the Court will, in the exercise of its discretion, decide whether the plaintiff is competent to sue. GYANENDRO NATH ROY *v.* LOBONGOMUNJURI DABI . . . . 11 C. L. R., 198

17. ——— *Alienation by widow—Suit for declaratory decree.*—Where a Hindu widow in possession as such of her deceased husband's property alienates it, only the person presumptively entitled to possess the property on her death may sue for a declaration of his right as against such alienation, unless such person has precluded himself from so suing by collusion and connivance, when the person entitled next to him may so sue. RAGHU NATH *v.* THAKURI . I. L. R., 4 All., 16

18. ——— *Hindu widow—Alienation—Suit by reversioner to set aside alienation—Nearest reversioner—Collusion.*—The only person who can maintain a suit to have an alienation by the widow of a childless Hindu declared inoperative beyond the widow's own life-interest is the nearest reversioner who, if he survived the widow, would inherit; unless it is shown or found that he refused without sufficient cause to sue, or precluded himself by his own act from suing, or colluded with the widow, in which case only can the more remote reversioners maintain such a suit. *Anund Koer* v. *Court of Wards, L. R., 8 I. A., 14: I. L. R., 6 Calc., 764,* and *Raghunath* v. *Thakuri, I. L. R., 4 All., 16,* referred to. *Ramphal Rai* v. *Tula Kauri, I. L. R., 6 All., 116,* and *Madan Mohan* v. *Puran Mal, I. L. R., 6 All., 288,* distinguished. PHULA *v.* KANTA PRASAD . . . . I. L. R., 9 All., 441

19. ——— *Suit by reversioner when nearest reversioner cannot sue.*—When the immediate reversioner is in possession of a part of the property, and not in a position to institute proceedings to set aside alienations, the next reversioner is entitled to sue to protect his own future rights. BALGOBIND RAM *v.* HIRUSRANEE . 2 W. R., 255

HINDU LAW—REVERSIONERS—*continued.*

2. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued.*

20. ——— *Persons not the next reversioners—Right to sue.*—Where it appeared there were other persons nearer than plaintiffs, and that there had been no disclaimer of their right on their part,—*Held* that plaintiffs, who, according to the ordinary Hindu law of inheritance, were not the next heirs, could not maintain the suit. GOOSHAEEN TEEKUMJEE *v.* PURSOTUM LALLJEE . 3 Agra, 238

21. ——— *Suit to set aside adoption—Right of suit.*—Although a suit, to contest an adoption made by a Hindu widow of a son to her deceased husband, may be brought by a contingent reversionary heir, yet it is not the law that any one who may have a possibility of succeeding to the estate of inheritance held by the widow for her life is competent to bring such a suit. The right to sue must be limited. As a general rule, the suit must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed to the estate if the widow were to die at the time of the suit. But it may be brought by a more distant heir, if those nearer in the line of succession are in collusion with the widow, or have precluded themselves from interfering. The rule laid down in *Bhikaji Apaji* v. *Jagannath Vithal, 10 Bom., A. C., 351,* approved. Reference made to *Kooer Golab Singh* v. *Rao Kurun Singh, 14 Moore's I. A., 187.* If the nearest heir had refused, without sufficient cause, to institute proceedings, or if he had precluded himself by his own act or conduct from suing, or had colluded with the widow, or had concurred in the act alleged to be wrongful, the next presumable heir would be, in respect of his interest, competent to sue. In such a case, upon a plaint stating the circumstances under which the more distant heir claimed to sue, a Court would exercise a judicial discretion in determining whether he was or was not competent in that respect to sue; and whether it was requisite or not that any nearer heir should be made a party to the suit. In a suit to have an alleged adoption set aside, the plaintiff, a minor, through his guardian, claimed to sue, on the strength of being the adopted son of the husband of a daughter of a brother of the father of the deceased, under whose authority the adoption was alleged to have been made by the widow, the defendant. The Judicial Committee, without deciding that, as an adopted son, this minor had the same rights as a naturally-born son, and without deciding that he would have been entitled, in default of nearer relations, to succeed to the estate of inheritance, after the death of the widow, pointed out that he could only have succeeded as a distant bandhu, and that he had not a vested, but at most a contingent interest. And *held* that, there being in fact heirs nearer in the line of succession than this minor, the grounds of his competence to sue in respect of his interest, assuming that interest to exist, should have been made out in the manner above indicated. ANUND KUNWAR *v.* COURT OF WARDS

[I. L. R., 6 Calc., 764
8 C. L. R., 381: L. R., 8 I. A., 14

HINDU LAW—REVERSIONERS
—*continued*

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued*

contingent interest It is therefore essential to see that he has such an estate as entitles him to come in that way, *i.e* that he holds the character which he professes THAKOORAIN SAHIBA *v* MOHUN LALL
[7 W R, P C, 25
11 Moore's I A, 386

8 ———— *Interest sufficient to give right to sue*—*Held* under the circumstances that the plaintiff had sufficient interest to enable him to maintain a suit to question the adoption of a son BROJO KISSORE DOSSEE *v* SREENATH BOSE
[8 W R, 241

9 ———— *Remote reversioner*—Suits to set aside improper alienations by a widow cannot be brought by those whose rights are only inchoate and remote as are those of a minor who is only entitled in reversion after the life estate of his mother and sister in the event of their surviving their mother, whose alienations he seeks to set aside BAMA SOONDUREE DOSSEE *v* BAMA SOONDUREE DOSSEE 10 W R., 301

Granting review in S C 10 W R, 133

10 ———— *Suit for declaration by a remote reversioner—Specific Relief Act (I of 1877) s 42—Parties*—The plaintiff claiming a remote reversionary interest in the estates of a deceased Hindu sued for a declaration of the invalidity of an adoption made by the widow It appeared

was entitled to bring the suit without proof of fraud on the part of the nearer reversioners (2) that the nearer reversioners were rightly impleaded in the suit *GURULINGASWAMI v RAMALAKSHMAMMA*
[I L R., 18 Mad, 53

11 ———— *Suit by rever*

limited to the nearest reversionary heir and if he without sufficient cause refuses to institute proceedings or if he has precluded himself by his own act and conduct from so doing or has colluded with the

HINDU LAW—REVERSIONERS
—*continued*

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued*

brother s sons Subsequently *R* adopted *V* as a son *M* who lived with *R* and *V* did not take any steps to dispute the alleged adoption The plaintiffs now sued for a declaration that the adoption if made in fact was invalid and that they were entitled to succeed to the property of *A* on the death of his widow *R* *Held* that as the plaintiffs were entitled under s 2 of Bombay Act V of 1886 to succeed to the vatan property in preference to *M* after the death of *R*, and were the presumptive reversionary heirs after *R*,

the plaintiffs *Anund Kunwar v Court of Wards I L R 6 Calc 764 L R 8 I A 22* and *Gulab Singh v Rao Kurun Sing 14 Moore s I A 193 10 B L R 1*, referred to and followed RAMABAI *v* RANGRAV . I L R, 19 Bom, 614

12 ———— *Suit to set aside alienation by Hindu widow—Grandsons of daughter of alienor's deceased husband*—*Held* in a suit to set aside an alienation made by a Hindu widow of property which had been of her deceased husband in his lifetime that the sons of the son of a daughter of the alienor's late husband were their father and grandmother being dead reversioners and as such entitled to sue to set aside the alienation made by the widow *Krishnayya v Pichamma I L R 11 Mad 287* and *Babu Lal v Nanku Ram I L R 22 Calc 339* referred to SHEOBARAT KUARI *v* BHAGWATI PRASAD I L R, 17 All, 523

13 ———— *Suit to set aside alienation—Right of remote reversioner—Relinquishment of right of suit*—Although a suit to set aside an alienation alleged to have been illegally made by a Hindu widow of property belonging to

SINGH *v* MURDUN SINGH 2 N W, 31

14 ———— *Right to bring*

reversioner or reversioners have been waived BHIKAJI APAJI *v* JAGANNATH VITHAL 10 Bom, 351

HINDU LAW—REVERSIONERS
—*continued.*

2. POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued.*

legal necessity, and for a declaration that the alienation was void and incapable of affecting his right of succession. A daughter of the deceased was still living and had taken no steps to set aside the sale. *Per* MAHMOOD, *J.*, that mere delay by a reversioner in instituting a suit to set aside an illegal sale made by a childless Hindu widow cannot be understood to amount to acquiescence in the sale. The acquiescence which would entitle a more remote reversioner to maintain the suit must be such as would amount to an equitable estoppel, precluding the first reversioner from contesting the validity of the sale made by the widow. *Duleep Singh* v. *Sree Kishoon Panday, 4 N. W., 83,* followed. Also *per* MAHMOOD, *J.*, that the existence of female heirs, whose right of succession cannot surpass a "widow's estate," does not affect the status of the nearest presumptive reversionary heir to the full ownership of the estate, and that such presumptive heir can maintain a suit for declaratory relief such as was prayed for in the present suit, irrespective of the question of collusion or concurrence by such female heirs in the alienation by a childless Hindu widow or other female heir holding a similar estate. *Chunderkoomar Hazaree* v. *Dwarkanath Purdhan, S. D. A., 1859, p. 1623,* and *Bal Gobind Ram* v. *Hirusranee, 2 W. R., 255,* followed. *Bhagwandeen Doobey* v. *Myna Baee, 11 Moore's I. A., 487 ; Gajapathi Nilamani Patta Maha Devi Garu* v. *Gajapathi Rhadamani Patta Maha Devi Garu, L. R., 4 I. A., 212 ;* and *Ram Lal* v. *Bansee Dhur, S. D. A., N.-W. P., 1866, p. 67,* referred to, *Anund Koer* v. *Court of Wards, L. R., 8 I. A., 14,* distinguished. *Per* OLDFIELD, *J.*, that the nearest reversioner being the widow's daughter, who herself could only take a limited interest in the property, and who had herself taken no steps to set aside the sale, the Court would be exercising a proper discretion in permitting the plaintiff as the next reversioner after the daughter to bring the suit. BALGOBIND *v.* RAMKUMAR . . . . . **I. L. R., 6 Calc., 431**

30. ——— *Right of daughter to sue.*—*Held* that a daughter was competent to sue during the lifetime of her mother, the encumbrancer, the daughter being the immediate reversioner to the property, and her reversionary right being seriously threatened. GOLAB KOONWER *v.* SHIB SAHAI . . . . **2 Agra, 54**

31. ——— *Son's power to sue in lifetime of mother.*—The daughter's son during the lifetime of his mother is not such a reversioner as is competent to challenge the act of his maternal grandmother. RADHA KISHEN *v.* BUKHTAWUR LALL [**1 Agra, 1**

32. ——— *Suit to set aside alienation of ancestral property—Right of remoter reversioner to sue.*—In a suit by a reversioner to set aside an alienation of ancestral property, where plaintiff questioned the acts of alienation effected jointly by his father and his aunt, it was held that he was entitled to maintain the suit even though his father, and not he, was the immediate reversioner. RETOO RAJ PANDEY *v.* LALLJEE PANDEY . **24 W. R., 399**

33. ——— *Right of succession—Nephews.*—The right of succession accrues to nephews (sisters' sons) whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow; and the nephews can sue to question the validity of alienations made by the widow without legal necessity. GOBIND MOONEE DOSSEE *v.* SHAM LALL BYSACK. KALEE COOMAR CHOWDHRY *v.* RAMDASS SHAHA . . . **W. R., 1864, 153**

34. ——— *Alienation by uncle—Right of nephew.*—*Held* that a nephew is not competent by Hindu law to object to any alienation of ancestral property directly or indirectly made by his uncle. GUNGA DEEN RAWUT *v.* MODHOO SUDUN . . . . **3 Agra, 4**

35. ——— *Right of nephew—Consent of heirs—Daughters-in-law.*—A nephew (who would be next of kin entitled to the property) can, with the consent of his father and his uncles, the persons immediately entitled to succeed to the property, maintain a suit for proprietary possession against the daughters-in-law of a deceased Hindu, who have no other right in the property than a right to maintenance. LADOOIAH *v.* SANVALEY [**3 Agra, 191**

36. ——— *Suit by step-son or step-grandson—Suit in lifetime of widow.*—A reversioner in the position of son or step-grandson may sue in the lifetime of a Hindu widow in possession to prevent waste. CHUMMUN MOHUNT *v.* RAJENDRA SAHOO . . . . . **7 W. R., 119**

37. ——— *Alienation by widow—Right of reversioner to sue.*—A sale by a widow of property derived from her husband, who is divided in interest from his own family, is valid for her life. Such a sale will not be set aside at the instance of a divided brother of the husband. BHAGAVATAMMA *v.* PAMPANA GAUD . **2 Mad., 393**

38. ——— *Power of reversioner to assign his interest—Right of assignee—Waste.*—A reversionary contingent interest subject to the life-estate of a Hindu widow may be assigned. The assignee of such an interest is entitled to restrain the widow from committing waste. RYCHURN PAUL *v.* PEARY MONEE DASSEE . **Marsh., 622**

39. ——— *Assignee of reversioner—Suit by assignee—Widow's estate.*—During the existence of a Hindu widow's interest in an estate, inasmuch as she has in her the whole estate of inheritance, the assignee of a reversionary heir to her husband has no interest therein as such assignee, which will enable him to bring a suit to have a mortgage and decree affecting the estate set aside. This

HINDU LAW—REVERSIONERS
—continued

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued*

22. ——————— *Collusion between widow and transferee* —*Held* that where the widow and plaintiff, the transferee, were engaged in a scheme for evading the restrictions put by the Hindu law upon the widow's right of alienation, and were making use of the forms of a suit in furtherance of the fraud it was quite competent for the lower Appellate Court to determine and satisfy itself (some of the

had the nearer reversioner been present and consented to the decree being passed in plaintiff s favour DOWAR RAI *v* BOONDA
[Agra, F. B, 57: Ed. 1874, 43

23. ——————— *Collusion between widow and next heir—Right of remoter reversioner to sue* —Where a daughter was colluding with the widow in making a transfer of divided property,—*Held* that plaintiffs the next reversioners after the daughter, were competent to maintain the suit to have the transfer declared null and void. JWALA NATH *v* KULLU
[3 Agra, 55. Agra, F. B, Ed 1874, 138

24. ——————— *Alienation by Hindu widow—Right to sue—Daughters* —The re-

maintain the suit *Anund Koer* v *Court of Wards L R, 8 I A 14* referred to MADARI *v* MALKI
[I. L R., 6 All, 428

25 ——————— *Next presumptive reversioner—Intervening woman's estate* —The plaintiff s grandson (daughter's son) of a deceased Hindu sued during the lifetime of his mother to set aside a will made by his mother's father in favour of an idol under the management of his step mother, the testator's second wife *Held* that there being no evidence of collusion or contrivance the plaintiff, not being the next reversioner was not competent to

NARAIN *v* JANKI I. L. R, 15 All, 132

26 ——————— *Suit in lifetime*

HINDU LAW—REVERSIONERS
—continued

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued*

of a sale by the widow of the last male holder notwithstanding the fact that he left a daughter who was alive at the date of suit but was not joined as a party RAGHUPATI *v* TIRUMALAI
[I L R., 15 Mad, 422

27 ———

tween such persons and *M* and *N* were referred by them to arbitration, and an award was made and filed in Court which among other things partitioned the estate between *S* and such persons *G* who claimed the right to succeed to the estate on *S* s death sued for the cancellation of the award on the ground that it was fraudulent and affected his reversionary in

[I. L R, 2 All., 41

28 ——————— *Partition between widow and mother, both claiming life interest—Alienation by mother—Declaratory decree* —Upon the death of a Hindu, a dispute as to his separate estate took place between his mother and his widow

the property *Held* that, inasmuch as the donor was in any circumstances entitled to maintenance and the decision come to upon the arbitration was to put her in possession of half the property but only on the footing of a woman's interest for life the defendants could not set up any title by adverse possession on her part to defeat the claim of the reversioners *Held* also that the plaintiffs were competent to maintain

29 ——————— *Alienation by*

HINDU LAW—REVERSIONERS—*continued.*

3. RIGHT TO POSSESSION—*continued.*

plaintiff was not entitled to have possession of the property delivered to her, inasmuch as the alienation did not amount to a total destruction of the benefit derivable from the right of succession, and could not therefore be called waste, but that she was entitled only to a declaration that the alienation made by the widow and the subsequent alienations by her alienees should not affect or prejudice the plaintiff or reversioner's interests beyond the lifetime of the widow. MUDDUN MOHUN SHAHA *v.* ANUNDMOYI [5 C. L. R., 49

49. ———— *Alienation by widow—Fraud, Proof of.*—A Hindu widow being in possession of certain lakhiraj lands in which she had a life-interest, the zamindar brought a suit against a minor reversioner and others to resume the land, obtained an *ex-parte* decree, and, whether under colour thereof or not, afterwards obtained possession. The widow, who was then dispossessed, brought a separate suit to recover the property, in which the reversioner, who had meantime come of age, was joined as a co-plaintiff. Owing to a petition presented by the widow, this suit was treated as having come to an end. *Held* that, in the circumstances, and the consequent jeopardy to the title of the reversioners, the reversioner above referred to was competent, without showing fraud on the part of the widow, to bring a suit to have the land reduced to his possession, and to prevent the zamindar from acquiring title by adverse possession. CHUNDER KOOMAR GANGOOLY *v.* RAJ KISHEN BANERJEE . . 14 W. R., 322

50. ———— *Collusion of widow with parties in adverse possession.*—Suit by a Hindu daughter, for herself and as guardian of her minor son, to recover possession of her deceased father's separate estate. The legal representatives of the estate were, first, the deceased's widow, and after her, the plaintiff and her son. The widow not only failed to occupy and manage the estate, but, in collusion with the other defendants claiming under a hostile title, abandoned her rights, alleging that her husband was not separate, but a member of a joint family, and left the hostile holders undisturbed. To preserve the separate estate from becoming extinguished by the operation of the law of limitation, it was necessary to remove the adverse occupants and to place the estate in the possession of some person to be appointed to represent it; and as the widow (the legal representative) never was in possession and did not ask for it, but repudiated all claim to it, it was held that no one had a better right to the possession than the plaintiff, and possession was accordingly decreed to her as manager during the widow's lifetime. GUNESH DUTT *v.* LALL MUTTEE KOOER [17 W. R., 11

See RADHA MOHUN DHUR *v.* RAM DAS DEY [3 B. L. R., A. C., 362: 24 W. R., 86 note

SHAMA SOONDUREE CHOWDHRAIN *v.* JUMOONA CHOWDHRAIN . . . 24 W. R., 86

HINDU LAW—REVERSIONERS—*continued.*

3. RIGHT TO POSSESSION—*concluded.*

51. ———— **Right to manage property as trustee**—*Alienation by widow without necessity—Waste.*—When a widow is proved to have made alienations without legal necessity, the reversioner may be appointed to act as her trustee. DINKISHEN SHATRAH *v.* GUNGADHUR MOOKERJEE [2 Hay, 582

4. RELINQUISHMENT BY WIDOW TO REVERSIONERS.

52. ———— **Effect of relinquishment by female**—*Title of reversioner on relinquishment.*—The succession of females according to Hindu law is not regular succession and is not based upon the ordinary theory of spiritual benefit. Therefore, if they relinquish their rights in favour of the reversioner, the case is again brought back to the normal state of succession, the effect being to vest in him a complete title. GUNGA PERSHAD KUR *v.* SHUMBHOONATH BURMAN . . 22 W. R., 393

53. ———— **Effect of relinquishment by widow**—*Consent of reversioners—Relinquishment to second reversioners.*—According to Hindu law, a widow in possession can relinquish, and, by relinquishing, anticipate for the reversioners their period of succession. A relinquishment in favour of second reversioners is also valid if made with the consent of the first reversioners. PROTAB CHUNDER ROY CHOWDHRY *v.* JOY MONEE DABEE CHOWDHRAIN [1 W. R., 98

54. ———— *Surrender of life-estate—Title of reversioners.*—The surrender of her estate by a Hindu widow, or mother to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited it, vests in those persons the inheritance which they would take if she at that time were to die. *Shama Soonduree* v. *Surut Chunder Dutt,* 8 *W. R.*, 500, and *Gunga Pershad Kur* v. *Shumbhoonath Burman,* 22 *W. R.*, 393, followed. NOBERDOSS ROY *v.* MODHU SOONDARI BURMONIA [I. L. R., 5 Calc., 732: 5 C. L. R., 551

55. ———— **Surrender of possession by widow in consideration of maintenance**—*Arrangement by reversioners to pay widow maintenance for her life instead of possession of property.*—Where persons who are presumptively the next in succession to a widow come into an arrangement by which she surrenders possession to them and receives a maintenance from them, such arrangement must be held to be binding as a family arrangement, and would not be altered by one or other of the reversioners dying during the lifetime of the widow. LALLA KUNDEE LALL *v.* LALLA KALEE PERSHAD [22 W. R., 307

56. ———— **Acceleration of succession by Hindu widow**—*Surrender of life-estate by widow to heir.*—A Hindu widow can accelerate the succession of the heir by conveying absolutely her

HINDU LAW—REVERSIONERS—*continued*

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*continued*

is so even though the assignee is the next heir to the property after the assignor RAICHARAN PAL v PYARI MANI DASI 3 B L R, O C, 70

RAM BUNSEE KOONWAR v MOHESHUR KOONWAR [1 W. R, 338

(b) WHEN THEY MAY SUE AND HOW

40. ———— Cause of action, Accrual of —*Suit for possession—Effect on reversioner of* ... The right of a reversionary he ...

when his rights as reversioner are converted into a right to immediate possession, that he is required to sue for possession of the estate The mere fact of the adoption of another party does not prejudice his rights. Those rights are invaded only when the adopted son, on the death of the widow, takes possession of the property as adopted son. JUGGENDRONATH BANERJEE v RAJENDRONATH HOLDAR [7 W. R, 357

41. ———— *Suit for possession of share of estate* —Where the plaintiff was entitled to a share of the estate of the defendant, a widow, in case she should die not having exercised the right to adopt —*Held* that a suit for his share on the widow's failure to adopt within a year must be dismissed, the plaintiff having no present right to possession S 162 of *Strange's Manual, H L*, dissented from RAMAN AMMAL v SUBHAM ANNAVI *alias* SUBRAMANIYAN ANNAVI 2 Mad, 399

RANEE KOONWAR . 1 Agra, 234

parties having no right to it, the cause of action for a suit to recover possession is afforded thereby to the widow, and not to the reversionary heirs JOY MOORUTH KOOER v BALDEO SINGH [21 W. R, 444

44 ———— *Suit for share of estate or to set aside alienation* —A Hindu reversioner ... after the death of a tenant for life

HINDU LAW—REVERSIONERS—*continued*

2 POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—*concluded*

45. ———— *Suit for compensation money paid to lessee of widow for right of working quarries on land leased to him—Quarries worked for purposes of State Railway—Waste—Right of widow to work quarries* —Land inherited by a widow from her husband was leased by her

SUBBA REDDI v CHENGALAMMA [I. L R., 22 Mad., 126

3 RIGHT TO POSSESSION

46 ———— Suit for immediate possession—*Waste on account of alienation by widow* —In cases where the sale by a Hindu widow

owing to the sale or has been wasted by the purchasers CHUTTURDHAREE SINGH v HURCOOMAREE [1 Hay, 107

47 ———— Right of reversioners on alienation being set aside—*Act of widow involving forfeiture of estate* —Although an alienation of property by a widow for other than allowable purposes may be declared void yet the reversioners are

BAMASOONDUREE DOSSEE v BAMA SOONDUREE DOSSEE 10 W. R, 133

in which case, however, a review was granted *See* S C 10 W. R., 301

RUGHOOBAR DYAL SINGH v BHEEKAREE SINGH [22 W. R, 472

48. ———— Suit for possession on ac

the alienations were not ...

HINDU LAW—REVERSIONERS—*continued.*

3. RIGHT TO POSSESSION—*continued.*

plaintiff was not entitled to have possession of the property delivered to her, inasmuch as the alienation did not amount to a total destruction of the benefit derivable from the right of succession, and could not therefore be called waste, but that she was entitled only to a declaration that the alienation made by the widow and the subsequent alienations by her alienees should not affect or prejudice the plaintiff or reversioner's interests beyond the lifetime of the widow. MUDDUN MOHUN SHAHA *v.* ANUNDMOYI

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[17 W. R., 11

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[22 W. R., 307

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HINDU LAW—REVERSIONERS —*continued.*

4. RELINQUISHMENT BY WIDOW TO REVERSIONERS—*concluded.*

life-estate to him, but it is essential that she should surrender her estate, so that the whole estate should become at once vested. A Hindu widow executed an ikrarnama in favour of her daughter's son, then apparently the heir who would ultimately succeed,

...

(deceased) daughter, but born at the date of its execution BEHARI LAL *v* MADHO LAL AHIR GAYAWAL . I. L. R., 19 Calc., 236 [L. R., 19 I. A., 30

5 ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS

57. ——— **Arrangement by next reversioner allowing her to keep possession** —*Loss of rights by widow on re-marriage—Act XV of 1856, s 2*—Where a widow having lost her rights in her husband's estate on account of re-marriage under the provisions of s 2, Act XV of 1856, was allowed to retain possession by the next reversioner,—*Held* that such arrangement by the next reversioner was only binding upon him, and not on the heirs of such reversioner, who, on the death of the former, were entitled to sue for possession of the property by dispossessing the widow KAISHO *v.* JUMNA . 1 Agra, 140

58. ——— **Relinquishment by Hindu widow of her life-interest to reversioner**—*Gift by reversioner to widow of moiety of estate—Declaratory decree, Suit for—Suit by reversioner in lifetime of widow—Right of suit—Specific Relief Act (1 of 1877), s. 42*—*M* died, possessed of certain immoveable properties, and leaving two widows, one of whom died shortly after him, leaving a daughter's son *R* The other widow, *S*, came to an arrangement with *R* under which, on 9th December 1889, two deeds were executed, by the first of which *S* relinquished to *R* her life-interest in the

...

half share of a suit by the ... of *M* for a valid, and did *Held* that the of the widow. *Isri Dut Koer* v *Hansbutti Koerain, I L R, 10 Calc, 324: L R, 10 I A, 150,* referred to *Pirthi Pal Kunwar* v *Guman Kunwar, I L R, 17 Calc, 933 L R, 17 I A, 107, Bhujendro Bhusan Chatterjee* v *Triguna Nath Mookerjee, I L R., 8 Calc, 761,* and *Kattama Natchiar* v *Dorasinga Tever, 15 B L R, 83 23 W. R, 314 L R, 2 I A, 169,* distinguished. *Held* also, following the case of *Nobokishore Sarma Roy* v *Harinath Sarma Roy, I L R, 10 Calc, 1102,* that the moiety of the properties, which was given by *S* to *R*, was absolutely alienated in his favour, and the plaintiff was not entitled to question the validity of the alienation, so far as that portion of the properties was concerned *Held* further that, though the effect of the decision in *Nobokishore Sarma Roy v. Harinath Sarma Roy* is to make the widow and the presumptive reversioners competent to deal with the estate absolutely for certain purposes, the widow cannot, with the consent of the presumptive reversioner, convert her life interest in any portion of her husband's

...

HEM CHUNDER SANYAL *v* SARNAMOYI DEBI [I. L R, 22 Calc, 354

59. ——— **Hindu widow, alienation**

...

by a deed during her lifetime, he is not entitled to maintain a suit for possession after the death of the widow against a person who had purchased the property from the widow several years before the relinquishment by the reversioner KALI KISHORE PAL *v* ABDUL KARIM 2 C. W. N, 132

60 ——— **Contract made in settlement of disputes as to estate**—*Condition restraining power of leasing property—Transfer of Property Act (IV of 1882), ss 10 and 15*—In an ikrarnama executed by a Hindu widow on the one side and her husband's cousins on the other, in settle-

...

individually, it would be ... mutual consultation of both the parties," and if "the document be not signed and consented to by both the parties, it shall be null and void" In a suit brought on the basis of the ikrarnama to set aside a lease granted by the widow,—*Held* that there is nothing in any statute law which renders such a provision inoperative, neither ss 10 and 15 of the Transfer of Property Act (IV of 1882) nor any principle underlying them is applicable to it it is not an unreasonable provision, there was no absence of equity in the arrangement, and effect should be given to it KULDIP SINGH *v* KHETRANI KOER [I. L. R, 25 Calc, 869 2 C. W. N, 463

6. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT

61 ——— **Effect of conveyance by widow and reversioners**—*Title of alienee*—

HINDU LAW—REVERSIONERS
—*continued.*

6. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT—*continued.*

A Hindu widow in possession and the apparent next taker, by joining in one conveyance, can make a complete title. KISHEN GEER *v.* BUSGEET ROY
[14 W. R., 379

TRILOCHUN CHUCKERBUTTY *v.* UMESH CHUNDER LAHIRI . . . . . 7 C. L. R., 571

62. ———— *Alienation for legal necessity, Binding effect of, on other reversioners—Consent of next reversioner.*—Under the Hindu law current in Bengal, a transfer or conveyance by a widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person, not a party thereto, who is the actual reversioner, upon the death of the widow, from asserting his title to the property. NOBOKISHORE SARMA ROY *v.* HARI NATH SARMA ROY
[I. L. R., 10 Calc., 1102

63. ———— *Power of remoter reversioner to question alienation.*—Observations on the power of a remoter reversioner to question alienations by a Hindu widow in which the next reversioner has concurred. SIA DASI *v.* GUR SAHAI
[I. L. R., 3 All., 362

64. ———— **Ratification by reversioner of conveyance by widow**—*Receipt of rent by reversioner from alienee of widow—Subsequent suit to set aside alienation.*—Where a tenure granted by a widow is recognized, after her death, by the reversionary heir, who receives rent from the holder of the tenure, such receipt amounts to a ratification of the tenure, and a suit to set aside, on the ground of the widow's incompetency to grant it, cannot succeed. MOHESH CHUNDER BOSE *v.* UGRA KANT BANERJEE . . . 24 W. R., 127

65. ———— **Gift by Hindu widow of her own interest and that of consenting reversioner.**—A Hindu widow in possession can, with the consent of a reversioner, make a valid gift which will operate so far as the interest of the widow and that of the consenting reversioner are concerned. *Rany Srimuty Dibeah* v. *Rany Koond Luta, 4 Moore's I. A., 292; Koer Goolab Singh* v. *Rao Kurun Singh, 14 Moore's I. A., 176; Sia Dassi* v. *Gur Sahai, I. L. R., 3 All., 362;* and *Raj Bullubh Sen* v. *Oomesh Chunder Rooz, I. L. R., 5 Calc., 44,* referred to. *Ramphal Rai* v. *Tula Kuari, I. L. R., 6 All., 116,* distinguished. RAMADHIN *v.* MATHURA SINGH . I. L. R., 10 All., 407

66. ———— **Alienation by Hindu widow of a portion of her estate with consent of some of the reversioners**—*Suit by other reversioners to set aside alienation.*—The principle enunciated by the Full Bench in the case of *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy, I. L. R., 10 Calc., 1102,* is not applicable to a case where some only of the reversioners have consented to an alienation by the widow, and where therefore only a portion of the widow's estate has been alienated. RADHA SHYAM SIRCAR *v.* JOY RAM SENAPATI
[I. L. R., 17 Calc., 896

SRISTIDHUR CHURAMONI BHUTTACHARJEE *v.* BROJO MOHUN BIDDYARUTON BHUTTACHARJEE
[I. L. R., 17 Calc., 900 note

67. ———— **Fraudulent consent given by nearest reversioner**—*Suit by a subsequent nearest reversioner to set aside alienations.*—In a suit brought by the nearest reversioner of a Hindu widow who had alienated portions of her husband's estate with the consent of the nearest reversioner alive at the date of the alienation (since deceased), it was found that the alienations were colourable transactions fraudulently got up for the purpose of defeating the plaintiff's claim,—*Held* that the consent of the nearest reversioner, who must have been aware of the fraud, was of no avail to validate the transactions impeached, and that they were therefore invalid as against the plaintiff. KOLANDAYA SHOLAGAN *v.* VEDAMUTHU SHOLAGAN
[I. L. R., 19 Mad., 337

68. ———— **Sale by a Hindu widow**—*Whether the reversioner consented that she should sell the whole inheritance, or only her life-estate.*—The sale by a Hindu widow of a share in village lands of which share her husband had been proprietor, having taking place without justifying necessity, could extend no further than to transfer her interest as a widow, for life, unless the consent of the reversionary heir had been given to her selling the whole inheritance. The appellant's case was that this consent had been given. The evidence of its having been given was the fact that this heir, having been appointed the widow's mukhtar for the purpose, had executed, on her behalf, a sale-deed containing words to the effect that the vendee had become (as the English translation on the record expressed it) "absolute" owner of the share sold. This heir, however, received no consideration to induce him to relinquish the reversionary title; and, on the death of the widow, his descendant claimed the inheritance against the vendee's son, then in possession. *Held* that it had not been made so clear that the conveyance transferred the whole estate of inheritance as to cause it to follow that the reversionary heir, when shown to have consented to the transfer by the widow, must be taken to have consented to a transfer by her of the whole estate of inheritance. Therefore, the judgment of the Appellate Court below, that the transfer extended only to the widow's life-estate, must be maintained. JIWAN SINGH *v.* MISRI LAL
[I. L. R., 18 All., 146
L. R., 23 I. A., 1

69. ———— **Transfer by Hindu widow of part of her estate**—*Consent of reversioner.*—A Hindu widow with the consent of *A*, the then nearest reversioner, sold part of the property inherited by her from her husband. *A* predeceased the widow, and on her death *B*, *C*, and *D* were the

HINDU LAW—REVERSIONERS
—*continued*

4 RELINQUISHMENT BY WIDOW TO REVERSIONERS—*concluded*

life-estate to him but it is essential that she should surrender her estate so that the whole estate should become at once vested. A Hindu widow executed an ikrarn...
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[L R, 19 I A, 30

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57 ———— Arrangement by next reversioner allowing her to keep possession —*Loss of rights by widow on re marriage—Act XV of 1856 s 2*—Where a widow having lost her rights in her husband's estate on account of re marriage under the provisions of s 2 Act XV of 1856 was allowed to retain possession by the next reversioner—*Held* that such arrangement by the next reversioner was only binding upon him and not on the heirs of such reversioner who on the death of the former were entitled to sue for possession of the property by dispossessing the widow KAISHO *v* JUMNA **1 Agra, 140**

58 ———— Relinquishment by Hindu widow of her life interest to reversioner—*Gift by reversioner to widow of moiety of estate—Declaratory decree Suit for—Suit by reversioner in lifetime of widow—Right of suit—Specific Relief Act (I of 1877) s 42*—*M* died possessed of certain immoveable properties and leaving two widows one of whom died shortly after him leaving a daughter's son *R* The other widow *S* came to an arrangement with *R* under which on 9th December 1889 two deeds were executed by the first of which *S* relinquished to *R* her life-interest in the ...

widow *P* came into possession of the half share of the properties belonging to him In a suit by the plaintiff as the next reversionary heir of *M* for a declaration that the deeds were invalid and did not affect his reversionary right *Held* that the suit was maintainable in the lifetime of the widow *Isri Dut Koer* v *Hansbutti Koerain I L R 10 Calc 324 L R 10 I A 150* referred to *Pirthi Pal Kunwar* v *Guman Kunwar I L R 17 Calc 933 L R 17 I A 107 Bhujendro Bhusan Chatterjee* v *Triguna Nath Mookerjee I L R 8 Calc 761* and *Kattama Natchiar* v *Dorasinga Taver 15 B L R 83 23 W R 314 L R 2 I A 169* distinguished. *Held* also following the case of *Nobokishore Sarma Roy* v *Harinath Sarma Roy I L R 10 Calc 1102* that the moiety of the properties

HINDU LAW—REVERSIONERS
—*continued*

5 ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS *concluded*

... alienated ... entitled to ... as that ... *Held* ... that though the effect of the decision in *Nobokishore Sarma Roy* v *Harinath Sarma Roy* is to make the widow and the presumptive reversioners competent to deal with the estate absolutely for certain purposes the widow cannot with the consent of the presumptive reversioner convert her life interest in any portion of her husband's estate which she retains for herself into an absolute ...

inoperative in affecting his reversionary interest so far as regarded the moiety in possession of *S* HEM CHUNDER SANYAL *v* SARNAMOYI DEBI
[I L R, 22 Calc, 354

59 ———— Hindu widow, alienation by—*Release by reversioners Effect of—Suit for possession after death of the widow—Estoppel*—When a reversioner whose title accrues on the death of a Hindu widow is found to have relinquished for consideration his interest in favour of the widow by a deed during her lifetime he is not entitled to maintain a suit for possession after the death of ... purchased the ... before the ... KISHORE ... **W N, 132**

60 ———— Contract made in settlement of disputes as to estate *Condition restraining power of leasing property—Transfer of Property Act (IV of 1882) ss 10 and 15*—In an ikrarnama executed by a Hindu widow on the one ...

the document be not signed and consented to by both the parties it shall be null and void In a suit brought on the basis of the ikrarnama to set aside a lease granted by the widow—*Held* that there is nothing in any statute law which renders such a provision inoperative neither ss 10 and 15 of the Transfer of Property Act (IV of 1882) nor any principle underlying them is applicable to it it is not an unreasonable provision there was no absence of equity in the arrangement and effect should be given to it KULDIP SINGH *v* KHETRANI KOER
[I L R, 25 Calc, 869
2 C W N 463

6 CONVEYANCE BY WIDOW WITH REVERSIONERS CONSENT

61 ———— Effect of conveyance by widow and reversioners—*Title of alienee*—

HINDU LAW—STRIDHAN—*continued.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

in the house, and that, as what a daughter inherits from her mother does not become her stridhan, the plaintiffs had no claim to the share of the house. PRANKISSEN LAHA *v.* NOYANMONEY DASSEE [I. L. R., 5 Calc., 222

6. ———— **Stridhan inherited by daughter from mother**—*Preferential heirs on death of daughter.*—Stridhan inherited by a daughter from her mother passes on the daughter's death to the person who would be the next heir to the mother's stridhan. Where *B* inherited stridhan from *A*, her mother, it was held to pass on the death of *B* to the sons of *A* in preference to the children of *B*. HURI DOYAL SINGH SARMANA *v.* GRISH CHUNDER MUKERJEE . . I. L. R., 17 Calc., 911

7. ———— **Succession of daughter to property of mother**—*Daughters as heirs to exclusion of sons—Mitakshara law—Mayukha law—Ratnagiri District.*—According to the Mitakshara (which, and not the Mayukha, is the paramount authority in the Ratnagiri District), the daughter, as to property inherited from her mother, takes an absolute estate which classes as her stridhan and descends to her own heirs, *i.e.*, to her daughters to the exclusion of her sons. JANKIBAI *v.* SUNDRA [I. L. R., 14 Bom., 612

8. ———— **Shares in villages held by wife of former proprietor**—*Mitakshara.*—A share in a pattidari village given by a Hindu proprietor to his wife may become her stridhan within the contemplation of the Mitakshara, s. 11, cl. 1, enabling her to make a valid gift of it. THAKRO *v.* GANGA PRASAD . . . . I. L. R., 10 All., 197 [L. R., 15 I. A., 29

9. ———— **Property acquired by woman by inheritance.**—According to Hindu law, property acquired by a woman by inheritance is not to be classed as stridhan. SENGAMALATHAMMAL *v.* VALAYNDA MUDALI . . . 3 Mad., 312

10. ———— **Property acquired by a Hindu widow by adverse possession.**—A property acquired by a Hindu widow by adverse possession is her stridhan. MOHIM CHUNDER SANYAL *v.* KASHI KANT SANYAL . 2 C. W. N., 161

11. ———— **Properties acquired after her husband's death**—*Reversioner—Burden of proof.*—Where after the death of a Hindu widow the plaintiff claimed, as the reversionary heir of her husband, certain properties some of which were inherited from her husband and some acquired by her after her husband's death,—*Held* that there is no presumption of law that property acquired by a Hindu widow after her husband's death forms part of her husband's estate. The question from what source the purchase-money came is one of fact, and it is for the plaintiff to start his case with proof sufficient to shift the onus, proof at least of facts from which an inference can be drawn. DAKHINA KALI DEBI *v.* JAGADISWAR BHUTTACHARJEE . 2 C. W. N., 197

HINDU LAW—STRIDHAN—*continued.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

12. ———— **Husband's estate inherited by widow**—*Benares law—Power of disposition of widow.*—*Held* that, according to the law of the Benares school, no part of her husband's estate, whether moveable or immoveable, to which a Hindu widow succeeds by inheritance, forms part of her stridhan or peculiar property; and the text of Katyayana must be taken to determine, first, that her power of disposition over both is limited to certain purposes; and, secondly, that on her death both pass to the next heir of her husband. BHUGWANDEEN DOOBEY *v.* MYNA BAEE [9 W. R., P. C., 23: 11 Moore's I. A., 487

13. ———— **Immoveable property inherited by mother from son.**—According to the Mitakshara and the Vivada Chintamoni, all property that a woman inherits does not thereby become stridhan, so as after her death to descend to her heirs. Immoveable property which, in default of other intervening heirs, has been inherited by a mother from her son descends, on the mother's death, not to her heirs, but to the heirs of the son from whom she inherited it. PUNCHANUND OJHAB *v.* LALSHAN MISSER . . . 3 W. R., 140

14. ———— **Property inherited by sister from brother**—*Law in Bombay Presidency.*—A *sister on this side of India, taking as heir to her* brother, takes his property as stridhan with an absolute power of disposition over it; and such property upon her death passes in the first instance to her daughters. The sons of such sister have not a vested interest in it as co-parceners with their mother. Property acquired by a married woman by inheritance with the exception of property inherited by a widow from her husband classes as stridhan, and descends accordingly. BHASKAR TRIMBAK ACHARYA *v.* MAHADEB RAMJI . . 6 Bom., O. C., 1

15. ———— **Immoveable property inherited by a married woman from her father.**—According to the Hindu law of inheritance as received in the Bombay Presidency, immoveable property inherited by a married woman from her father, whether or not it be strictly entitled to the name of stridhan, descends on her death to her own heirs, and not to her father's ascendants according to what is called the "melancholy succession." An inheritance descending on a married woman from her father must be classed as stridhan and descends accordingly. NAVALRAM ATMARAM *v.* NANDKISHOR SHIVNARAYAN . . . . 1 Bom., 209

16. ———— **Gifts by husband to wife from motives of affection**—*Ornaments for ordinary wear.*—Gifts of affection given by a husband to his wife after marriage are stridhan, and it is not necessary to the preservation of their character as stridhan that they should be constantly worn. If given unreservedly, they become the wife's stridhan. If ornaments appear to be ornaments which a wife would ordinarily wear in her station of life, and not those which would be purchased for use only on extraordinary occasions, such as marriages and the like, the presumption is that they are for the ordinary use of

HINDU LAW—REVERSIONERS—*concluded*

6. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT—*concluded*

70 ———— Alienation by widow and reversioner—*Sale in execution of decrees for their debts* —A Hindu widow can, with the consent of next reversioner at the time, alienate the estate so as to give an absolute title to the purchaser, but an execution sale in satisfaction of debts contracted by her and the reversioner for the time being cannot have the effect of a sale by her and that reversioner MOHIMA CHUNDER ROY CHOWDHURI *v* GOURI NATH DEY CHOWDHURI 2 C. W. N, 162

HINDU LAW—STRIDHAN.

See HINDU LAW—CONTRACT—HUSBAND AND WIFE I L R, 1 Bom, 121
[I L R., 4 Bom, 318
I. L R, 6 Bom, 470, 473

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN

1. ———— Definition of "stridhan"—

one class of stridhan, and includes in that class all property acquired by a woman by inheritance According to the last-mentioned authority, a woman's stridhan, if she has been married by the Asura form, upon her death childless, goes to her mother, her father, and their kindred —*i e*, to the sapindas of her father in the first instance,—and failing them, to her *mother's next of kin*; but if a woman has been married according to one of the approved forms, her stridhan descends, upon her death childless to her

HINDU LAW—STRIDHAN—*continued*

1 DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued*

inheritance), which descends in the same line as if the woman had been a male,—*i e*, *to her sons and the* rest, —and this notwithstanding her having left daughters Authorities bearing upon the subject of stridhan considered and commented upon VIJIARANGAM *v* LAKSHUMAN . . . 8 Bom, O C, 244

2 ———— Property given to a woman by a stranger—*Mayukha—Inheritance—Devolution of such property—Daughter's daughter not entitled to it—Son's widow preferred as gotraja sapinda* —By the law of inheritance laid down in the Mayukha a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male The

3. ———— Property of daughter bequeathed to her by father before her marriage —The property of a daughter bequeathed to her by her father before her marriage falls within the category of stridhan JUDOONATH SIRCAR *v* BUSSUNT COOMAR ROY CHOWDHRY
[11 B L R, 286: 16 W. R., 105: 19 W. R, 264

4 ———— Gift by son to mother for maintenance —A gift of money by a son to his mother for her maintenance comes within the definition of stridhan in the Hindu law DOORGA KOONWAR *v* TEJOO KOONWAR 5 W. R, Mis, 53

5. ———— Property purchased or acquired by mother—*Property inherited by daughter from mother—Interest of Hindu daughter in mother's property* —*A*, a Hindu widow died intestate, leaving her surviving sons of her husband's

being obscure, the parties interested under it had

HINDU LAW—STRIDHAN—*continued.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

forming part of her stridhanam. *Held* that she could dispose of such immoveable estate as her stridhanam. VENKATA RAMA RAO *v.* VENKATA SURIYA RAO

[I. L. R., 2 Mad., 333 : 8 C. L. R., 304

Affirming on appeal decision of High Court in S. C.

[I. L. R., 1 Mad., 281

27. ——— **Widowed daughter with dumb son**—*Bengal school of law—Daughter's son—Disqualification for inheritance.*—Under the Bengal school of the Hindu law, a widowed daughter having a son who is dumb at the time the succession opens out (but is not shown to be incurably dumb) is entitled to succeed to her mother's stridhan in preference to a daughter's son. CHARU CHUNDER PAL *v.* NOBO SUNDERI DASI . **I. L. R., 18 Calc., 327**

28. ——— **Inheritance to stridhanam**—*Right of step-son to inherit.*—A Hindu widow, having stridhanam acquired from her husband, died leaving no issue. The defendant, who was the son of her elder sister, took possession. The step-son of the deceased now sued to recover the stridhanam property. It was found that the marriage of the deceased had been celebrated in the Brahma form. *Held* that the plaintiff was entitled to succeed. BRAHMAPPA *v.* PAPANNA . **I. L. R., 13 Mad., 138**

29. ——— **Moveable property inherited by a widow from her husband**—*Devolution of such property on the widow's death.*—Moveable property inherited by a Hindu widow, if not disposed of by her, passes on her death to the next heirs of her husband, whether such property be regarded as her stridhan or not. HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS

[I. L. R., 16 Bom., 229

See BAI JAMNA *v.* BHAISHANKAR

[I. L. R., 16 Bom., 233

and GODHADHAR BHAT *v.* CHANDRABHAGABAI

[I. L. R., 17 Bom., 690

30. ——— **Devolution of stridhan belonging to a childless widow**—*Grandson—Co-widow—Husband's nephew—Sapindas.*—A childless Hindu widow died, possessed of stridhan consisting of ornaments given to her on her marriage and of a house purchased by her out of her own separate income. She left her surviving (1) a co-widow; (2) the plaintiff, who was grandson of another co-widow; and (3) a nephew (*i.e.*, brother's son) of her husband. She had been married in one of the approved forms. *Held* that the plaintiff was a nearer sapinda of the deceased than either her co-widow or her husband's nephew, and as such excluded both from inheriting the deceased's stridhan. GOJABAI *v.* SHAHAJIRAO MALOJI RAJE BHOSLE

[I. L. R., 17 Bom., 114

31. ——— **Stridhanam**—*Husband's nieces—Bandhu.*—A Hindu widow, married according to one of the approved forms, died without issue, leaving her surviving the plaintiffs, who were the daughters of her husband's deceased brother, and the first defendant, who was the adopted son of her sister's daughter, and the second defendant, who was the adopted son of her maternal uncle, and the third defendant, who was the widow of her brother. The defendants having taken possession of her stridhanam property on her death, the plaintiffs now sued as heirs under the Hindu law for possession. *Held* that the plaintiffs were entitled to succeed. VENKATASUBRAMANIAM CHETTI *v.* THAYARAMMAH

[I. L. R., 21 Mad., 263

32. ——— **Succession**—*Mithila law.*—The husband's sister's sons are preferential heirs to the husband's paternal great-grandfather's great-grandsons in the succession to stridhan property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH . **I. L. R., 21 Calc., 344**

33. ——— **Succession to stridhan property**—*Sister-in-law.*—A childless Hindu widow, who had been predeceased by her parents, died leaving stridhanam property. Her brother's widow claimed to be entitled to inherit that property, and sued to enforce her claim. *Held* that, whether the marriages of the deceased and her mother respectively had taken place in a superior or an inferior form, the plaintiff was not entitled to inherit the stridhanam property in question. THAYAMMAL *v.* ANNAMALAI MUDALI . . . **I. L. R., 19 Mad., 35**

34. ——— **Estate of married daughter in stridhanam property of mother.**—Under the Hindu law in force in Southern India, a married daughter, who succeeds to her mother's immoveable stridhanam property, takes a life-interest only, and after her death it passes to her mother's heir. VENKATARAMAKRISHNA RAU *v.* BHUJANGA RAU

[I. L. R., 19 Mad., 107

35. ——— **Devolution of stridhan a property**—*Hindu Law, Marriage—Presumption as to form of marriage.*—Under the Hindu law of Benares school, in the absence of any evidence to the contrary, a marriage must be presumed to have taken place in one of the approved forms; therefore, the heir of a woman to her stridhan a property is the nearest kinsman of her husband, and not of her father. *Thakoor Deyhee* v. *Rai Baluk Ram, 11 Moore's I. A., 139; Gojabai* v. *Shahajirao Malaje Raje Bhosle, I. L. R., 17 Bom., 114;* and *Gridhari Lal* v. *Government of Bengal, 1 B. L. R., P. C., 44: 10 W. R., P. C., 31,* referred to. The Virmitrodaya cannot be referred to where the Mitakshara is clear. JAGANNATH PRASAD GUPTA *v.* RUNJIT SINGH . . . **I. L. R., 25 Calc., 354**

36. ——— **Woman's estate apart from stridhan**—*Devolution of, according to Mayukha—Property inherited by a woman from a male owner—Property not of the class called "stridhan proper"—Reversion on her death to heir of last male owner not to be extended to stridhan.*—In cases to which the Vyavahara Mayukha is applicable, a woman's daughter, and not her husband, is the heir to her property, although not of the kind belonging

HINDU LAW—STRIDHAN—*continued*

1 DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

the wife and given to her without reservation They

band's debts RADHA v. BISHESHUR DASS [6 N. W., 279

17. ——— **Ornaments given to wife at**

pass, according to the Mayukha, to the son and daughters *in equal shares* ASHABAI v TYEB HAJI RAHIMUTTULLA . I. L R., 9 Bom, 115

ROY v. NAFAR DAS ROY [3 B L R., A. C., 121, 11 W. R., 497

19. ——— **Grant to wife and her heirs male**—*Devise by widow to sons—Rights of daughter*—A Hindu granted certain land to his wife *C* and her sons and grandsons for ever *C* devised ... will *Held* that the land be-

[I. L. R., 7 Mad., 557

20 ——— **Stridhanam property**—*Right of daughter to succeed.*—In a suit for land it appeared that it had been given to one *S* deceased, after her marriage, by her father The donees died leaving her brother, defendant No 1, her son (since ... of defendant No 2, and the ... was in joint ... *Held* that ... MUTHAP- ... Mad., 58

21. ——— **Enfranchisement of service inam.**—Land which formed the emolument of the office of moniegar was enfranchised in favour of a

to recover the land to which she claimed to be entitled under the Hindu law of inheritance *Held* that the property belonged to the deceased as her stridhanam descendible to her heirs, and (without deciding what control, if any, defendant No 2 had over the property) that the plaintiff was entitled to succeed according to the law of inheritance applicable to such property SALEMMA v LUTCHMANA REDDI [I. L. R., 21 Mad., 100

See DHARANIPRAGADA DURGAMMA v. KADAMBARI VIRRAZU I. L. R., 21 Mad., 47

22. ——— **Enfranchisement in favour of widow**—*Right of widow*—Lands which had been held by a deceased as moniem service inam were enfranchised after his death and sold by his widow. On a claim being preferred by the reversioners for a

BARAYA MUDALI v KAMU CHETTI [I. L R., 23 Mad., 47

See SITAPATI v NARASIMHAM [I. L R, 23 Mad, 48 note

23 ——— **Widow's savings from the income of the husband's estate**—A widow's

L. R., 10 I. A., 150

24. ——— **Arrears of maintenance due to widow.**—*Arrears of maintenance due to a Hindu widow* at her death do not necessarily revert to the estate from which they were to be derived, on the ground that they were not separated from the corpus of that estate during her life COURT OF WARDS v MOHESSUR ROY . . . 16 W. R., 76

25. ——— **Immoveable property acquired from deceased uterine brother**—*Power of alienation—Husband's heirs*—Immoveable property acquired by a childless Hindu widow from her deceased uterine brother is her stridhan and stridhan with which the heirs to her husband have nothing to do Over such property her control is absolute and unimpeachable, and the relations of her

[I. L. R., 6 All., 510

26. ——— **Purchase of immoveable estate with money received from husband**—*Proceeds of jewellery*—A widow who received presents of moveable property from her husband from time to time during their married life, after his death purchased immoveable estate, partly out of such property and partly with money, the proceeds of jewellery

HINDU LAW—STRIDHAN—*continued.*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

death on the heirs of the grandson. PHUKAR SINGH *v.* RANJIT SINGH . . I. L. R., 1 All., 661

41. ———— **Property given to a woman after marriage by her husband's father's sister's son**—*Inheritance.*—With respect to property given to a woman after her marriage by her husband's father's sister's son, the brother, mother, and father are preferable heirs to the husband. HURRYMOHUN SHAHA *v.* SHONATUN SHAHA

[I. L. R., 1 Calc., 275

42. ———— **Stridhan of childless Hindu widow**—*Succession to stridhan.—Semble*—The stridhan of a childless Hindu widow, according to the law of the Western schools, goes to the collateral heirs of her husband, in preference to her own next of kin. THAKOOR DEYHEE *v.* BALUK RAM

[2 Ind. Jur., N. S., 106 : 10 W. R., P. C., 3
11 Moore's I. A., 135

43. ———————— *Succession to stridhan.*—Upon the death of a childless Hindu widow who had been married in one of the four approved forms of marriage, *S*, one of the collateral relatives of her husband, stating that his minor son had been adopted by her, obtained possession of certain property which had formed her stridhan, and mutation of names was effected in the minor's favour in the revenue records. A suit was instituted against *S* and his son by *C*, on the allegation that he and *J*, who were collateral relatives of the widow's husband, were entitled, under the Hindu law, to succeed in moieties to the properties left by her as her stridhan, and claiming recovery of possession of half her property. In defence, the adoption was pleaded, and another plea was that the widow had left a brother who, in the absence of the adoption, would succeed to the property to the exclusion of the plaintiff. The Court of first instance held that the alleged adoption had not been proved. In the lower Appellate Court the plea as to adoption was given up. *Held* that, upon the facts found, the plaintiff was the heir of the deceased widow, and as such entitled to succeed to her stridhan under the Hindu law. *Thakoor Deyhee* v. *Baluk Ram, 11 Moore's I. A., 135,* followed. *Munia* v. *Puran, I. L. R., 5 All., 310,* distinguished. CHAMPAT *v.* SHIBA . . I. L. R., 8 All., 393

44. ———— **Property inherited by female**—*Succession to such property.*—An estate inherited by a female does not become her stridhan. Such estate on her death goes to the heirs of the last male heir, and not to the heir of her separate property. JULLESSUR KOER *v.* UGGUR ROY

[I. L. R., 9 Calc., 725 : 12 C. L. R., 460

45. ———— **Property inherited by female from male**—*Law applicable in Carnatic.*—The Mitakshara rule that property inherited by a female from a male is taken by her for only a restricted estate, and devolves on her death in the line, if any exists, of such male, is applicable in the Carnatic. *Chotaylall* v. *Chunnoo Lall, L. R., 6 I. A., 15,* referred to. MUTTU VADUGANADHA TEVAR *v.* DORA SINGHA TEVAR

[I. L. R., 3 Mad., 290
L. R., 8 I. A., 99

46. ———— **Property inherited by daughter from father**—*Succession to such property.*—According to the law of the Mitakshara, a daughter's estate inherited from her father is, like that of a widow inherited from her husband, a limited and restricted estate, and does not, on her death, pass as stridhan to her heirs, but reverts to the heirs of her father. CHOTAY LALL *v.* CHUNNOO LALL

[14 B. L. R., 235
22 W. R., 496

S. C. on appeal to Privy Council

[I. L. R., 4 Calc., 744 :
L. R., 6 I. A., 15 : 3 C. L. R., 465

See also DEO PERSHAD *v.* LUJOO ROY

[14 B. L. R., 245 note : 20 W. R., 102

47. ———————— *Devolution of property.*—*D*, the daughter of one *L*, died childless in 1866 possessed of certain immoveable property which she had inherited from her father *L*. [illegible] had one son *A* by her first husband *P*. [illegible] second wife *B*, whose son *K* was the father of the defendants. After *P*'s death, his widow *N* married again and had a son who was the father of the plaintiff. The plaintiff in this suit claimed to recover the property of *D* from the defendants who had taken possession. He contended that the property having devolved on *A* through a female must continue to descend in that line, and that he was entitled. The defendants claimed as heirs of *A*. *Held* that on *D*'s death *A* was the nearest bandhu relation both of *D* and her father *L*, and consequently became full owner of the property. On *A*'s death the defendants, as sons of his half-brother *K*, became his heirs and were entitled to the property. DALPAT NAROTAM *v.* BHAGBAN KHUSHAL

[I. L. R., 9 Bom., 301

48. ———— **Devolution of stridhan**—*Daughters, betrothed and unbetrothed—Devolution of stridhan after first devolution.*—A betrothed daughter is not entitled at her mother's death to share in her stridhan, but the unbetrothed daughters alone inherit with the sons. When stridhan has once devolved as such upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law. SRINATH GANGOPADHYA *v.* SARBAMANGALA DEBI

[2 B. L. R., A. C., 144 : 10 W. R., 488

49. ———————— *Property of daughter bequeathed to her by father before marriage—Inheritance—Mother.*—According to the Hindu law as current in Bengal, the mother succeeds to the property of her daughter bequeathed to her by her father before her marriage in preference to her husband. Such property falls within the category of

HINDU LAW—STRIDHAN—*continued*

1 DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued*

to the class of "stridhan proper" The doctrine that property which has been inherited by a woman should revert on her death to the heirs of the last male owner is not to be extended to the devolution of stridhan The heirs to succeed are the heirs to the woman herself, though her heirs in the husband's family. The phrase "sons and the rest" in Ch IV, s 10, placitum 26 of the Mayukha,"

sons" As regards property which does not class as woman's property in the technical sense, the "sons and the rest" take precedence over the "daughter and the rest" Failing both sons and daughters, the heirs to "stridhan proper" and "stridhan improper" are identical, save that as between male and female offspring the latter have a preferential right as regards "stridhan proper," while the former have a similar right as to "stridhan improper" The author of the Mayukha, like the author of the Mitakshara, does not regard the enumeration of specific kinds of stridhan in the old Smriti texts as exhaustive He

...comes the author of ...cific kinds ...h are not In doing ...n that, as regards that class of property which is emphatically woman's property being expressly so named by the old sages, the female offspring should take precedence over the male, while as regards that which is not such, the general preference given to male offspring over female by Hindu law should have effect On

Under the rule of succession above stated, the woman is recognized as a fresh source of devolution It is to be remembered that the property with which the rule in question deals, is not merely that which the woman obtains by inheritance, but may include that which has never belonged to her husband or any other relation, either on the husband's or the father's side, but is her own original acquisition. Such property is the woman's property, it is not the

37 ——— **Inheritance by a granddaughter for a limited estate**—*Succession by*

HINDU LAW—STRIDHAN—*continued*

1 DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued*

step son of *D* Under the settlement, two-thirds of the property were given to the present plaintiff, and the rest was divided between *A* on the one hand and *D* and *E* on the other *E* was the daughter of *D* Subsequently *D* and *E* acquired *A*'s share under a deed of gift, dated 5th June 1863 *D* died in 1883 *E* had died previously, leaving the present defendant (her husband) and a daughter *F*, who died an infant without issue in

(3) that *F* inherited the property, but only for a limited estate, and that the plaintiff was entitled to succeed as heir to *D*, the last full owner VIRASANGAPPA SHETTI *v* RUDRAPPA SHETTI

[I L R, 19 Mad, 110

38. ——— **Husband's younger brother**

DASSEE 4 C. W. N., 143

39 ——— **Property inherited from a female**—*Descent of stridhan*—Amongst property which becomes stridhan according to the law of the Mitakshara is property inherited from a female It is not the case that where such stridhan has once devolved according to the law of succession which governs the descent of this peculiar species of pro

Phukar Singh v. *Ranjit Singh*, I L R, ... and *Muttu Vaduganadha Tevar* v *Dora Singha Tevar, I L R, 3 Mad, 290,* referred to DEBI SAHAI *v* SHEO SHANKAR LAL

[I. L. R, 22 All., 353

40. ——— **Immoveable property inherited by paternal grandmother from grandson**—*Mitakshara law*—Immoveable pro-

HINDU LAW—USURY—*continued.*

principal remained outstanding, and the interest be paid in smaller sums from time to time, there is no limit to the amount which may be thus received in respect of interest. The previous decisions of the Sudder Court to the contrary overruled. DHONDU JAGANNATH *v.* NARAYAN RAM CHANDRA . 1 Bom., 47

8. ——— *Interest exceeding principal—Damdupat, Rule of.*—The Hindu law rule of damdupat does not operate when the defendant is other than a Hindu. NANCHAND HANSRAJ *v.* BAPUSAHEB RUSTAMBHAI . I. L. R., 3 Bom., 131

9. ——— *Interest—Rule of damdupat when applicable—Mortgage—Hindu creditor claiming interest from a debtor not a Hindu—Redemption, Suit for.*—In a redemption suit brought by a Mahomedan against a Hindu, it was found on taking the accounts that a sum of R17,519 was due by the plaintiff (mortgagor) to the defendant (mortgagee). Of this sum, R6,500 were the principal, and the remainder (R11,019) was for interest. The plaintiff contended that the defendant being a Hindu was bound by the rule of damdupat, and could not claim as interest more than the amount of the principal. *Held* that the rule of damdupat did not apply; and that the plaintiff was liable to the defendant for the whole amount. The rule of damdupat only applies when the debtor is a Hindu. DAWOOD DURVESH *v.* VULLUBHDAS PURSHOTAM

[I. L. R., 18 Bom., 227

10. ——— *Damdupat—Bond purporting to be executed in adjustment of a past debt—Principal for the purpose of damdupat.*—In the case of a bond purporting to be executed in adjustment of a past debt, the principal for the purpose of the rule of damdupat is the amount of such bond, and not the balance of the unpaid principal actually advanced on an earlier bond. *Per* JENKINS, *C.J.*—Neither the texts, the commentaries, usages or the cases forbid the conversion by subsequent agreement of interest into capital, nor is there any such prohibition involved in the rule of damdupat as it has been formulated. SUKALAL *v.* BAPU SAKHARAM

[I. L. R., 24 Bom., 305

11. ——— *Interest—Rule of damdupat—Balance of principal actually due at date of suit—Part payments of principal.*—The rule of damdupat limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time. DAGDUSA SHEVAKDAS *v.* RAMCHANDRA . . I. L. R., 20 Bom., 611

12. ——— *Interest exceeding principal—Usury—Contract.*—The rule of Hindu law, prohibiting the recovery of interest exceeding in amount the principal sum lent, is not applicable to suits brought in Mofussil Courts in Bengal. DEEN DOYAL PORAMANICK *v.* KYLAS CHUNDER PAL CHOWDHRY . I. L. R., 1 Calc., 92: 24 W. R., 106

PRAN KRISHNA TAWARY *v.* JADU NATH TRIVEDY

[2 C. W. N., 608

13. ——— *Interest exceeding principal—Suits between Hindus in mofussil—Act XXVIII of 1855, s. 2.*—In suits between Hindus in the mofussil, interest exceeding the principal may be awarded. HET NARAIN SINGH *v.* RAM DEIN SINGH

[I. L. R., 9 Calc., 871: 12 C. L. R., 590

14. ——— *Interest exceeding principal—Debtor and creditor—Damdupat.*—Since the passing of Act XXVIII of 1855, a Hindu creditor may claim from his Hindu debtor interest in excess of the principal sum lent, should such interest have accrued. The rule of law prohibiting the recovery of interest in excess of the principal sum lent was in force in the mofussil of Bengal not as a provision of Hindu law, but as a statutory rule introduced by Regulation XV of 1793, and embracing all persons contracting in the mofussil. SURJYA NARAIN SINGH *v.* SIRDHARY LALL

[I. L. R., 9 Calc., 825: 12 C. L. R., 400

15. ——— *Interest exceeding principal—Amount recoverable in execution of decree—Damdupat, Rule of.*—The rule of Hindu law which limits the amount recoverable at one time by way of interest to the amount of the principal, does not apply to an amount recoverable in execution of the decree of a Civil Court. BALKRISHNA BHALCHANDRA *v.* GOPAL RAGHUNATH

[I. L. R., 1 Bom., 73

See RAMACHANDRA *v.* BHIMRAO

[I. L. R., 1 Bom., 577

16. ——— *Mortgage—Payment in grain—Damdupat.*—*Held* that the rule of damdupat applied to a mortgage, the advance having been in cash, although the interest was to be paid in grain. ANANDRAO BABAJI BARVE *v.* DURGABAI

[I. L. R., 22 Bom., 761

17. ——— *Mortgage with possession—Mortgagee to take rent in part payment of interest—Remaining interest to be paid by mortgagor every year.*—The damdupat rule applies in all cases as between Hindu debtors and creditors both in respect of simple as also of mortgage debts. (2) It does not, however, apply where the mortgagee has been placed in possession, and is accountable for profits received by him as against the interest due. (3) But where these profits are by the terms of the bond received for only a portion of the interest on the mortgage debt, the general rule of damdupat will govern such mortgage accounts. SUNDARABAI *v.* JAYAVANT BHIKAJI NADGOWDA

[I. L. R., 24 Bom., 114

18. ——— *Interest—Rule of damdupat—Mortgage.*—The rule of damdupat applies to mortgages where no account of the rents and profits has to be taken. BALKRISHNA BABAJI *v.* HARI GOVIND . . I. L. R., 15 Bom., 84

19. ——— *Interest exceeding principal—Mortgage transactions.*—The rule of Hindu law which declares that interest exceeding in amount the principal sum cannot be recovered at any one time is not applicable to mortgage transactions. NARAYAN BIN BABAJI *v.* GUNGARAM BIN KRISHNAJI . . . 5 Bom., A. C., 157

20. ——— *Interest exceeding principal.*—The rule of Hindu law that interest

HINDU LAW—STRIDHAN—*concluded*

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*concluded*

stridhan JUDOONATH SIRCAR *v.* BUSSUNT COOMAR ROY CHOWDHRY

[11 B. L. R., 286 : 16 W. R., 105
19 W. R., 264

50. ———— *Succession of woman to impartible zamindari* —If a woman succeeds to an impartible zamindari, the estate which devolves on her demise upon her son does not thereby become self-acquired property in the hands of the latter MUTTAYAN CHETTI *v.* SANGILI VIRA PANDIA CHINNA PAMBIAR I. L. R., 3 Mad., 370

51. ———— *Mithila law—Succession* —The stridhan property of a widow, governed by the Mithila law and married in one of the approved forms of marriage, goes to her husband's brother's son in preference to her sister's son BACHHA JHA *v.* JUGMON JHA

[I. L. R., 12 Calc., 348

52. ———— *Right of adopted son to succeed to stridhan of co wife of his adoptive mother* —A son adopted by one wife may succeed to a co-wife's stridhan TEENCOWREE CHATTERJEE *v.* DINONATH BANERJEE . . . 3 W. R., 49

53. ———— *Sowdaick stridhan—Heirs of wife* —Sowdaick stridhan created by the husband descends not to his heirs, but to the heirs of the wife. KASHEE CHUNDER ROY CHOWDHRY *v.* GOUR KISHORE GOOHO . 10 W. R., 139

2 GIFT OF STRIDHAN

54. ———— **Nature of gift of stridhan** —*Maintenance, Provision for* —A gift of stridhan is not equivalent to a provision for maintenance JOYTARA *v.* RAMHARI SIRDAR

[I. L. R., 10 Calc., 638

3 EFFECT OF UNCHASTITY.

55. ———— **Unchastity as incapacitating woman from holding stridhan**—*Inheritance and keeping possession of stridhan* —*Per* ... chastity in a woman does not preclude her from keeping possession by right of inheritance of stridhan GANGA JATI *v.* GHASITA I. L. R., 1 All., 46

4 POWER TO DISPOSE OF STRIDHAN

56. ———— **Power of married woman to dispose of stridhan**—*Immoveable property bought with stridhan* —Under the Hindu law, a married woman is at liberty to make any disposition she likes ... rate and ... immoveab... right to ... CHUNDER ...

HINDU LAW—USURY.

1. ———— **Rate of interest**—*Act XXVIII of 1855* —Act XXVIII of 1855 did not repeal the Hindu laws as to the rate of interest Such rate is governed by the strict rules of Hindu law, as originally laid down by Manu and other lawgivers. RAMLAL MOOKERJEE *v.* HARAN CHANDRA DHUR

[3 B. L. R., O. C., 130 . 12 W. R., O. C., 9

2 ———— *Hindu law—Contract—Act XXVIII of 1855* —Act XXVIII of 1855 does not affect or supersede the rules of the Hindu law as to interest HAKMA MANJI *v.* MEMAN AYAB HAJI . 7 Bom., O. C., 19

3 ———— **Amount of interest recoverable**—*Interest exceeding principal* —By the Hindu law, interest exceeding in amount the principal sum cannot be recovered at one time Act XXVIII of 1855 has not, by repealing s. 12 of Regulation V of 1827 or otherwise, altered this rule of the Hindu law KHUSHALCHAND LALCHAND *v.* IBRAHIM FAKIR RAM KRISHNABHAT *v.* VITHABA BIN MALHARJI

[3 Bom., A. C., 23

See KADARI BIN RANU *v.* ATMARAMBHAT

[3 Bom., A. C., 11, at p. 18

4. ———— *Interest exceeding principal—Usury laws—Act XXVIII of 1855—Contract Act (IX of 1872), s 10* —According to Hindu law, arrears of interest more than sufficient to double the debt are not recoverable, and the law upon this point was not affected by the Act (XXVIII of 1855) for the repeal of the usury laws, nor by s. 10 of the Contract Act *Semble*—The rule of Hindu law in question has not properly anything to do with the legality or illegality of any contract, but is rather a rule of limitation RAMCONNOY AUDICARRY *v.* JOHUR LALL DUTT

[I. L. R., 5 Calc., 867 : 7 C. L. R., 201

5. ———— *Interest exceeding* ...

[6 Mad., 400

6. ———— *Interest exceeding principal—Mad Reg XXXIV of 1802* —Where ... against an award of interest in excess of the principal, refers only to the amount claimed for interest at the time the suit is brought The rule of Hindu law as to recoverable arrears of interest discussed. KAKARLAPUDI SITARAMARAJA *v.* UPPALAPADI JANAKAYYA . . . . . . 1 Mad., 5

7. ———— *Interest exceeding principal* —By Hindu law the amount recoverable at any one time for interest or arrears of interest on money lent cannot exceed the principal; but if the

HINDU LAW—USURY—*continued.*

the contract rate for six months, provided for redemption on payment of the amount due within the six months, and directed in case of default of payment that interest due be added to the principal sum, interest thereafter to be computed on the aggregate amount at 6 per cent.,—*Held* that in taking the account the rule of damdupat was rightly applied to the interest accruing on the mortgage debt both previous to and during the six months allowed for redemption, notwithstanding the form of the decree. *Nobin Chunder Bannerjee* v. *Romesh Chunder Ghose, I. L. R., 14 Calc., 781,* referred to; and that the same rule was applicable to the interest accruing after the period of six months had elapsed. When the rule of damdupat has once been applied in any account directed to be taken by the Court, and interest equal in amount to the principal sum has been allowed in the account, the application of such rule has the effect of preventing the allowance of any further interest, not only for the period of six months allowed for redemption, but also subsequently without limitation of time. RAM KANYE AUDICARY *v.* CALLY CHURN DEY . **I. L. R., 21 Calc., 840**

30. ——————— *Interest—Mortgage, Decree on—Damdupat, Rule of—Report of Registrar, Confirmation of.*—Where the mortgagee obtained the usual mortgage decree, and on the Registrar's report there was found due on the mortgage a total sum less than double the amount of the principal,—*Held* that the mortgagee was entitled to claim further interest at 6 per cent. on the total amount found due by the Registrar until satisfaction of the judgment-debt. *Held* also that the rule of damdupat is not applicable, if it was not applicable at the time when the decree became final and binding. *Semble*—Such time being from the date of the confirmation of the Registrar's report. *Buggoban Chunder Roy Chowdhry* v. *Pran Coomaree Dassee, I. L. R., 23 Calc., 906,* and *Kanaye Lall Khan* v. *Anund Lall Dass, I. L. R., 23 Calc., 903,* followed. LALL BEHARY DUTT *v.* THACOMONEY DASSEE **[I. L. R., 23 Calc., 899**

KANAYE LALL KHAN *v.* ANUND LALL DASS **[I. L. R., 23 Calc., 903 note**

BUGGOBAN CHUNDER ROY CHOWDHRY *v.* PRAN COOMAREE DASSEE **I. L. R., 23 Calc., 906 note**

31. ——————— *Rule of damdupat—Mortgage by Mahomedan to Hindu—Assignment of mortgaged land by mortgagor to Hindu assignee—Subsequent suit by mortgagee against assignee—Interest.*—*A*, a Mahomedan, having in 1869 mortgaged certain land for R61 to *B*, a Hindu, afterwards assigned it to *C*, who was also a Hindu. At the date of this assignment the interest due on the mortgage (R122-15-10) was much more than the principal debt. *B* (the mortgagee) subsequently sued *A* and *C* for R270, being R61 for principal and R209 for interest. *A* did not appear. *C* contended that, the plaintiff and himself being Hindus, the law of damdupat applied, and that only as much interest as principal could be recovered. The lower Courts passed a decree for the principal (R61) together with all interest due at the date of the assignment to *C*. They disallowed subsequent interest, as the amount then due was already more than the principal. On appeal to the High Court,—*Held* (confirming the decree) that *C* was not personally liable to pay anything at all, but that land which he had purchased was charged with the amount due at the date of his purchase. Unless, therefore, he wished the land to be sold, he should pay that amount. The rule of damdupat did not apply in this case to the original mortgagor, who was a Mahomedan. He charged the land with a debt which included principal and interest, and he and his land were liable for both. He could not by any assignment prejudice his creditor or reduce the amount due to him, nor could he by assigning his land to a Hindu free it from any charge that existed on it at the date of the assignment. HARILAL GIRDHARLAL *v.* NAGAR JEYRAM **[I. L. R., 21 Bom., 38**

32. ——————— *Rule of damdupat—Mortgage—Original mortgagor a Hindu—Assignment of mortgage to Mahomedan purchaser—Suit by Mahomedan purchaser for redemption—Rule of damdupat how far applicable.*—A Hindu mortgaged his property in 1843 to a Mahomedan for R150, with interest at 12 per cent. per annum. On the 5th April 1880, the Hindu mortgagor's interest was sold to the plaintiff, who was a Mahomedan. In March 1893, the plaintiff sued for redemption, both parties to the suit being Mahomedan. *Held* that as long as the mortgagor was a Hindu (*i.e.*, until 1880) the rule of damdupat applied, and that, as soon as the interest doubled the principal, further interest stopped. The sum of R300 was therefore the full amount of debt for which the land could be charged and liable in the hands of a Hindu debtor. But on the 5th April 1880 the plaintiff (a Mahomedan) became the debtor. The rule of damdupat then no longer applied: the stop was removed, and interest again began to run. The decree therefore ordered the plaintiff to redeem on payment of R300 (*i.e.*, double the principal R150) with further interest at R12 per annum from the date of his purchase (5th April 1880) until payment. ALI SAHEB *v.* SHABJI . . . **I. L. R., 21 Bom., 85**

HINDU LAW—WIDOW.

HINDU LAW—USURY—*continued.*

beyond the amount of the principal sum cannot be recovered at any one time applies as well to mortgage transactions as to other loans But where the mortgagee enters into possession of the mortgaged property, and in taking the accounts between the mortgagor and mortgagee credit is given to the latter for the rents and profits received by him as against the principal and interest due, the above rule cannot equitably be applied NATHUBHAI PANACHAND v MULCHAND HIRACHAND

[5 Bom., A C, 196

21. ——————— *Interest—Rule of damdupat—Mortgage*—A mortgagee is entitled to have interest added to the principal at the rate stipulated in the mortgage-deed, and to appropriate the rents and profits received by him in or towards satisfaction of such interest, but after such appropriation, if the amount of interest due on the mortgage exceeds the amount of principal, then, according to the rule of damdupat, the mortgagee's claim must be limited to double the principal amount. *Nathubhai Panachand* v *Mulchand Hirachand, 5 Bom., A C, 196,* explained GANESH DHARNIDHAR MAHARAJDEV v. KESHAVRAV GOVIND KULGAVKAR

[I. L. R., 15 Bom., 625

22. ——————— *Rule of damdupat—Applicability of the rule—Mortgage the terms of which make an account current necessary*—The operation of the rule of damdupat is excluded in all mortgages, the terms of which necessitate the existence of an account current between mortgagor and mortgagee, whatever the state of the account may be. *Ganesh Dharnidhar* v *Keshavrav Govind, I L. R, 15 Bom, 625,* overruled GOPAL RAMCHANDRA v GANGARAM ANAND SHET

[I. L R, 20 Bom., 721

23. ——————— *Damdupat—Mortgage—Liability to account—Decree on mortgage—Further interest from date of suit to decree ordered by the Court—Discretion of Court—Civil Procedure Code (Act XIV of 1882), s 209*—Where

SHET v RAVJI . I L. R., 22 Bom., 86

24 ——————— *Interest exceeding principal—Mortgage transaction.—Held,* in a case of deposit for redemption of a mortgage, that the principal and an equal sum for interest was sufficient, and that no more interest could accrue during the year of grace, as the law prohibited interest in excess of the principal SHEOBART v DHAREE THAKOOR . 2 Agra, Pt. II, 194

25 ——————— *Interest exceeding principal—Rule of damdupat—Mortgage transactions*—According to the Hindu law of damdupat, interest exceeding the principal sum lent cannot be recovered at any one time Cases bearing upon the subject of damdupat, and how far and when that law is applicable to loans upon mortgage, reviewed and considered. NARAYAN v SATVAJI 9 Bom., 83

26 ——————— *Interest exceeding principal—Damdupat, Rule of—Mortgage transactions—Suit for foreclosure*—In a suit for foreclosure of an equitable mortgage,—*Held* that the plaintiff could not recover interest to an amount exceeding the principal sum lent, the rule of damdupat being applicable in a case of a mortgage by a Hindu where no account of rents and profits is to be taken GANPAT PANDURANG v ADARJI DADABHAI

[I L. R., 3 Bom., 312

27. ——————— *Interest exceeding principal—Rule of damdupat—Limitation*—In a suit by the assignees of the equity of redemption for possession on payment of the mortgage-money,—*Held* the question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, art 132 of which applied, but as the rule of damdupat is not affected by Limitation Acts, the defendants could not be allowed as interest more than the amount of the principal on which it was to be paid HARI MAHADAJI v PALAMBHAT RAGHUNATH

[I L. R., 9 Bom., 233

28. ——————— *Interest recover-*

Hindu law of contract is, in the absence of any legislative enactment to the contrary, the law as between Hindus in the High Court in its Ordinary Original Civil Jurisdiction Act XXVIII of 1855 deals exclusively with the rate of interest which may be allowed, and there is nothing in that Act inconsistent with the rule of damdupat *Nathobhai Panachand* v *Mulchand Hirachand, 5 Bom., A C, 196,* distinguished. NOBIN CHUNDER BANNERJEE v. ROMESH CHUNDER GHOSE

[I. L. R, 14 Calc., 781

29. ——————— *Interest—Rule of damdupat—Account directed by decree in mortgage suit between Hindus—Interest for periods before, during, and after, the six months allowed by decree for redemption*—Where a mortgage decree, in a suit between Hindus, directed an account to be taken of what was due to the plaintiff for principal and interest, the latter to be computed at

9. ———— *Right of widow as to vested property of husband under a will.*—The doctrine of the Hindu law that a widow succeeding as heir to her husband cannot recover property of which he was not possessed does not apply when the husband has a vested interest under a will or deed, the actual enjoyment being postponed. HURROSOONDERY DEBEA CHOWDRANEE *v.* RAJESSUREE DEBEA . . . . . . 2 W. R., 321

10. ———— *Interest of Hindu widow in husband's property, Power of disposal of, as against reversioners.*—The widow of one of the brothers of a divided Hindu family, governed by the Mitakshara law, does not acquire an absolute interest in her husband's separate estate, but only such an interest as would render her acts conveying her interest to a third party binding as against herself, but not as against the reversionary heirs, unless the alienations were made under legal necessity. CHEET BANOO *v.* RAM KISHEN SINGH. RAM KISHEN SINGH *v.* CHEET BANOO . . W. R., 1864, 102

11. ———— *Suit by reversionary heir—Hindu widow—Burden of proving ownership of the husband through whom title is made.*—It is incumbent on a plaintiff suing as the reversionary heir of a Hindu proprietor, who has died leaving a widow, to show that the property claimed in the suit and found in her possession has vested in the husband. There is no presumption of law arising where the late husband possessed considerable property, that property found to be in the possession of the widow after his death must have been included in that which belonged to him unless she shows that she obtained the property from another source. RAN BIJAI BAHADUR SINGH *v.* INDARPAL SINGH

[I. L. R., 26 Calc., 871
L. R., 26 I. A., 226
4 C. W. N., 1

See DAKHINA KALI DEBI *v.* JAGADISHWAR BHUTTACHARJEE . . 2 C. W. N., 197

12. ———— *Trustee—Daughter's estate.*—The title of a Hindu widow to her husband's property, though a restrictive one, is not in the nature of a trust. *Quære*—Whether by the Hindu law current in Bengal the interest of a daughter in the estate of her deceased father is of the same nature as that of a widow. HURRYDOSS DUTT *v.* UPPOORNAH DOSSEE . . . 6 Moore's I. A., 433

13. ———— *Power of husband to cut down by deed wife's absolute estate to a life-interest.*—Where a Hindu wife is entitled to an absolute estate in certain property, her husband cannot cut down her interest to a life-interest by any dowl which he may make. MOHIMA CHUNDER ROY *v.* DURGA MONEE . . . . 23 W. R., 184

14. ———— *Liability of heir for debts left by widow.*—By Hindu law a widow is allowed, during her lifetime, to make the fullest use of the usufruct of her husband's estate; but whatever part of it she leaves behind at her death becomes the property of the next heir, and is not liable for her personal debts, unless such debts have been contracted under legal necessity and for the benefit of the estate. CHUNDRABULEE DEBIA *v.* BRODY

[9 W. R., 584

15. ———— *Savings or accumulations by widow.*—One *M* died in 1872, leaving him surviving his widow *F*, and a grandson *G*, and a daughter-in-law. The widow (*F*) on her husband's death became entitled to a widow's estate in his immoveable property, and accordingly entered into possession and management thereof. Under certain agreements made between her and one *K*, the latter received the rents of certain portions of the said immoveable property, and in consideration paid *F* certain fixed annual sums. On the 26th May 1883, there was a balance of R1,787-10-3 due from *K* to *F* in respect of the yearly privilege of recovering and receiving the said rents. *F* died intestate on the 18th December 1884, and the plaintiff, having obtained letters of administration to her estate, demanded payment of the said sum of R1,787-10-3 from *K*. It appeared that, after *F*'s death, *K* had paid this sum to *G*, who was *F*'s grandson and the reversioner expectant on the determination of *F*'s widow's estate, and on her death had succeeded to all the immoveable property as the right heir of her husband *M*. The question was whether the said sum of R1,787-10-3 belonged to *F*'s estate, or remained portion of the immoveable property of *M*, and as such properly payable to *G* as his heir. *Held* that the plaintiff was entitled to recover it as part of *F*'s estate. There was nothing to show it to be "savings or accumulations" so as to give it to the heir to her husband's estate. RIVETT-CARNAC (ADMINISTRATOR GENERAL, BOMBAY) *v.* JIVIBAI . . . I. L. R., 10 Bom., 478

16. ———— **Accumulations.**—The right of a Hindu widow to the income and accumulations of her husband's estate arising subsequently to his death is absolute, and is not affected by the fact that she may receive them in a lump sum; but whether she receives them as they fall due, or after they have accumulated in the hands of others, her right is the same. GRISH CHUNDER ROY *v.* BROUGHTON

[I. L. R., 14 Calc., 861

17. ———— **Acquisitions by widow**—*Liability of property purchased by her for her debts—Liability of heir to pay widow's debts—Power to borrow money on security of estate.*—The property acquired by a Hindu widow by purchase, with moneys borrowed on her own credit, is liable to be sold in satisfaction of her debts. Where a Hindu widow has acquired property purchased by moneys borrowed on the credit of her husband's estate, it is equitable that the heir of the husband, who takes in succession to her, should not be permitted to take such acquired property freed from the liability of satisfying a debt contracted by the widow to enable her to make the acquisition, and if the heir claims to take the acquisition, he is bound to satisfy the debt. A Hindu widow may encumber her husband's estate for her

HINDU LAW—WIDOW—*continued*

See CASES UNDER HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW

See HINDU LAW—CONTRACT—HUSBAND AND WIFE I L R, 6 Bom 470

See HINDU LAW—ENDOWMENT SUCCESSION IN MANAGEMENT 3 W R 180
[3 Bom A C, 75
I. L R, 2 Calc, 365
I. L. R, 9 Calc, 766
I L R., 20 Mad, 421

See CASES UNDER HINDU LAW—FAMILY DWELLING HOUSE

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO PARTITION—WIDOW

See CASES UNDER HINDU LAW—PARTITION—SHARES ON PARTITION—WIDOW

See CASES UNDER HINDU LAW—REVERSIONERS

See CASES UNDER HINDU LAW—STRIDHAN

See CASES UNDER HINDU LAW—WILL—CONSTUCTION OF WILLS

See LETTERS OF ADMINISTRATION
[8 Bom., O C, 140
I. L. R 2 Calc 431
I. L R, 4 Calc, 87

See LIMITATION ACT 1877 ARTS 125 140 141

See CASES UNDER ONUS OF PROOF—HINDU LAW—ALIENATION

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
[I L R, 11 Calc, 492
I L R, 21 Calc, 697

1 INTEREST IN ESTATE OF HUSBAND

(a) BY INHERITANCE

1. ———— **Right of widow in husband s property**—*Registration of name* —A widow under the Hindu law is entitled to succeed to her husband s property and to have her name registered as proprietor DEEPO DEBIA v GOBINDO DEB
[16 W R., 42

2 ———— **Estate taken by widow**—*Life estate* —A widow is entitled by law to a life estate in her husband s property GIRDHAREE SINGH v KOOLAHUL SINGH
[6 W R., P C, 1 2 Moore s I A., 344

HINDU LAW—WIDOW—*continued.*

1 INTEREST IN ESTATE OF HUSBAND—*continued*

3 ———— *Immoveable property—Nature of right* —A Hindu widow has an absolute right to the fullest beneficial interest in her husband s property inherited by her for her life She takes as heir a proprietary estate in the land absolute for some purposes although in some [illegible]

enjoyment of the usufruct is untenable RAMAVADHANI VENKATA SUBHAYA v JOYSA NARASINGAPPA 3 Mad, 116

4 ———— *Possession of and* [illegible]

the deceased legatee also that the estate being jointly held by them was partible and either widow might maintain a suit for partition SUNDAR v PARBATI I. L R 12 All 51
[L R 16 I A, 186

5 ———— *Childless widow—Mitakshara law—Qualified interest* —A child [illegible]

KALEE CHURN 9 W R, 490

6 ———— *Widow succeeding in default of male issue—Qualified interest* —A widow who succeeds to the estate of her husband in default of male issue whether she takes by inheritance or by survivorship does not take a mere life estate The whole estate is for the time vested in her though in some respects for only a qualified interest She holds an estate of inheritance to herself and the heirs of her husband and upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death MONIRAM KOLITA v KERI KOLITANI
[I. L. R, 5 Calc, 776 6 C L R 322

7 ———— *Childless Jain* [illegible] —A childless [illegible] in her hus[illegible] PERSHAD v [illegible] Calc, 679

8 ———— *Right to divided property* —According to the Hindu law a widow cannot claim an undivided property DEWAN PERSAD v RADHA BIBEE
[7 W R, P C, 35 4 Moore's I. A., 137

HINDU LAW—WIDOW—*continued.*

1. INTEREST IN ESTATE OF HUSBAND —*continued.*

of one of the co-heirs in her character of heiress and legal personal representative of her deceased husband, declared that she was entitled to the sum therein expressed as the share of her deceased husband "for her sole absolute use and benefit." *Held* (reversing the decree of the Supreme Court at Calcutta) that these words were not to receive the same interpretation as a Court of equity in England would put upon them, as creating a separate estate in the widow; but that the deed must be construed with reference to the situation of the parties and the rights of the widow by the Hindu law, and that, as the deed recited that she claimed and received the money as her husband's share in the joint estate in her character as his heiress and legal personal representative, such words must be construed to mean that it was to be held by her in severalty from the joint estate, and as a Hindu widow she had only a life-estate in the corpus, the same at her death devolved as assets of her deceased husband upon his personal representative in succession. In reversing such decree, the Judicial Committee directed that interest at the usual rate allowed by the Supreme Court should be allowed from the death of the widow. RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK

[6 Moore's I. A., 1

26. ———— Gift of moveable and immoveable property—*Power of alienation.*—Under a gift of moveable and immoveable property by a Hindu to his wife, the wife takes only a life-estate in the immoveable property, and has no power of alienation over it, while her dominion over the moveable property is absolute. A Hindu wife takes by the will of her husband no more absolute right over the property bequeathed than she would take over such property if conferred upon her by gift during the lifetime of her husband, and whether in respect of a gift or a will, it is necessary for the husband to give her in express terms a heritable right or power of alienation. KOONJBEHARI DHUR *v.* PREMCHAND DUTT . I. L. R., 5 Calc., 684 : 5 C. L. R., 561

27. ———— Gift of immoveable property by husband—*Life-interest—Heritable interest—Alienable interest.*—The plaintiff, alleging himself to be joint in estate with *A*, his granduncle, sued to set aside an absolute gift of the house in suit made by *A* in favour of his wife, as also the subsequent sale of the house by the wife of the defendant. The lower Appellate Court, finding that *A* was separate in estate from plaintiff and the sole and exclusive owner of the house, held the gift to the wife and the sale by her to defendant valid, and dismissed the suit. On appeal, plaintiff contended that he was the heir of the donee, and that, under the deed of gift, she had no power to alienate. *Held* that, from the wording of the deed of gift, it appeared that the husband intended to give and did give to his wife an heritable estate in, and power of alienation over, the property the subject of the gift, and therefore the sale by the wife was valid. *Koonjbehari Dhur* v. *Prem Chand Dutt, I. L. R., 5 Calc., 684,* referred to. KANHIA *v.* MAHIN LAL

[I. L. R., 10 All., 495

HINDU LAW—WIDOW—*continued.*

1. INTEREST IN ESTATE OF HUSBAND —*continued.*

28. ———— Deed of adoption by widow to deceased husband—*Interest and powers of adoptive mother.*—The widow of a separated Hindu made an adoption to her deceased husband under a power to adopt conferred upon her by her husband's will. The deed by which the adoption, the validity of which was not disputed, was evidenced, contained, amongst others, the following conditions: "that during my" (*i.e.*, the adoptive mother's) "lifetime, I shall be the owner and manager of the estate, and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of *I C M* born of me." *Held* that these words conferred upon the widow an interest and an authority not less than she would have had as the widow of a separated sonless Hindu to whom no adoption had been made, so far as her position as manager was concerned. KALI DAS *v.* BIJAI SHANKAR . . . . . I. L. R., 13 All., 391

29. ———— Deed of gift to widow, Construction of—*Life-estate.*—In this case the decision of the High Court, reported in *7 B. L. R., 93,* was reversed by the Privy Council, who held that the effect of the instruments was to give the widow an estate for life with power to use the proceeds as she chose, and consequently that the proceeds, or property purchased by her out of the proceeds, would belong on her decease to her heirs. BHAGBUTTI DEVI *v.* BHOLANATH THAKOOR

[I. L. R., 1 Calc., 104 : 24 W. R., 168
L. R., 2 I. A., 256

30. ———— Gift containing power of adoption—*Interest in moveable and immoveable property.*—A Hindu gave a power of adoption to his wife, directing that so long as the wife should live she should remain in possession of all his property, moveable and immoveable, ancestral as well as self-acquired. *Held* that the widow took a life-interest in her deceased husband's property with remainder to the adopted son. *Bhugbutti Daee* v. *Bholanath Thakoor, L. R., 2 I. A., 256,* followed. BEPIN BEHARI BUNDOPADHYA *v.* BROJO NATH MOOKHOPADHYA . . . . I. L. R., 8 Calc., 357

31. ———— Bill of sale, Construction of—*Estate of, as heiress of her son—Estate given to be held in severalty absolutely.*—*M*, a member of a joint Hindu family, died, leaving three sons, *K*, *G*, and *D*, and a widow, *R*, who was mother of *G* and *D*. *G* having died, *R*, claiming as mother and heiress of *G*, joined with *D*, in bringing a suit for partition against *K* and the other members of the joint family. The decree in the suit, which was made by consent of all parties, declared *R* and *D* entitled to two equal twelfth parts of the joint estate, and *K* to one-twelfth share, and referred it to certain persons as arbitrators, and not as commissioners only, to make the award. The arbitrators allotted certain land to *R* and *D* as their two-twelfths of the joint immoveable property, "to be held by them in severalty absolutely:" to *K* they allotted other land as his

HINDU LAW—WIDOW—*continued*

1 INTEREST IN ESTATE OF HUSBAND —*continued*

wn maintenance consequently it seems that if she an derive no income from the estate sufficient for her maintenance there being no funds for cultivation he would be at liberty to borrow money on the security of the estate for the purposes of cultivation and provision for herself ODDEY SINGH *v* PHOOL HUND 5 N W, 197

18 ——— *Money advanced y widow—Presumption as to its being husband s property* —Where Hindu widows acquire property by advancing money during an interval when they are out of possession of their deceased husband s estate the money so advanced cannot be presumed to be a part of the proceeds of that estate GOBIND CHUNDER MOJOOMDAR *v* DULMEER KHAN [23 W R, 125

19 ——— *Widow's estate in moveables inherited from her husband—Liability of such property for her debts after her death* —Under the Hindu law in force in the Presidency of Bombay a widow inheriting from her husband or a

[illegible]

personal property liable in their hands for her debts BAI JAMNA *v* BHAISHANKAR [I L R, 16 Bom, 233

See HARILAL HARJIVANDAS *v* PRANVALAVDAS PARBHUDAS I L R, 16 Bom, 229

20 ——— *Funeral expenses of widow—Liability of husband s estate for such expenses* —Under the Hindu law the estate of the husband is liable for the funeral expenses of the widow her stridhan cannot be charged with such expenses *Sadashiv v Dhakubai I L R 5 Bom 50*, referred to RATANCHAND *v* JAVHERCHAND [I L R, 22 Bom, 818

21 ——— *Rents of immoveable property—Execution of decree for money—Application for receiver of rents of immoveable pro-*

[illegible]

widow s estate such rents not being assets of the deceased but the personal moveable property of the widow and this even if the decree holder had not as in fact he had agreed for consideration not to execute his decree against the moveable property of the widow KANHO DAI *v* LACY [I L R, 19 All, 235

(*b*) BY DEED GIFT OR WILL

22 ——— **Devise by will**—*Widow s estate—Married woman* —The rule of Hindu law by

HINDU LAW—WIDOW—*continued*

1 INTEREST IN ESTATE OF HUSBAND —*continued*

[illegible]

23 ——— *Construction of will—Estate taken by widow—Alienation by justifying necessity* —The will of a Hindu testator who

[illegible] my lifetime and after my death my wife taking possession of them shall perform with the proceeds my obsequies and the expenses for the marriage maintenance and support according to the family usage of my three daughters. *She shall have 4 annas of talukhs A and* B in the possession of my step mother for her necessary expenses and the performance of charity Ac

[illegible]

24 ——— *Joint tenancy*—

[illegible]

heirs with a direction that they should maintain

[illegible]

Held that under the will *H* took only a widow s estate in half the property and that (subject to her right as a Hindu widow to a widow s estate in a half share) *the entire property vested absolutely in N* On *N* s death the property (subject as aforesaid)

[illegible]

express words giving her a larger estate HIRABAI *v* LAKSHMIBAI I L R., 11 Bom 573

Affirming on appeal the decision in LAKSHMIBAI *v* HIRABAI I L R., 11 Bom., 69

25 ——— **Deed of arrangement giving property to widow "for her sole use and benefit"** —*Interest in property of husband* —A deed of arrangement and release in the English form between members of a Hindu family in respect of certain joint estate claimed by a childless Hindu widow

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

(b) POWER OF DISPOSITION OR ALIENATION.

38. ——— Power of alienation—*Alienation for religious or charitable purposes—Necessity—Right of Crown taking property to set aside alienation—Onus probandi.*—Under the Hindu law, a widow, though she takes as heir, takes a special and qualified estate. If there be collateral heirs of her husband, she cannot of her own will alienate the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely wordly purposes. To support an alienation for the last, she must show necessity. The restrictions on her power of alienation are inseparable from her estate, and independent of the existence of heirs capable of taking on her death. If for want of heirs the property, so far as it has not been lawfully disposed of by her, passes to the Crown, the Crown has the same power of protecting its interest as an heir by impeaching any injurious alienation by the widow. The onus is on those who claim under an alienation from a Hindu widow to show that the transaction was within her limited powers. COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARAINAPAH

[2 W. R., P. C., 61: 8 Moore's I. A., 529

39. ——— *Power to dispose of property by will—Right to dispose of.*—A Hindu widow succeeding to the immoveable property of her deceased husband, and also claiming as heir to her only daughter, who died after her father childless and unmarried, is only entitled during her life to a widow's estate. The doctrine laid down in the original Court that ancestral property after partition can be disposed of by will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindu law. LAKSHMIBAI *v.* GANPAT MOROBA. GUNPAT MORABA *v.* LAKSHMIBAI . . . . 5 Bom., O. C., 128

40. ——— *Widow of Hindu having undivided property—Self-acquired property—Payment of debts.*—The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired. NAMASIVAYA CHETTI *v.* SIVAGAMI . . 1 Mad., 374

41. ——— *Alienations by a widow of her husband's estate in order to pay his time-barred debts—Widow's status as distinguished from that of a manager—Liability of alienees—Rights of reversioners.*—According to the Hindu law, a widow is competent to alienate her husband's estate for the purpose of paying his debts, even though they may be barred by the law of limitation. Her alienations for such a purpose are legal and binding on the reversionary heirs. A widow stands in a different position from that of a manager of a joint family. The latter can act only with the consent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. She can therefore do what the body of co-parceners can do, subject always to the condition that she act fairly to the expectant heirs. The rights of these heirs impose, on persons dealing with a widow, the obligation of special circumspection, failing which they may find their securities against the estate to be of no avail after the widow's death. CHIMNAJI GOVIND GODBOLE *v.* DINKAR DHONDEV GODBOLE

[I. L. R., 11 Bom., 320

42. ——— *Gift adverse to collateral heir of husband.*—A childless widow rani has no power to alienate her deceased husband's property as against his collateral heir by a waseeutnamah or deed of gift. KEERUT SINGH *v.* KOOLAHUL SINGH . . . 5 W. R., P. C., 131

[2 Moore's I. A., 331

43. ——— *Power to dispose of immoveable property by will—"Inherited."*—A widow has no power to dispose by will of immoveable property inherited by her from her husband. The word "inherited" used in the Mitakshara, in regard to a woman's stridhan, does not include immoveable property so as to make it her peculium, but refers only to personal property over which alone she has absolute dominion. GOBURDHUN NATH *v.* ONOOP ROY . . . . 3 W. R., 105

RAM SHEWUK ROY *v.* SHEO GOBIND SAHOO

[8 W. R., 519

44. ——— *Right to dispose of land, portion of stridhan.*—*Held* that a widow cannot, under Hindu law, dispose of immoveable property given to her by her husband which has become a portion of her stridhan. GUNPUT SINGH *v.* GUNGA PERSHAD . . . . . 2 Agra, 230

45. ——— *Right to alienate stridhan, except land.*—A Hindu wife or widow may alienate her stridhan, whether it be moveable or immoveable, with the exception, perhaps, of lands given to her by her husband. DOE D. KULAMMAL *v.* KUPPU PILLAI . . . . . 1 Mad., 85

46. ——— *Power to alienate land being her stridhanam.*—Land received by a woman from her husband as stridhanam cannot be alienated even after the husband's death to the prejudice of the daughters as next heirs without their consent. GANGADARAIYA *v.* PARAMESWARAMMA

[5 Mad., 111

47. ——— *Power to dispose of property by will.*—A woman cannot execute a will regarding any property she inherits from her husband or father. She may dispose of her stridhan by gift, will, or sale, unless it is immoveable property given her by her husband. TEENCOWREE CHATTERJEE *v.* DINONATH BANERJEE . . . 3 W. R., 49

48. ——— *Stridhan—Power of disposition by will.*—Where a Hindu lady had received presents of moveable property from her husband from time to time during their married life, and after his death, partly out of such property and partly from funds raised by the mortgage of jewels admitted to be her stridhanam, purchased immoveable property,—*Held* that that was her stridhanam

HINDU LAW—WIDOW—*continued*

1. INTEREST IN ESTATE OF HUSBAND —*concluded.*

one twelfth share, and in pursuance of an arrangement come to between *K* and *R* and *D*, they directed *K* to sell and convey his one twelfth share to *R* and *D*, on receiving from them the sum at which it

day invested with my rights, you have become proprietors of the right of gift and sale I have no further connection with the said land Paying the taxes, revenue, etc, to Government, and causing mutation of names, you will continue, with your sons and grandsons in succession, to enjoy possession in perfect peace" In a suit brought by *A* against the executor of *R*, to recover a moiety of the property awarded to her and *D* and of the property conveyed to them by the bill of sale, upon an allegation that *R* took *this property only as mother and heiress of G, and* that upon her death it devolved upon him as *G's* next of kin,—*Held* (reversing the decision of MACPHERSON, J) that *R* took an absolute estate, and not merely a life interest, both in the property awarded to her and in the property conveyed by the bill of sale BOLYE CHAND DUTT *v* KHETTERPAL BYSACK [11 B. L. R., 549

2 POWER OF WIDOW

(*a*) POWER TO COMPROMISE

32 ———— Nature of power to compromise—*Assertion of rights—Right of appeal.* —A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. TARINI CHARAN GANGULI *v* WATSON [3 B L. R., A. C, 437: 12 W. R., 413

33 ———— Nature of compromise by

[14 W. R., 148

34. ———— Compromise of suit—*Disclaimer of interest*—In a suit for the recovery of a share of joint property the plaintiff's maternal aunts,

SHAMA SOONDUREE *v.* SHURUT CHUNDER DUTT [8 W. R., 500

HINDU LAW—WIDOW—*continued.*

2 POWER OF WIDOW—*continued*

35. ———— *Effect to compromise—Power to bind reversioners*—Hindu widows have no power by a compromise between themselves to affect the rights of the successor to the estate on their death. DHARAM CHAND LAL *v* BHAWANI MISRAIN 1 C W N, 697 [I. L. R., 25 Calc, 89

36 ———— Compromise made by widow, Effect of—*Claim under alleged adoption—Minor daughters*—In a suit in which a claim

alienation, and that, after her death, her minor daughters should take the self acquired property, and that the claimant should succeed to the ancestral estate *Held* that the daughters could not under ... compromise ... the facts.

... L. R., 70

37. ———— *Alienation—Reversioner—Limitation*—*C*, the brother of *A* and *B*, died in 1835, and an order for mutation and registration of names having been obtained by *A* and the heirs of *B* on the 28th March 1835, *K*, the widow of *C*, instituted a suit to have the order cancelled and to have her possession confirmed and on the 4th September 1837 obtained a decree which, however, was reversed on appeal on the 24th July 1839, the Appellate Court declaring that *K* was not entitled as her husband's heir A special appeal

..., and ... should remain in ... possession ... life without power to make zur-i-peshgi leases or mortgages, and that on her death such mortgages ... al ... to

the effect that the ikrarnamah ... may affect the rights of the minors" the heirs of *A* and *B* *Held* that the ikrarnamah and order of the 14th September 1841 could not be regarded as affecting the rights of the reversioners of *C's* estate on the expiration of the widow's life-interest *Held* also that the suit by *K* and the succeeding compromise was tantamount to an alienation by her, and that there was consequently no adverse possession during her life, and that the period of limitation in a suit by the reversioners must be calculated from her death SHEO NARAIN SINGH *v* KHERO KOERY. SHEO NARAIN SINGH *v* BISHEN PROSAD SINGH [10 C. L. R., 237

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

57. ——————— *Widow's estate —Moveable property.*—The restriction placed by the Hindu law on a widow's power of alienation of her husband's estate extends to moveable as well as immoveable property. NARASIMAH *v.* VENKATADRI [I. L. R., 8 Mad., 290

58. ——————— *Right of childless widow to alienate moveable property—Mithila law—Inheritance.*—Under the Mithila law, a childless Hindu widow, although she cannot alienate the immoveable property, has an absolute right over the moveable property inherited from her husband, and can alienate it in any manner she pleases, and she has also an absolute power to dispose of the profits of the estate during her lifetime. BIRAJUN KOER *v.* LUCHMI NARAIN MAHATA [I. L. R., 10 Calc., 392

59. ——————— *Immoveable property—Will—Bequest—Gift.*—An absolute bequest by a Hindu of his separate immoveable property to his widow confers on her as full dominion and power of alienation over that property as if the bequest had been made to a stranger. SETH MULCHAND BADHARSHA *v.* BAI MANCHA . I. L. R., 7 Bom., 491

60. ——————— *Power to dispose of property by will.*—Where a widow of a Hindu who had received a share of the estate of her husband, consisting of moveable and immoveable property, from her co-widows, purported to dispose of her property by will to the prejudice of the co-widows,—*Held* that the alienation was invalid. GURIVI REDDI *v.* CHINNAMMA [I. L. R., 7 Mad., 93

61. ——————— *Grant of money in lieu of maintenance—Power of disposal.*—Where a sum of money was given to a widow, without restriction, in lieu of maintenance, by her deceased husband's family,—*Held* that it became absolutely hers, and that she could dispose by will of landed property acquired by means of it. NELLAIKUMARU CHETTI *v.* MARAKATHAMMAL . I. L. R., 1 Mad., 166

62. *Gift—Interest with husband in joint property.*—Where a Hindu wife has a joint interest with her husband in landed properties, partly acquired by purchase, partly (as sowdayakam) by gift from her father,—*Held* that she was entitled on her husband's death to part with her interest in those properties. MADHAVARAYYA *v.* TIRTHA SAMI . . I. L. R., 1 Mad., 307

63. ——————— *Restriction on alienation—Proof of legal necessity.*—The restrictions on a Hindu widow's power of alienation are inseparable from her estate. Their existence does not depend on that of heirs capable of taking on her death. The plaintiffs sued as purchasers of the equity of redemption from *S*, a Hindu widow, to redeem a mortgage effected by her husband *B*. The mortgage deed recited that a portion of the mortgaged land was held by *B*, not as owner, but as mortgagee from a third party. *S* was alive when the suit was instituted, but she died after the settlement of issues. The plaintiff then filed a supplementary claim to succeed as *B*'s next heir. The defendants (the sons of the mortgagee) contended that the plaintiff could not redeem because the sale by *S* was invalid. They also claimed compensation for loss of the rents and profits of a portion of the mortgaged property redeemed from *B* by the original owner. The Subordinate Judge allowed the plaintiff's claim. In appeal, the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendants, because there were no collateral heirs. On appeal to the High Court,—*Held*, following the decision of the Privy Council in *Collector of Masulipatam* v. *Cavaly Venkata Narrainapah, 2 W. R., P. C., 61 : 8 Moore's I. A., 529*, that the plaintiffs, who were bound to make out their title, could not succeed on the strength of an alienation by a Hindu widow, unless they proved that the alienation was made for purposes which the Hindu law recognized as necessary. DHONDO RAMCHANDRA *v.* BALKRISHNA GOVIND NAGVEKAR [I. L. R., 8 Bom., 190

64. ——————— *Adoption made on promise of settlement by adoptive father on adopted son—Specific performance, Right to—Alienation by widow in accordance with promise—Limitation—Immoveable property.*—Where a member of the Talabda Koli caste of Hindus, by an express promise to settle his property upon the boy, induced the parents of the defendant to give him their son in adoption, but died without having executed such settlement,—*Held* that the equity to compel the heir and legal representative of the adoptive father specifically to perform his contract survived; and the property in the hands of his widow was bound by that contract. Therefore, when the widow of the adoptive father, nearly thirty years after his death, gave effect to his undertaking by executing a deed of gift of his property in her hands in favour of the adopted son,—*Held* that such alienation was valid as against the next heir by blood of the adoptive father, and he could not, on the death of the widow, avail himself of the plea of limitation which she had waived. The nature of a Hindu widow's estate in immoveable property considered. BHALA NAHANA *v.* PARBHU HARI [I. L. R., 2 Bom., 67

65. ——————— *Right of widow to dispose by will.*—By Hindu law the widow of a collateral does not take an absolute estate in the property of her husband's gotraja-sapinda, which she can dispose of by will after her death. BHARMANGAVDA *v.* RUDRAPGAVDA . I. L. R., 4 Bom., 181

66. ——————— *Bengal school of Hindu law—Widow's estate—Joint widows—Partition—Purchaser from Hindu widow.*—Where a Hindu governed by the Bengal school of Hindu law dies intestate, leaving two widows, his only heirs, him surviving, either of those widows may sell her interest in her deceased husband's property, and the purchaser thereof is entitled to enforce a partition as against the other widow. JANAKI NATH MUKHOPADHYA *v* MOTHURANATH MUKHOPADHYA [I. L. R., 9 Calc., 580: 12 C. L. R., 215

HINDU LAW—WIDOW—*continued*

2 POWER OF WIDOW—*continued*

and that she consequently could dispose of it by will VENKATA RAMA RAU *v* VENKATA SURIYA RAU
[I. L. R., 1 Mad., 281

In the same case in the Privy Council it was held as follows affirming the decision of the High Court ... her ... r of ... eing absolute, no distinction can be taken as regards a widow's power of disposition by will over immoveables in the purchase of which she has invested money given to her by her husband Such estate is subject to the disposition which the general law gives her the power to make of her stridhanam. VENKATA RAMA RAO *v* VENKATA SURIYA RAO
[I. L. R., 2 Mad., 333
8 C. L. R., 304

49. ——— — *Right of alienation of moveable and immoveable property* —A Hindu widow's right to alienate moveable property ... necessary subsistence, or for purposes beneficial to the deceased BECHAR BHAGAVAN *v* BAI LAKSHMI
[1 Bom, 56

50 ——— *Right of alienation of immoveable property* —*Held* that a Hindu ... life-interest and no further MAYARAM BHAIRAM *v*. MOTIRAM GOVINDRAM
[2 Bom., 331 : 2nd Ed., 313

51. ——— *Non-ancestral and ancestral property—Agarwala Banias of Saraogi sect of Jains* —Amongst Agarwala Banias of the Saraogi sect of the Jain religion, a widow has full power of alienation in respect of the non ancestral property of her deceased husband, but she has no such power in respect of the property which is ancestral SHIMBHU NATH *v* GAYAN CHAND
[I. L. R, 16 All., 379

52. ——— *Power of, to dispose of personalty inherited by her from her husband* —*Held* that, under the Hindu law as understood in the Benares school a widow has an absolute ... inherited by her ... Hindu law Gov- ... be treated as per ... etc., are of the ... Hindu law looks ... with reference to ... land, and ... sory notes cannot be included in the said term "corrody." DOORGA DAYEE *v* POORUN DAYEE
[1 Ind. Jur, N. S., 128 : 5 W. R., 141

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

53. ——— *Power to dispose of property—Immoveable and moveable property.* —By the law of the Western schools, as well as by the law of Bengal a Hindu widow is restricted from alienating any immoveable property which she has inherited from her husband. *Quære*—Is there any distinction in respect of moveable property? THAKOOR DEYHEE *v* RAI BALUK RAM
[2 Ind. Jur., N S, 106 10 W. R., P. C., 3
11 Moore's I. A., 139

KOTARBASAPA *v*. CHANVEROVA 10 Bom., 403

54. ——— *Widow's property in moveables left to her by the will of her husband* —In Western India a widow takes absolutely all moveable property bequeathed to her by her husband, and may dispose of such property by will DAMODAR MADHOWJI *v* PURMANANDAS JEEWANDAS
[I. L. R., 7 Bom., 155

55 ——— *Moveable property inherited from husband—Devolution of such property* —Under the Mitakshara law, a widow has no power to bequeath moveable property inherited by her from her husband. In the Presidency of Bombay, moveable property inherited by a widow from her husband devolves on her death to her husband's heirs If the decision in the case of *Damodar v Purmanandas, I. L. R., 7 Bom 155*, is to be regarded as necessarily giving to the heir of a widow on her death such moveable property inherited from her husband as remains undisposed of by her, it must be treated as of no authority GADADHAR BHAT *v*. CHANDRABHAGABAI
[I. L. R., 17 Bom., 690

See HARILAL HARJIVANDAS *v* PRANVALAVDAS PARBHUDAS I. L. R., 16 Bom., 229

and BAI JAMNA *v* BHAISHANKAR
[I. L. R., 16 Bom., 233

56 ——— *Widow's power to dispose of moveables bequeathed to her by her husband—Mayukha law* —*Held* that a widow in Gujarat, under the law of Mayukha had power to bequeath moveable property taken by her under the will of her husband which gave her express power of free disposition *Gadadhar Bhat v Chandra-* ... be borne in mind ... Gujarat, claiming under a will which gave her express ... of move- ... authority ... If the ... herself, ... freedom of disposition ... all have gone to the reversioner as her husband's heir MOTILAL LALUBHAI *v* RATILAL MAHIPUTRAM
[I. L. R., 21 Bom., 170

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

from recovering from an alienee, after the other co-widow's death, property given by way of partition to the latter and alienated by her. A widow may alienate for her life any estate which comes to her by virtue of her widowhood, and may therefore enter into such a deed as will preclude her from recovering during her life property which she has alienated, to the full extent of such alienation, provided that it does not extend beyond her life-interest. RAMAKKAL v. RAMASAMI NAICKAN . **I. L. R., 22 Mad., 522**

77. ———————— *Right of widow to sell property inherited from her husband—Suit by reversioner to set aside sale by widow.*—*B* having during his lifetime mortgaged certain property, the income of which was sufficient only to pay interest on a portion of the mortgage-debt, his widow, after his death, sold it before the mortgage-debt fell due. The reversioners sued to set aside the sale. *Held* that, although there might have been no absolute necessity for the widow to sell the property to provide herself with maintenance, still, as there was no other family property, the property in question must necessarily have been sold at the expiration of the time fixed by the mortgage, and the sale by the widow ought be supported. A widow, like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs. VENKAJI SHRIDHAR v. VISHNU BABAJI BERI . **I. L. R., 18 Bom., 534**

78. ———————— *Alienation by widow without legal necessity.*—The property in dispute (consisting of 12 thikans or plots of land) was originally held by *A* and *B* as tenants-in-common, and they divided the income according to their respective shares. After *A*'s death, his widow adopted *C* on condition that she was to remain in absolute possession and enjoyment for her life, and that *C* was to succeed to the estate after her death. The widow mortgaged 9 out of the 12 thikans, sold one, and granted a perpetual lease of another to the defendant. All these alienations to the defendant were made without any legal necessity. The defendant also purchased *B*'s share in the thikans in dispute. The plaintiff purchased *C*'s rights, and, on the widow's death, sued to set aside her alienations and to obtain joint possession with the defendant of all the thikans. The defendant pleaded (*inter alia*) that the widow's alienations were valid and binding on the plaintiff, and that the plaintiff's remedy was a partition suit. *Held* that *A*'s widow, not having higher powers than those of an ordinary Hindu widow who succeeds as heir to her sonless husband, could only make valid alienations for purposes warranted by the law. As no legal necessity was shown in respect of the alienations in question, which were made long after disputes had commenced between her and her adopted son, they were not binding on him or on his alienee, the plaintiff. ANTAJI v. DATTAJI . **I. L. R., 19 Bom., 36**

79. ———————— *Mortgage taken from Hindu widow—Unpaid interest claimed on her deceased husband's mortgages—Will, Construction of.*—A pardanashin widow executed a mortgage of part of the family estate to secure payment of the balance of interest alleged to be due on three previous mortgages, which had been executed by her husband in his lifetime. Justifying necessity for her to encumber was not shown, nor enquiry by the mortgagee as to her authority. Even if the transaction had been properly explained to her, as a Hindu widow she would have exceeded her powers. By his will her husband had declared that his widow should have full powers, but that, during the life of his minor son, she should not have power to transfer without legal necessity; and that she should have power to mortgage to pay revenue and other debts. *Held* that the will conferred on her no greater power of alienating the family estate than she had under the Hindu law; and that, under the circumstances, the mortgage executed by her was invalid. Notes promising to pay interest, additional to that contracted for in the mortgages, had been signed by the husband, which it was held could not affect the right to redeem, being unregistered. TIKA RAM v. DEPUTY COMMISSIONER OF BARA BANKI . . . **I. L. R., 26 Calc., 707**
L. R., 26 I. A., 97
3 C. W. N., 573

80. ———————— *Assignment by widow of—Decree for mesne profits of her late husband's land in her favour—Execution proceedings by assignee—Objections by reversioners—Validity of assignment.*—The widow of a deceased Hindu, having been kept out of possession of land forming portion of her late husband's estate, obtained a decree for possession thereof and for mesne profits. She assigned the decree for mesne profits and subsequently died. Upon the assignee attempting to execute the decree in respect of mesne profits, the reversionary heirs contended that he had no right to do so on the ground that his assignor, the widow, could not alienate the mesne profits so as to enure beyond her lifetime. *Held* that the right to mesne profits under a decree is not immoveable property, and that the decree was validly assigned. SAMINATHA PILLAI v. MANIKKASAMI PILLAI . . **I. L. R., 22 Mad., 356**

81. ———————— *Adopted son's right to impeach alienation unnecessarily made by his adoptive mother before his adoption—Widow, Alienation by—Alienee from widow bound to inquire if legal necessity for alienation—Evidence—Onus of proving necessity for alienation by the widow.*—The plaintiff claimed, as the adopted son of one *K*, to recover possession of his adoptive father's property, which had been mortgaged by his (*K*'s) widow, *R*, (defendant No. 1), to the third defendant *B* prior to the plaintiff's adoption by her. The property had come into *R*'s possession incumbered with a mortgage effected by her husband, and in order to redeem that mortgage, she mortgaged the property again to one *Y*. She subsequently paid off *Y*'s debt, amounting to R3,629, and in 1876 she mortgaged the property for R5,999 to *B*, who was put into possession. In 1881 she adopted the plaintiff, and in 1882 the plaintiff brought this suit to recover the property. He contended that *R* had no power to alienate or mortgage the ancestral immoveable

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*continued.*

67. ——— *Widow with certificate under Act XXVII of 1860—Ground for setting aside sale—Fraud.*—The sale by a widow (who has obtained a certificate under Act XXVII of 1860 to collect the debts due to her husband's estate) of a money-decree belonging to her husband's estate

LUCHMEE NARAIN . . . 2 W. R., Mis., 19

68. ——— *Sale by widow with consent of heirs.*—An adopted son is not actually precluded from questioning acts done by his

an adopted son adopted long after the sale. RAJKRISTO ROY v. KISHOREE MOHUN MOJOOMDAR [3 W. R., 14

69. ——— *Gift by Hindu widow of her own interest and that of consenting reversioner.*—A Hindu widow in possession can, with the consent of a reversioner, make a valid gift, which will operate, so far as the interest of the widow and that of the consenting reversioner are concerned. *Rany Srimutty Dibeah v. Rany Koond Lata, 4 Moore's I. A., 292, Kooer Goolab Singh v. Rao Kurun Singh, 14 Moore's I. A., 176, Sia Dasi v. Gur Sahai, I. L. R., 3 All., 362,* and *Raj Bullubh Sen v. Oomesh Chunder Rooz, I. L. R., 5 Calc., 44,* referred to. *Ramphal Rai v. Tula Kuari, I. L. R., 6 All., 116,* distinguished. RAMADHIN v. MATHURA SINGH . . . . I. L. R., 10 All., 407

70. ——— *Gift with consent of reversioner—Subsequently-born reversioners.*—The widow of a separated Hindu, being in possession as such widow of property left by her husband, executed a deed of gift of such property in favour of her daughter's son, her ... Subsequently

could not operate to prevent the succession (as to

SINGH . . . . I. L. R., ...

71. ——— *Power to defeat rights of reversioners.*—A Hindu widow is not at liberty to defe... ating or wastin... her husband.

72. ——— *Forfeiture of property—Reversioner, Right of, to possession.*—A Hindu widow does not forfeit her interest in her deceased husband's separate estate merely by divesting herself of such interest. Such an act does not en-

[I. L. R., 1 All., 503

73. ——— *Appointment of reversioner as manager—Lease by Hindu widow before he took over charge.*—Where a reversioner had obtained a decree for waste against a Hindu widow and was appointed manager of the estate, but did not take over charge of it for six years,—*Held* a pottah granted by the widow in the meantime was a valid lease. RAIE CHURN PAUL v. SAROOP CHUNDER MYTEE . . 9 W. R., 598

74. ——— *Right of purchaser at sale in execution of decree.*—A purchaser

75. ——— *Mortgage by one*

bind the estate in the possession of the surviving widow after the death of the mortgagor. But assuming that the deeds had been so framed, and that there

husband (a state of ... here), such a necessity could not render a mortgage attempted by one co-widow binding upon the ... widows for their

76. ——— *Division by co-widows of their late husband's estate—Alienation by one after the division—Validity of alienation as against surviving widow on decease of alienor.*—A Hindu died, leaving two widows who divided his property by a formal registered partition deed under ... of her share with powers ... Cer... subse... ing the ... ng the ... legal ... so far ... ade her

HINDU LAW—WIDOW—*continued.*

2. POWER OF WIDOW—*concluded.*

The widow invested the sum so received in Government securities, and twenty years afterwards created with this fund a trust in favour of one *G C R*, and appointed *B* trustee thereof. On the death of the widow, the daughters of the testator tried to set aside this trust, claiming the funds as a portion of their father's estate with which the widow had no right to deal. *Held* that, as the accumulations were handed over to the widow by the person entitled to the reversion after the estate had vested in him, and a release had been entered into between them, no presumption arose that the fund in question had been accumulated by the widow for the benefit of other heirs of the testator, and that, there being no such presumption, the facts of the case must be looked at to ascertain the intention of the parties regarding this fund. *Held* as to this that the conduct of the widow evidenced no intention to accumulate the sum received by her for the benefit of any person but herself, or that she ever intended to give up the power of disposing, expending, or dealing with it in any way. SOWDAMINI DASSI *v.* BROUGHTON . . . **I. L. R., 16 Calc., 574**

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

88. ——— **Effect of decree against Hindu widow**—*How far binding on inheritance.*—The same principle which has prevailed in England as to tenants-in-tail representing the inheritance would seem to apply to the case of a Hindu widow, as there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow. A decree in a suit for a zamindari by a Hindu widow binds those claiming the zamindari in succession to her, unless it can be impeached on some special ground. KATTAMA NAUCHEAR *v.* RAJA OF SHIVAGUNGA . . . **2 W. R., P. C., 31 [9 Moore's I. A., 539**

BADAMOO KOOER *v.* WUZEER SINGH **[1 Ind. Jur., N. S., 144: 5 W. R., 78**

GOPAUL CHUNDER MAMA *v.* GOUR MONEE DOSSEE . . . . **6 W. R., 52**

See PERTAB NARAIN SINGH *v.* TRILOKINATH SINGH **[I. L. R., 11 Calc., 186: L. R., 11 I. A., 197**

89. ——— **Decree against widow in representative capacity**—*Execution of decree—Debts incurred by husband.*—After the death of a member of a Hindu family, his widows were sued in their representative capacity, and decrees were obtained in respect of debts incurred by him in his lifetime on his own account. *Held* that the decrees could only be executed against that property which passed from the deceased to his widows in their own right, and not against other portions of the joint family property. SADABURT PERSHAD SAHOO *v.* LOTF ALI KHAN. PHOOLBAS KOOER *v.* LALL JUGGESSUR SAHI. BIKRAMJEET LALL *v.* PHOOLBAS KOOER. RAMDHYAN KOOER *v.* PHOOLBAS KOOER . . . . **14 W. R., 340**

HINDU LAW—WIDOW—*continued.*

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued.*

90. ——— Under a decree in a suit on a bond against the widow of the deceased obligor, property to which her son, of whom she was guardian, was entitled as heir, was sold. In the advertisement of the sale the property was described as that of the widow, and the interest to be sold was described as that of the debtor. *Held* that the purchaser at the sale acquired the property of the deceased debtor in the estate, and had a good title against the heir. ISHAN CHUNDER MITTER *v.* BUKSH ALI SOUDAGUR . . **Marsh., 614**

S. C. BUKSH ALI SOWDAGUR *v.* ESSAN CHUNDER MITTER . . . **W. R., F. B., 119**

NUZEERUN *v.* AMEEROODEEN . **24 W. R., 3**

HULKHORY LALL *v.* SHEO CHURN LALL **[24 W. R., 109**

See ABDUL KUREEM *v.* JAUN ALI **[18 W. R., 56**

91. ——— **Decree against widow for arrears of revenue**—*Sale in execution of widow's interest—Purchaser, Rights of—Reversioner.*—The immoveable property of a Hindu widow was sold under a decree against her, and *A* was the purchaser at the sale. Afterwards and during the lifetime of the widow the lands in question were sold for arrears of revenue due by *A* to Government in respect of other lands, and *B* was the purchaser at the sale. After the death of the widow, the reversioner sued *B* for recovery of possession of the lands. *Held* that the life-estate of the widow was alone acquired by the purchaser at the sale under the decree, and sold at the sale for arrears of Government revenue, and that interest having expired, the reversioner was entitled to recover the possession of the lands. DOORGA CHURN *v.* KASSY CHURN MOITREE **[Marsh., 539: 2 Hay, 646**

KISTO MOYEE DOSSEE *v.* PROSUNNO NARAIN CHOWDHRY . . . . . **6 W. R., 304**

RAM SHEWUK ROY *v.* SHEO GOBIND SAHOO **[8 W. R., 519**

92. ——— **Decree against widow personally and as guardian of son**—*Debts of husband and wife jointly, Liability of estate for.*—Where a decree is obtained against a Hindu widow, as guardian of her son, as well as in her own right, for a debt contracted jointly by her and her husband, the husband's property is liable to satisfy the whole decree, and the wife is therefore entitled to sell as much of the estate as is necessary to raise the full amount of the debt. GOLUCK CHUNDER PAUL *v.* MAHOMED ROHIM . . . **9 W. R., 316**

93. ———**Decree for refund of deposit by mortgagee to prevent sale for arrears of revenue**—*Estate in possession of Hindu widow—Effect of decree by mortgagee against widow.*—A mortgaged estate, which was about to be sold for arrears of Government revenue, was saved from sale by the mortgagee depositing a sum sufficient to pay.

HINDU LAW—WIDOW—*continued*

2 POWER OF WIDOW—*continued*

property of her deceased husband and he claimed

impeach the unauthorized transactions of his adoptive mother *R*, who possessed only a widow s restricted power of alienation The plaintiff was adopted by *R* to her husband who was the last owner of the ancestral property The plaintiff at once succeeded to that property upon his adoption and as heir of his adoptive father was entitled to object to any alienation made by *R* on the principle that the restrictions upon a Hindu widow s power of alienation are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death *Held* also that the plaintiff was entitled to redeem the property on payment of such amount only as was raised by *R* for the purpose of meeting expenses necessarily incurred by her *Held* further that the onus of proving the necessity for alienation lay upon *B* The Court found that there was no evidence that any sum beyond R3 629, the amount of *Y's* mortgage was really required by *P*, and accordingly directed that the mortgage account should be taken between

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BAI I L R, .. Bom, 609

82 ———————— *Lease granted by Hindu widow while in possession of widow s estate* —A widow in possession of her widow s estate in a zamindari made a grant of a patni tenure under it to a lessee at a rent In this suit brought by the reversionary heir on her death with the object of having the grant set aside as invalid as against him the patni lease was not proved to have been made with authority or from necessity justifying the

L R, 24 I A, 164
1 C W N, 433

83 ———————— *Working quarries by Hindu widow on property inherited from husband* —The right of a widow to work quarries on land inherited from her husband considered SUBBA REDDI *v* CHENGALAMMA I L R, 22 Mad, 126

84 ———————— *Gift to Po Brahmin—Alienation by widow for religious purposes* —When a Po Brahmin receives a salary for the performance of his duties a gift to him by the widow of the person whose exequial rites he has been appointed to perform to reward him for having performed any of those exequial rites, is not a gift

binding on the reversioners MAHADEVI *v* NEELAMANI I L R., 20 Mad, 269

85 ———————— *Grant by widow of jungleburi tenure—Power to bind reversioners* —The question whether a jungleburi tenure granted by a Hindu widow is binding on reversioners depends on the circumstances of the land *Quære*—Whether such a tenure granted in respect of a chur where no legal necessity on behalf of the widow is shown could under any circumstances be binding on the reversioners DROBOMOYI GUPTA *v* DAVIS

[I L R., 14 Calc., 332

86 ———————— *Accumulations by Hindu widow—Accumulations Period up to*

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ments except for reasons which would justify her dealing with the original estate but if she has evinced no such intention she can at any time during her life, deal with the profits Where she invests her income making a distinction between the investments and the original estate she can at any time thereafter deal with such investments save in the case of the purchase of other property as a permanent invest

GRISH CHUNDER ROY *v* BROUGHTON

[I L R., 14 Calc, 861

87 ———————— *Accumulations—Period up to which accumulation may be dealt with —Intention to accumulate* —Under the will of *N C M*, the testator left his estate to his brother, provided that within a term of eight years no son should be born to such brother capable of being

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rents and

profits of the estate during the period the succession thereto was in abeyance Disputes having arisen between the widow of the testator and his brother as to the right to such rents and profits the brother eventually agreed to pay and did pay over to the widow a large sum by way of settlement of these disputes for which sum the widow executed a release

HINDU LAW—WIDOW—*continued.*

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued.*

distinguished. KRISTO GOBIND MAJUMDAR *v.* HEM CHUNDER CHOWDHRY. KRISHNA GOPAL MAJUMDAR *v.* HEM CHUNDAR CHOWDHRY

[I. L. R., 16 Calc., 511

98. ———— Decree executed against widow of mortgagor—*"Razinama decrees"—Right of purchaser.*—Razinama arrangements, not made decrees of Court, but irregularly acted upon as if they had been so made, do not substantiate advances alleged to have been made by creditors; but, assuming such "razinamah decrees" to substantiate creditor's claims, proceedings in execution against the widow of the mortgagor alone as his representative cannot be effectual to pass to the purchaser of the equity of redemption at a sale in the course of such proceedings any right or interest in the property mortgaged. PAREYASAMI *alias* KOTTAI TEVAR *v.* SALUCKAI TEVAR *alias* OYYA TEVAR 8 Mad., 157

See, however, the same case on appeal to Privy Council. SIVAGNANA TEVAR *v.* PERIASAMI

[I. L. R., 1 Mad., 312
L. R., 5 I. A., 61

RAMASAMI CHETTI *v.* SALUCKAI TEVAR *alias* OYYA TEVAR . . . . . 8 Mad., 186

99. ———— Execution of decree against widow as representing estate—*Sale in execution of decree—Widow's interest under deed of adoption—Right of purchaser against adopted son.*—The plaintiff sued to follow into the hands of the defendant certain property to which the latter had by transfers acquired the title of the purchaser at an auction-sale held in June 1843. The ground of his claim was that the late owner, who died before the sale, had left his widow a permission to adopt a son, and thereupon in 1856 she had adopted the plaintiff. His contention was that the sale was of the widow's interest merely, the permission to adopt having given to her, in the event of an adoption, a life-interest in the property, and that, upon her death in 1865, his interest accrued. *Held* that, as the proceeds of the execution-sale were *not* applied to satisfy only a liability incurred after the owner's death, but also decrees for other debts, for which the estate was liable, there was no substantial ground to impeach the long title acquired by the respondent. DEBENDRO NARAIN ROY *v.* COOMAR CHUNDERNATH ROY 20 W. R., 30

100. ———— Execution of decree against widow for arrears of maintenance—*Sale of right, title, and interest of widow—Maintenance of widow—Charge on estate of husband.*—A Hindu died, leaving two sons, *S* and *M*, who became separate in estate. *S* died, leaving a son, *K*, who became a lunatic. *M* died, leaving a widow, *N*, and two sons, *B* and *C*; and on his death, his sons *B* and *C* took possession of their father's estate, and entered into an agreement with their mother, *N*, to pay her R200 per annum for maintenance, and hypothecated some villages as security for due payment. *B* died and *C* remained in exclusive possession of the property. After the death of *C*, his widows, *R* and *D*, and afterwards *D* alone, took possession of the estate. *N* sued *D* for arrears of maintenance accrued since the death of *C* and obtained a decree. In execution of that decree, she attached the rights and interests of *D* in certain properties, but she died before any sale took place. The plaintiff, the son of *K*, then obtained a certificate under Act XXVII of 1860 as representative of *N*. He was appointed a guardian of *K*, who was, in a suit brought by him before his insanity and before the death of *N*, declared, by a decree made in 1848, entitled to the estate of *C* as reversioner. The plaintiff executed the decree obtained by *N*, and caused the properties, which had been before attached, to be sold in 1866. Some time after *D* died, and the plaintiff then sued the purchaser to recover possession of the property as the representative of his father under the decree of 1848, but was defeated on the ground set up by the defendants, the purchasers, that his father was no longer heir to *C* by reason of supervenient insanity when the succession opened out to him on the death of *N*. The plaintiff then brought this suit to establish his own title to the property as heir of *C*. It was contended by the defendants, among other things, that by the sale in execution in 1866, under the decree obtained by *N* against *D*, the absolute proprietary title passed, and not the life-interest of the widow only. *Held* that the arrears of maintenance for which the sale in 1866 took place was the personal debt of *D*, and that nothing but her life-interest passed under the sale. BRIJBHOOKUN LALL AWUSTEE *v.* MAHADEO DOOBEY

[15 B. L. R., 145 note: 17 W. R., 422

Held on appeal to the Privy Council, affirming the decision of the High Court, that the purchaser at the execution-sale took only the widow's interest, and not the absolute estate, and therefore the plaintiff was entitled to recover. BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWUSTI

[I. L. R., 1 Calc., 133: 24 W. R., 306
L. R., 2 I. A., 275

See BRAJA LAL SEN *v.* JIBAN KRISHNA ROY

[I. L. R., 26 Calc., 285

101. ———— Debt incurred by Hindu widow for legal necessity—*Decree for such debt against a person subsequently found not to be her legal representative—Sale of property under such decree, Effect of.*—A Hindu widow obtained medicine and medical aid on credit, and on her death her creditors sued the son she had purported to adopt and obtained a decree to the effect that the debt is to be satisfied first from the widow's assets and the remainder from the assets of the adopted son. The property in dispute was sold in execution of the decree, but the adoption was subsequently found to be invalid. *Held* that the execution-sale in such a case could pass only the widow's right, title, and interest, and not the inheritance. *Baijun Doobey* v. *Brij Bhookun Lall Awustee, I. L. R., 1 Calc., 133;* and *Jugul Kishore* v. *Jotendro Mohun Tagore, I. L. R.,*

HINDU LAW—WIDOW—*continued*.

3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued*

of the money paid to save the estate from sale, not

gagee had no charge on the estate, and was not entitled to have it sold to pay the amount due the

as defendant represent and protect the estate as well as in respect of her own as of the reversionary interest NAGENDRA CHUNDER GHOSE v SREEMUTTY DOSSEE
[8 W. R., P. C, 17: 11 Moore's I. A., 241

94. ——— **Decree in suit for arrears of rent**—*Decree against widow in representative capacity—Purchaser, Rights of*—*A* sued, under Act X of 1859, the widow of *Z*, as widow of *Z* and guardian of *Z*'s son, for arrears of rent due by *Z* He

put up for sale under Act ... tion of *A*'s decree for rent, and *A* became the purchaser The certificate stated that the sale was of the right and interest of the widow, and that it took place under the decree in the regular suit. *B* the holder of a prior decree for rent against *Z*, having failed to obtain execution against the same property, then sued *A* and *Z*'s son for a declaration that he

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605

95 ——— *Personal decree against widow—Rent accruing after husband's* ... under the ... t a Hindu ... ilukh, the ... as sold in ... ion of an ... w for ar ... 65 Both

decrees were for arrears of rent which had accrued *due after the death of the husband*, and the suits were brought against the widow alone, the reversioner not being made a party In a suit by the purchaser of the talukhs from the reversioner against the purchasers at the execution sales to recover possession of the talukhs —*Held* that the plaintiff was entitled to recover The decrees for arrears of rent were a personal debt of the widow, and not a debt against the estate of the deceased husband Such decrees can be enforced by the sale of her interest only, except where the proceeding is one which authorizes the sale of the tenures under Bengal Act VIII of 1869 Even assuming them to be a charge on the husband's estate the onus was on the defendants to prove that such charge was created by legal necessity, which they had failed to do MOHIMA CHUNDER ROY CHOWDHRY v RAM KISHORE ACHARJEE CHOWDHRY
[15 B L R, 142: 23 W R, 174

See BRAJA LAL SEN v JIBAN KRISHNA ROY
[I L. R, 26 Calc, 285

96 ——— *Widow in possession of husband's property—Personal debt—Right of purchaser*—Arrears of rent due to a zamindar by a Hindu widow in possession of her hus

the property absolutely and not merely the rights of the widow TELUCK CHUNDER CHUCKERBUTTY v MUDDON MOHUN JOOGEE
[15 B L R, 143 note: 12 W R, 504

ANUND MOYEE DASSEE v MOHINDRO NARAIN DASS . 15 W R, 264

CHOWDHRY ZUHOORUL HUQ v GOOROO CHURN ROY . 15 W R, 329

RAJARAM BANERJEE v SONATUN ROY
[23 W. R, 404

97 ——— *Personal decree against person having life interest—Execution of decree* ... by *H* a ... estate ... the death of *B*, this property was taken by ... The decree was for ... lifetime of *B*, ... *B* as judgment- ... ecution of the ... n in *Bayun* ... *L R*, 2 *I*. ... debt was a personal debt, payment of which could be enforced only against the property left by *B* The decree,

HINDU LAW—WIDOW—*continued.*

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued.*

has, for some purposes, only a partial or qualified right, title, and interest in the estate which was her husband's, yet for other purposes she represents an absolute interest therein. The question whether, on the sale of the right, title, and interest of the widow in execution of a decree, the whole interest or inheritance in the family estate does or does not pass, depends on the nature of the suit in which the execution of the decree takes place. If the suit is a personal claim against the widow, then merely the widow's limited estate is sold. If, on the other hand, the suit is against the widow in respect of the family estate, or upon a cause not merely personal against her, then the whole of the inheritance passes by the execution-sale. The judgment which the decree has followed may be examined in order to determine which of these two results attends the execution-sale of the widow's right, title, and interest. The principle in *Baijun Doobey* v. *Brij Bhookun Lall Awusti, I. L. R., 1 Calc., 133*, referred to and applied. JUGUL KISHORE *v.* JOTENDRO MOHUN TAGORE [I. L. R., 10 Calc., 985: L. R., 11 I. A., 66

JYKISHOON SOOKUL *v.* SHUNKUR SHOOKUL [3 Agra, 168

108. ———— **Hindu widow in possession of husband's estate**—*Sale of the land in execution of a personal decree obtained against the widow—Suit by the nephew and reversioner of the deceased husband to recover the land from the purchaser.*—A Hindu widow sued to recover certain land which belonged to her late husband from his brother. The suit was compromised by means of a razinama, one of the terms of which was that the widow should remain in possession of and enjoy the property, but should not alienate it without the brother's permission. Subsequently a personal decree was obtained against the widow, and the land, being sold in execution, was purchased by the defendant in the present suit, in which the first plaintiff was the nephew and reversioner of the deceased husband. *Held* that the suit against the widow being on a personal claim, only her limited interest in the property was sold in execution, and that consequently the plaintiff was entitled to the property. *Jugul Kishore* v. *Jotendro Mohun Tagore, I. L. R., 10 Calc., 985*, distinguished, and the principle in *Baijun Doobey* v. *Brij Bhookun Lall Awusti, I. L. R., 1 Calc., 133: L. R., 2 I. A., 275*, applied. NARANA MAIYA *v.* VASTEVA KARANTA [I. L. R., 17 Mad., 208

109. ———— **Mesne profits payable under a decree against a Hindu widow and other defendants**—*Subsequent suit for contribution against the widow by one of the defendants from whom the whole amount of mesne profits had been realized—Sale in execution of decree—Rights of the auction-purchaser.*—*M*, widow of *N*, a Hindu, and *K* (brother of *N*) jointly brought a suit against *C*, her sons and others, for recovery of possession of certain property which had devolved upon *N* and *K* by inheritance, obtained a decree, and were put into possession. *G*, one of the sons of *C*, subsequently brought a suit against *M* and the legal representatives of *K*, then deceased, and also against *J* (to whom *K* had sold a portion of the property after the decree), and obtained a decree with mesne profits for his share of the same property. *G* then sold the decree to *R*, who executed it for mesne profits against *J* alone, and realized the entire decretal amount from him. *J* thereupon brought two suits for contribution against *M* and the legal representatives of *K*, on account of the mesne profits payable by them, according to their respective shares, and obtained decrees. In execution of one of these decrees passed against *M*, he sold the property in suit belonging to the estate of *N*, and purchased a moiety of it himself. In a suit on the death of *M*, by the reversionary heirs of *N* to recover possession of his share of the property, in which his widow *M* had only a life-interest, on the allegation that only her life-interest, and not the entire estate, passed,—*Held* that the suit for contribution brought by *J* was a suit to recover a debt due by the estate. The amount of the debt in the shape of mesne profits had been decreed against *M* and others, as representing the estate of *N* and *K*, and it was not therefore a personal debt of *M*. That being so, the purchaser at the auction-sale took the entire estate and not merely the qualified interest of the widow. *Jugul Kishore* v. *Jotendro Mohun Tagore, I. L. R., 10 Calc., 985*, referred to. BARODA KANTA CHATTAPADHYA *v.* JATINDRA NARAIN ROY I. L. R., 22 Calc., 974

110. ———— **Decree against widow how far binding on minor son**—*Parties—Representation—Sale of equity of redemption—Mortgage—Redemption.*—A widow does not represent the estate so as to bind the son when the existence of the minor son is, from whatever cause, altogether ignored, and there is nothing on the face of the proceedings to show that she is sued as representing the minor son. Accordingly, where the plaintiff, a minor, sought to redeem a certain property from the defendant, who had purchased the equity of redemption at an auction-sale, in execution of a decree obtained against the plaintiff's mother alone as representative of her deceased husband,—*Held* that the plaintiff was entitled to redeem. The plaintiff having been ignored, the inheritance had not been substantially represented in the suit against his mother alone, and the plaintiff's right to the equity of redemption consequently remained unaffected by the sale to the defendant. AKOBA DADA *v.* SAKHARAM . . . I. L. R., 9 Bom., 429

111. ———— **Decree against widow as heir of husband**—*Effect of, against reversioners—Res judicata—Compromise by widow.*—A suit brought against *K*, the widow of *R*, a Hindu, by the representatives of *R*'s brothers, *H* and *P*, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After *K*'s

HINDU LAW—WIDOW—*continued*

3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued*

10 Calc., 985, distinguished RANJIT SINGH v RAM CHANDRA MOOKERJEE 4 C. W. N., 415

102. ———— **Decree in form personal against widow**—*Sale in execution of decree—Right of purchaser*—Where an estate is sold in execution of a decree which in form is a personal decree against a widow, and the sale certificate purports to pass only the right, title, and interest of such widow, the purchasers at such sale cannot, in a suit by the reversionary heirs of the husband for possession of the property, give evidence to show that the debt for which the property was sold was chargeable on the estate of the deceased husband, with a view to establishing a right to more than the widow's interest *Baijun Doobey* v *Brij Bhookun Lall Awusti, L R, 2 I. A., 275 I L R, 1 Calc., 133 24 W R, 306*, cited. RADHA MOHUN MUNDUL v SHOSHI BHOOSUN BISWAS 3 C. L. R., 530

103. ———— **Sale in execution of mortgage decree against widow**—*Right of purchaser—Son's widow*—A Hindu having mortgaged family property died, leaving a widow and a son him surviving The son died leaving a widow, the defendant. The mortgagee then sued the widow of the

Coomar Ramaput Singh, 14 Moore's I A, ... distinguished SIVA BHAGIAM v PALANI PADIACHI [I L R., 4 Mad., 401

104. ———— *Sale of right,*

... *Manager of the Durbhunga Raj* v *Coomar* ... 605, and *Ishan* ... *udagar, Marsh*, ... MINAKSHI AMMAL I. L. R., 5 Mad., 5

105. ———— **Decree against widow on bond**—*Sale of right, title, and interest of widow in execution of decree—Purchaser of right, title, and interest, Rights of*—In 1854 *A R* executed a bond in favour of *K* by way of security for a loan, and, in a suit against *A* (the widow of *A R*), *K* obtained a decree on the bond on the 24th of December 1859, in execution of which a share in a jalkar, which had belonged to *A R*, was put up for sale and purchased by *K* At the time of sale the property sold was in the possession of *A*, on behalf of the two sons of herself and *A R*, who were minors On the death of the two minor sons, unmarried and without issue, *A* took possession of the property as their heir In the decree of the 24th of December 1859 *A* was described as widow of *A R* and mother of the two minor sons Neither the sale-proclamation nor certificate of sale was produced, but a purwannah from the Munsif to the Nazir was put in evidence, which referred to the sale proclamation, and in which the parties were described merely as "decree-holder" and "judgment debtor," this purwannah also contained a schedule of the property intended to be sold, in which the interest was the "right and possession of the debtor" in the share of the jalkar. In a suit brought by the representatives of *K* to obtain possession of the property purchased by *K* at the sale in execution of his decree,—*Held* that *K* did not by his purchase acquire the interest of the minor sons in the property sold, and that the plaintiffs were therefore not entitled to succeed ALUKMONEE DABEE v BANEE MADHAB CHUCKERBUTTY [I. L. R., 4 Calc., 677 : 3 C. L. R., 473

106. ———— **Execution of decree against representatives of widow**—*Civil Procedure Code, 1877, s 234*—A Hindu widow instituted a suit to recover possession of certain property belonging to her

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late widow's deceased husband *Held* that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment debt in the effort to recover a portion of her husband's estate, to which in its entirety the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representative" of the late widow's husband, under s 234 of Act X of 1877 *Mohima Chunder Roy Chowdhry* v *Ram Kishore Acharjee Chowdhry, 15 B L R, 142*, distinguished. In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband RAMKISHORE CHUCKERBUTTY v KALLYKANTO CHUCKERBUTTY [I. L. R., 6 Calc., 479 : 8 C L. R., 1

107. ———— **Sale of right, title, and interest of Hindu widow**—*Estate taken by*

personal to herself, or one which affects the whole ... *Baijun Doobey* ... *, 2 I. A., 275,* ... RE v JOGUL ... C. L. R., 57

Held, on appeal to the Privy Council, affirming the decree of the High Court,—Although a Hindu widow

HINDU LAW—WIDOW—*continued.*

3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued.*

that it is but reasonable to suppose that she will fairly and honestly contest the right and uphold and maintain the several interests which are adverse to those of the plaintiff. So where there is a charge created by the ancestor from whom the widow and the reversioners alike derive their title, there is such identity of interest as will justify the widow being treated as the "substantial representative." But where the widow is the person who has created the charge, there is no authority to shew that she sufficiently represents the reversioners. *Nogendra Chundra Ghose* v. *Sreemutty Kamini Dassee, 11 Moore's I. A., 241,* and *Mohima Chunder Roy Chowdhry* v. *Ram Kishore Acharjee Chowdhry, 15 B. L. R., 142,* referred to. SRINATH DASS *v.* HARI PADA MITTER . . . . . 3 C. W. N., 637

114. ——— Decree in compromise made by widow after adoption of son in suit on mortgage executed before adoption.—*A*, executrix to the estate of her husband, executed a mortgage bond, partly for money due on bonds executed by her husband in his lifetime, and partly for payment of Government revenue due from the estate. She then adopted a son, *B*, under authority granted by the will of her husband. After the adoption, a suit was brought on the mortgage bond against *A*, and a decree was passed in terms of a compromise for payment by instalments, the mortgaged property remaining hypothecated as before. Default was made in payment of the instalments, and the decree-holder applied for execution of the decree, and *B* was substituted for *A* in the proceedings in execution. An objection was raised that the compromise decree was only a personal decree against *A*, and execution could not proceed against *B*. *Held* that it was not a mere personal decree against *A*, but was binding on the estate inherited by *B* from his adoptive father. *Ishan Chunder Mitter* v. *Buksh Ali Soudugar, Marsh., 614; General Manager of Raj Durbhunga* v. *Ramput Singh, 14 Moore's I. A., 605: 10 B. L. R., 294; Bissessur Lall Sahoo* v. *Luchmessur Sing, L. R., 6 I. A., 233: 5 C. L. R., 477;* and *Hari Saran Moitra* v. *Bhubaneswari Debi, I. L. R., 16 Calc., 40: L. R., 15 I. A., 195,* referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY . . I. L. R., 23 Calc., 374

115. ——— Decree against widow for husband's debt—*Liability of family property—Execution-sale—Minor sons bound though not parties to suit—Suit by sons to redeem mortgage.*—One *G* died leaving him surviving a widow and two minor sons. The widow mortgaged some lands and a house to pay off a debt due by her husband. Subsequently a money decree was passed against her for another debt due by her husband, and the greater part of the mortgaged property was sold in execution and the equity of redemption thereof was purchased by the mortgagee (the defendant). The sons were not parties to the suit in execution proceedings. The sons afterwards brought this suit claiming that not having been parties to the suit their interests were not affected by the sale, and praying for redemption. The lower Courts allowed the claim and passed a decree for the plaintiffs. On second appeal,—*Held* (reversing the decree and remanding the case) that the Courts in determining the effect of an execution-sale *must look to* the substance of the transaction. The question was whether the debt for which the property was sold was a joint family debt, and whether it was the equity of redemption in the entirety of the mortgaged property that was offered for sale, bargained for, and intended to be bought. It was obvious that, if the sons had been parties to the suit in which the decree had been passed, they would have appeared by their mother and guardian, and there was *no reason to suppose that anything would have been differently* done in the suit if she had been described as their *guardian instead of being treated as the representative of the estate. Under these circumstances,* the sons were substantially represented in the suit, and the sale and proceedings therein should be treated as valid, unless the sons were able to show either that their father's debt, which was the foundation of the decree, was of such a nature that no liability arising *from it could attach to the family property, or, if* they failed in that, they might show that the entirety of the family property was, in fact, not sold. DEVJI *v.* SAMBHU . I. L. R., 24 Bom., 135

116. ——— Purchase at sale in execution of decree of widow's interest—*Private sale by widow—Cause of action to reversioner.*—A purchaser at an execution-sale of the widow's life-interest is in no better position than a purchaser of the same interest from the widow herself; although his possession as against the widow is not a wrongful possession, and she would have no cause of action against him for the recovery of the property, the reversionary heir is entitled to recover possession, and the cause of action arises at the death of the widow. MOHIMA CHUNDER ROY CHOWDHURI *v.* GOURI NATH DEY CHOWDHURI 2 C. W. N., 162

4. DISQUALIFICATIONS.

(*a*) RE-MARRIAGE.

117. ——— Effect of re-marriage—*Act XV of 1856, ss. 2, 3, 5—Inheritance.*—A Hindu died leaving a widow and minor son and daughter. The widow re-married after her husband's estate had vested in her son. The son subsequently died, and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. *Held* that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. AKORA SUTH *v.* BOREANI

[2 B. L. R., A. C., 199: 11 W. R., 82

S. C. in lower Court. OKHOORAH SOOT *v.* BHEDEA BARINEE . . . . . 10 W. R., 34

**118. ——— *Maravar caste—Forfeiture of property of first husband.*—The Court,

HINDU LAW—WIDOW—*continued*

3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued*

death *M*, a daughter of *R*, brought a suit on her own behalf against the above mentioned plaintiffs for possession of her father s estate but afterwards withdrew her claim Subsequently, *S M* s son who had been born after *K*'s compromise brought a suit against *M* and the representatives of *H* and *P* to recover possession of the estate on the allegation that the family being a divided one he was entitled under the Hindu law to succeed to such estate, and ... nto by *K* and the ... were in fraud of his rights The ... the plaintiff was ... t that his mother being still alive he was entitled to possess on after her death only and upon these findings gave him a decree declaring his right to possession on *M* s death The lower Appellate Court reversed the decree hold-

...

s on come after her and in that sense may be dealt with as her ... fairly obtaine ... *bonâ fide* litig ... promise effected by K which could scarcely be regarded as on a higher footing than an alienation which the widow in possess on of her husband s

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764 *Nand Kumar* v *Radha Kuari I L R 1 All 282* and *Katama Natchiar's case, 9 Moore's I A 542,* referred to Also that *M*'s withdrawal of her suit was not a bar to the suit of the plaintiff SANT KUMAR v DEO SARAN

[I L R, 8 All, 365

See SACHIT v BUDHUA KUAR

[I L R, 8 All, 429

...

leaving him surviving a widow and two daughters The widow was substituted in the suit instead of her husband, and she obtained a decree for possession

...

against them when their sons were substituted in

HINDU LAW—WIDOW—*continued*

3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*continued*

their stead as defendants It appeared that the widow the daughters and the daughters' sons had

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ROY v GONESH CHUNDER DASS

[I L R, 13 Calc, 283

113 ——— **Sale in execution of mortgage decree against widow**—*Principle of ascertaining what was purchased—Absent parties—Pleadings—Nature of suit—Hindu widow, when substantial representative of the inheritance—Equitable mortgage* —In a suit for a declaration of right to a particular property and possession thereof plaintiffs were the reversioners expectant on the death of the mother and heiress of the last male holder at the time when the defendant pur

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the Appellate Court (affirming the decision of the Court below) that for the purposes of ascertaining

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certainty that the inheritance may be bound by a decree in a suit to which the reversioners are not

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interest *Per* AMEER ALI *J* —The words " mother and heiress " in the advertisement and the sale notification are merely descriptive and indicate that it was only the qualified interest of the mother that was being sold *Per* JENKINS *J* (in the Court below)—It is a rule of general application that the Court will not adjudicate so as to bind absent parties though the Courts have under certain circumstances permitted the expectant reversioners to be represented by a Hindu widow entitled to immediate and present interest The principle upon which a widow is regarded as a " substantial representative " of the inheritance is that she by reason of the common interest is as much concerned to resist the particular claim as those who are not parties, and

HINDU LAW—WIDOW—*continued.*

4. DISQUALIFICATIONS—*continued.*

caste can no longer be recognized as working a forfeiture of any right or property, or affecting any right of inheritance. PARVATI *v.* BHIKEE

[4 Bom., A. C., 25

128. ———— *Divesting of property—Forfeiture of inheritance.*—Unchastity in a Hindu widow does not divest her of property which has become vested in her after the death of her husband. ABHIRAM DOSS *v.* SREERAM DOSS

[3 B. L. R., A. C., 421 : 12 W. R., 336

129. ———— *Divesting of property—Forfeiture of inheritance— Act XXI of 1850.*—A Hindu widow, whom the property of her husband has once vested, does not forfeit by her unchastity her right to such property. *Semble*—Unchastity, followed by degradation or expulsion from caste, would not be sufficient to deprive a widow of an estate which she has taken by inheritance. MATANGINI DEBI *v.* JAYKALI DEBI

[5 B. L. R., 466 : 14 W. R., O. C., 23

130. ———— *Widow's estate, Forfeiture of—Unchastity during widowhood—Divesting of property.*—*Held* (KEMP, GLOVER, and MITTER, JJ., dissenting), under the Hindu law as administered in the Bengal school, a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. *Per* KEMP, GLOVER, and MITTER, *JJ.*, *contra.* KERY KOLITANY *v.* MONERAM KOLITA

[13 B. L. R., F. B., 1 : 19 W. R., 367

Held in the same case on appeal to the Privy Council.—It has not been established that the estate of a widow forms an exception to the general rule that the estate of a Hindu once vested by succession or inheritance is not divested by any act or incapacity which before succession would have formed a ground for exclusion from inheritance. The general rule is stated in the Viramitrodaya, Ch. VIII, "On exclusion from inheritance," paras. 3, 4, and 5. This work, like the Mitakshara, may be referred to in Bengal in cases in regard to which the Dayabhaga is silent. A widow who, not having been degraded or deprived of caste, had inherited the estate of her deceased husband, *held* not liable to forfeit that estate by reason of subsequent acts of unchastity. *Quære*—As to the effect of her being degraded or deprived of caste for unchastity. MONIRAM KOLITA *v.* KERI KOLITANI

[I. L. R., 5 Calc., 776 : 6 C. L. R., 322
L. R., 7 I. A., 115

131. ———— *Estate of deceased widow who lived a life of unchastity—Right of step-son to inherit—Caste Disabilities Removal Act (XXI of 1850), s. 1.*—The step-son of a deceased Hindu widow sued as her heir for possession of certain property. The defence was that the widow had deserted her husband in his lifetime and lived a life of unchastity, and that the plaintiff's right of inheritance was in consequence destroyed. *Held* that, assuming the widow to have been guilty of unchastity and to have been actually degraded for it, plaintiff's right to inherit her property in the absence of nearer heirs could not be affected by such degradation. *Held* also that, though Act XXI of 1850 gives relief against the forfeiture of rights of persons deprived of caste on other grounds besides that of renouncing or being excluded from the Hindu religion, it does not restore to an outcaste all the rights which he, as a casteman, could have civilly enforced; nor does it contemplate the restoration of privileges the granting of which would amount to an interference with the autonomy of caste; nor does it interfere with the forfeiture of such a right, as, *e.g.*, to participate with other members of a caste in the benefits of a religious institution appropriated to the members of the caste, or to participate jointly with fellow-castemen in the benefit of a caste institution; nor can it apply where the question is not as to the rights of a degraded person, but as to who is entitled to the property of a degraded person. *Kery Kolitany* v. *Moneeram Kolita, 13 B. L. R., 1,* referred to. *Held* further that, though under the Hindu law a loss of caste by expulsion for specified reasons causes forfeiture of rights, it has never broken the relationship of the person expelled to those who remain within the caste, degradation having merely the effect of rendering the tie of kindred but dormant; and, *e.g.*, the degradation of either spouse does not dissolve the tie of marriage. It is impossible to construct out of the Smritis and commentaries a consistent doctrine of "civil death" or "fiction of death." Prostitution does not sever the legal relation, and therefore the degradation of a woman in consequence of her unchastity does not in law entail a cessation of the tie of kindred between her and the members of her natural family or between her and the members of her husband's family. Nor does a wife's adultery, unattended by degradation, dissolve the marriage. *Held* therefore that the step-son was entitled to inherit the property as sapinda of the widow's late husband in the absence of nearer heirs. SUBBARAYA PILLAI *v.* RAMASAMI PILLAI . . . I. L. R., 23 Mad., 171

132. ———— *Widow's estate, Forfeiture of—Unchastity during widowhood.*—*Held,* under the Mitakshara law, that a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. The ruling of the majority of the Full Bench of the Calcutta High Court in *Kery Kolitany* v. *Moneeram Kolita, 13 B. L. R., 1,* followed. NEHALO *v.* KISHEN LAL

[I. L. R., 2 All., 150

133. ———— *Widow's estate, Forfeiture of—Unchastity during widowhood.*—It is sufficient for the protection of a Hindu widow's right to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct. BHAWANI *v.* MAHTAB KUAR . . . . I. L. R., 2 All., 171

HINDU LAW—WIDOW—*continued.*

4 DISQUALIFICATIONS—*continued.*

applying the principles of the Hindu law, held that

119. ——————— *Lingaits—Custom in Wynaad—Widow marriage*—Among the Lingait Goundans in the Wynaad, a widow, who contracts what is known as an odaveli marriage, ceases to inherit her deceased husband s estate Ko DUTHI *v.* MADU . I. L R, 7 Mad, 321

120. ——————— *Maintenance, Power to sell husband's estate for*—Where a Hindu widow is re married or is living with another man, it does not necessarily follow that she would not be entitled to

her maintenanc

121. ——————— *Act XV of 1856, s. 2—Suit by reversioner to establish his title to property sold in execution of decree obtained*

to the lower Court for trial Whether, by the usage of the country, the rights and interests of *B V* by inheritance in her deceased husband's property, the subject of this suit, ceased and determined on re marriage in 1876 as if she had then died" PAREKH RANCHOR *v.* BAI VAKHAT I. L. R, 11 Bom., 119

122. ——————— *Act XV of 1856, s. 2—Re-marriage of widow, who could have re married before the Act was passed.*—Act XV of 1856 was not intended to place under disability or liability persons who could marry a second time before the Act was passed It was intended to

v. NANDI . . I. L. R, 11 All, 330

HINDU LAW—WIDOW—*continued*

4 DISQUALIFICATIONS—*continued*

123 ——————— *Widow Re-marriage Act (XV of 1856), ss 2, 3, and 4—Hindu widow inheriting property from son*—

which re marriage has been always allowed, who has inherited property from her son, forfeits by re-marriage her interest in such property in favour of the next heir of the son VITHU *v* GOVINDA

[I. L. R, 22 Bom., 321

124 ——————— *Rights of widow in deceased husband's property—Widows whose re marriage is valid independently of Act XV of 1856.—Held* that a Hindu widow belonging to the Kurmi caste, in which the re marriage of widows was permitted by custom of the caste, independently of Act XV of 1856, was not, by reason of her

succeed *Har Saran Das* v *Nandi, I L R, 11 All, 330,* and *Dharam Das* v *Nand Lal Singh, All Weekly Notes, 1889, p 78,* followed RANJIT *v* RADHA RANI . . I. L R, 20 All, 476

(b) UNCHASTITY

125 ——— **Application of Hindu texts as to females debarred from inheriting—** *Widow—Mother*—The texts which pronounce that Hindu females are debarred from inheriting are con fined in their application to the widow as such KOJIYADU *v* LAKSHMI I. L. R, 5 Mad., 149

126. ——— **Effect of unchastity**—*Unchastity subsequent to descent of estate—Divesting of property*—It is a general rule of Hindu law that when the descent of an estate has taken place before

[2 N. W., 361

127. ——————— *Forfeiture of*

some time after he married *P* In a suit by *B* to recover a moiety of *D*'s estate, *P*, while admitting

tion, but that by Act X of 1856

HINDU LAW—WILL—*continued.*

1. POWER OF DISPOSITION—*continued.*

and in use amongst, Hindus not in the presidency towns only, but from one end of the peninsula to the other. The right to make a will is part of the Hindu law itself. *The extent and nature of the disposition which a Hindu testator is capable of making is not a question of public expediency or of custom or usage, but must be regulated by rules to be found in, or directly deduced from, Hindu law.* GANENDRA MOHAN TAGORE *v.* UPENDRA MOHAN TAGORE

[4 B. L. R., O. C., 103

2. —————— *Nature and extent of power.*—The testamentary power of disposition by Hindus has been established in Bengal by the decision of Courts of justice. The nature and extent of such power cannot be governed by any analogy to the law of England,—the English system being one of the most artificial character, founded in a great degree on feudal rules, regulated by Acts of Parliament and adjusted by a long course of judicial determination to the wants of a state of society differing as far as possible from that which prevails among Hindus in India. BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJEE

[3 W. R., P. C., 15: 10 Moore's I. A., 279

3. —————— *Power of disposition of Hindus.*—By the Hindu law as administered in the North-West Provinces, a Hindu has power to make a testamentary disposition in the nature of a will. A disputed will made by a Hindu, disposing of self-acquired estate among his family, established. NANA NARAIN RAO *v.* HUREE PUNTH BHAO

[9 Moore's I. A., 96

4. —————— *Power over estate during life.*—Any Hindu within these provinces, whether governed by the Bengal mode of succession or otherwise, possesses a power to bequeath an estate by will co-extensive with his power over the estate in his lifetime. PITUM KOONWAR *alias* MUNAR BIBEE *v.* JOY KISHEN DOSS . . 6 W. R., 101

5. —————— *Zamorins of Calicut—Power of disposition by a will.*—The Zamorin of Calicut, although a member of a Kovilagom, is entitled to dispose of his separate property by a will. SRIDEVI *v.* KRISHNAN

[I. L. R., 21 Mad., 105

6. —————— *Holder of impartible estate.*—The holder of an impartible estate may alienate it by will to the same extent that he may alienate it by gift *inter vivos.* COURT OF WARDS *v.* VENKATA SURYA MAHIPATI RAMAKRISHNA RAU

[I. L. R., 20 Mad., 167

7. —————— *Mitakshara law.*—Under the Mitakshara law, a father can dispose of his self-acquired property, moveable and immoveable, at his own will, and he can by will make an unequal distribution of the same amongst his heirs. BAWA MISSER *v.* BISHEN PROKASH NARIAN SINGH

[10 W. R., 287

8. —————— **Power to dispose of self-acquired immoveable property after adopting a son.**—An adopted son does not stand in a better position, with regard to the self-acquired immoveable property of his adoptive father, than a natural-born son would occupy; and there is nothing in the Hindu law in this presidency to prevent a father from disposing by will of his self-acquired immoveable property, and so defeating the rights by inheritance of his adopted son. PURSHOTAM SHAMA SHENVI *v.* VASUDEV KRISHNA SHENVI

[8 Bom., O. C., 196

9. —————— **Power of disposition by will over ancestral property in Bombay.**—A testator cannot in the town of Bombay dispose of ancestral property, even if it consist of moveables, to the prejudice of the rights of an existing grandson. CHATTERBHOOJ MEGHJI *v.* DHARAMSI NARANJI

[I. L. R., 9 Bom., 438

10. —————— **Power to dispose of separate and self-acquired property**—*Nephew's right to object to alienation.*—A Hindu without male descendants may dispose by will of his separate and self-acquired property, whether moveable or immoveable, even in those parts of India which are governed by the Mitakshara; and the testamentary power may be exercised at least within the limits which the law prescribes to alienation by gift *inter vivos.* ADJOODHIA GIR *v.* KASHEE GIR . . . 4 N. W., 31

11. —————— **Bequest to widow with power of alienation over immoveable property.**—A testamentary bequest of immoveable property to a Hindu widow with an express power of alienation conferred held to be valid, and to authorize alienation by her. As a husband is not incompetent to give such an interest in property to his wife, it cannot be contended that he is incompetent to bequeath it. JEEWUN PUNDA *v.* SONA

[1 N. W., Ed. 1873, 66

12. —————— **Unequal division of ancestral property**—*Illegality of will.*—*Held* that a will made by a Hindu dividing unequally ancestral property between his sons, and assigning a share to his wife with the power of disposing of it, was illegal under Hindu law. BULDEO SINGH *v.* MAHABEER SINGH . . . . . 1 Agra, 155

13. —————— **Disposition of ancestral and self-acquired property**—*Validity of will.*—A Hindu may make an alienation of his property to take effect after his death. The Hindu law in Madras admits of the testamentary disposition of property, whether ancestral or self-acquired. The testamentary power of a Hindu in Madras is co-extensive with his independent right of alienation *inter vivos.* VALLINAYAGAM PILLAI *v.* PACHCHE . 1 Mad., 326

14. —————— **Arbitrary disposition of self-acquired property**—*Validity of will.*—A will by which a testator gave to his brother four-fifths of his self-acquired property and only one-fifth to his son, *held* not to be invalid as being beyond his power of disposition. NARAYANASVAMI CHETTI *v.* ARUNACHALA CHETTI 1 Mad., 487 note

HINDU LAW—WIDOW—*continued*

4 DISQUALIFICATIONS—*continued*

134 ——————— *Proof of incontinence—Suspicion*—Infidelity in wife or incontinence in a widow in order to constitute a disqualification to inherit must be positively proved or at any rate there must be a reasonably well grounded suspicion of it having taken place But *quære* as to anything less than positive proof being sufficient PAMIA *v* BHAGI 1 Bom, 66

S C IN THE GOODS OF DADOO MANIA [1 Ind. Jur, O S, 59

135 ——————— *Adoption Right to make*—A Hindu widow who has become unchaste

[illegible]

136 ——————— *Adoption by mother-in-law—Subsequent adoption by daughter in law—Unchastity of widow after vesting of estate* [illegible] *of adoption—Suit to set aside* [illegible] iving his sequently *P* and a opted the plaintiff and immediately afterwards *P* adopted the defendant The plaintiff sought to set aside the adoption of the defendant alleging that it was invalid inasmuch as it took place subsequently to his own adoption and because of *P* being an unchaste widow

RAMKRISHNA *v* GOVIND GANESH [I L R, 9 Bom, 94

137 ——————— *Liability of* [illegible] *suspended* eclaring her set aside or subsequent unchastity given by her husband's relatives either in a suit brought by them expressly for the purpose of setting aside the decree or in answer to the widow's suit to enforce her right VISHNU SHAMBHOG *v* MANJAMMA I L R, 9 Bom., 108

138 ——————— *Maintenance*—

[illegible] after her husband's death and [illegible] unchaste life at and about the date of suit —*Held* that she was not entitled to maintenance of any sort *Quære*—Whether if she were to begin to lead a moral life she would not be entitled to a starving maintenance *Honamma* v *Timannabhat I L R 1 Bom, 559* and *Valu* v *Ganga I L R 7 Bom 84* referred to ROMA NATH *alias* RAMANUND DHUR PODDAR *v* RAJONIMONI DASI [I L R, 17 Calc, 674

See DAULTA KUARI *v* MEGHU TIWARI [I L R, 15 All, 382

HINDU LAW—WILL

See MALABAR LAW—WILL

See CASES UNDER PROBATE

See CASES UNDER WILL

1 POWER OF DISPOSITION

(a) GENERALLY

1 ——————— **Power to make will**—*Origin and extent of power* —*Per* NORMAN J—The power of a Hindu to make a will is not of modern introduction nor is it of local origin Wills were known to

HINDU LAW—WILL—*continued.*

1. POWER OF DISPOSITION—*continued.*

22. ———— Right to deprive by will a widow of her share on partition—*Widow's share on partition.*—Under the Hindu law in Bengal, a person has the right to dispose of his property by will so as to deprive his widow of her share on partition. *Bhobunmoyee Dabea Chowdhrani* v. *Ramkissore Acharj Chowdhry, S. D. A. Rep., 1860, p. 485,* followed. DEBENDRA COOMAR ROY CHOWDHRY *v.* BROJENDRA COOMAR ROY CHOWDHRY. PROSUNNOMOYI DASI *v.* BROJENDRA COOMAR ROY CHOWDHRY **I. L. R., 17 Calc., 886**

23. ———— Will against interests of widow and reversioner—*Inofficious will.*—The will of a childless Hindu giving power to adopt a son, though opposed to the interests of the widow and the next heir in reversion, is not inofficious. SARODA SOONDERY DOSSEE *v.* TINCOWRY NUNDY [**1 Hyde, 223**

24. ———— Effect on will of subsequent adoption—*Validity of will.*—Where a separated Hindu made a will and subsequently adopted a son, the boy adopted and his father being aware of the provisions of the will, in which an adequate provisions was made for the adopted son, it was held that the subsequent adoption did not invalidate the will. VINAYAK NARAYAN JOG *v.* GOVINDRAV CHINTAMAN JOG . . . **6 Bom., A. C., 224**

25. ———— Devise away from remote kinsman—*Separate property.*—The title of a remote kinsman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsman had not been united in food, worship, or estate, cannot prevail against the title of a devisee of that testator, whether such property was by the testator self-acquired or held in severalty, either by virtue of a partition, or of the non-existence, or, if any did ever exist, the extinction of co-parceners. NAROTTAM JAGJIVAN *v.* NARSANDAS HURKISANDAS [**3 Bom., A. C., 6**

26. ———— Alienability by co-parcener of his undivided share of ancestral property—*Mitakshara law.*—It having been contended that as a father and his sons were during his life co-parceners in the family estate, one of such co-parceners being able, according to the decisions of the Court, by act *inter vivos* to make an alienation of his undivided share binding on the others, it followed that the father might dispose by will of his one-third share. *Held* that, under the Mitakshara law as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability, by a co-parcener, of his undivided share, without the consent of his co-sharers, should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a co-parcener could not, without his co-sharer's consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that, although a co-parcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the co-parcener, the title of the other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will were held to be sound and sufficient to support that decision. LAKSHMÁN DADA NAIK *v.* RAMCHANDRA DADA NAIK . . . . . **I. L. R., 5 Bom., 48** [**L. R., 7 I. A., 181**

Affirming the decision of the High Court in S. C. [**I. L. R., 1 Bom., 561**

27. ———— Power of co-parcener to dispose of ancestral property.—In a suit by an adopted son to set aside a will made by his father disposing of immoveable ancestral property,—*Held that the will was of no effect as a valid devise of property. At the moment of death the right of* survivorship was in conflict with the right by devise, and the right by survivorship, being the prior title, took precedence to the exclusion of that by devisee. VITLA BUTTEN *v.* YAMENAMMA . . **8 Mad., 6**

See GOOROOVA BUTTEN *v.* NARRAINASAWMY BUTTEN . . . . . . **8 Mad., 13 note**

28. ———— Devise against interest of unborn son—*Right of unborn son to ancestral property.*—According to the Hindu law which obtains in the Madras Presidency, the right of a son in the womb to ancestral property cannot be defeated by a will or gift. *Quære*—Whether this rule would govern the case of an alienation for value. MINAKSHI *v.* VIRAPPA . . **I. L. R., 8 Mad., 89**

(*b*) DISHERISON.

29. ———— Power to disinherit sons—*Gift absolute to widow—Absence of express declaration of disherison.*—A Hindu died leaving a widow, two infant sons and a daughter, and having made a will in English, of which the following is the material portion: "I give, devise, and bequeath unto my wife, *L D*, and her heirs and assigns for ever, all my real and personal estates and effects, and do appoint my said wife sole executrix of this my will." *Held* (reversing the decision of MACPHERSON, *J.*) that the wife took an absolute estate with full power of alienating the property, and not merely as trustee and manager for the infant sons. It is not necessary that there should be an express declaration of the testator's desire or intention to disinherit his sons if there is an actual gift to some other persons expressed in clear and unequivocal words. PROSUNNO COOMAR GHOSE *v.* TARRUCKNATH SIRCAR **10 B. L. R., 267**

S. C. TARUCKNATH SIRKAR *v.* PROSUNNO COOMAR GHOSE . . . . . . **19 W. R., 48**

But *see* ROOPLAL KHETTRY *v.* MOHIMA CHUNDER ROY . . . . **10 B. L. R., 271 note**

30. ———— *Nuncupative will —Disinherison of an undivided son.*—Under Hindu law, a father has power by a nuncupative will to dispose of self-acquired immoveable property as he

HINDU LAW—WILL—*continued*

1 POWER OF DISPOSITION—*continued*

15. ——— **Power of disposition over ancestral property**—*Hindu without male issue*—A will by a Hindu without male issue, kinsman, or co-parcener, which, after providing for the maintenance of his widow, daughters and female relations devised ancestral as well as other real and personal estate to trustees upon certain charitable trusts was impeached by reason first that the testator had authorized his widow in an event which happened to adopt a son which act would have rendered him incompetent to exercise a testamentary power, secondly, that at the time of the execution of the will the testator was not of sufficient mental capacity to make a testamentary disposition, and thirdly, that the testator being a Hindu had no power by law of devising ancestral estate by will *Held* on appeal affirming the decision of the Sudder Court in India [illegible]

[illegible] a son for him, yet that the evidence entirely failed to prove that fact, secondly that the evidence established his mental capacity at the time of executing the will; and thirdly, that by the Hindu law prevailing at Madras a Hindu in possession without issue male, kinsman, or co-parcener, had power to make a will disposing of ancestral as well as acquired estate NAGALUTCHMEE UMMAL *v* GOPOO NADARAJA CHETTY 6 Moore's I. A., 309

16. ——— **Extent of power of disposition**—*Bequest to idol—Right of widow to maintenance* [illegible] extent of [illegible] regu[illegible] with a widow's right to a proper maintenance A Hindu by will gave all the moveable and immoveable property to his family idol, and, after stating that he had four sons he directed that his property should never be divided by them, their sons or grandsons, in succession, but that they should enjoy "the surplus pro[illegible]

[illegible] of a disagreement between the sons and family the testator directed that after the expenses attending the estate, the idol and the maintenance of the members of the family, whatever nett produce and surplus there might be should be divided annually in certain proportions among the members of the family At the date of the will the members of the family were joint in estate, food and worship. The accumulations of the income were divided as directed by the will *Held*, first, that the bequest to the idol was not an absolute gift, but was to be construed as a gift to the testator's four sons and their offspring in the male line as a joint family, so long as the family remained joint, and that the four sons were entitled to the surplus of the property after providing for the performance of the ceremonies and festivals of the idol and the provisions in the will for maintenance secondly, that the fact of the division of the income arising out of the testator's estate among the members of the family after the testator's death did not constitute a division of the family One of the sons of the testator died, leaving three sons, one of whom also died without issue, leaving a widow *Held* further, that the direction contained in the will that the property should go in the male line did not exclude the widow of the grandson of the testator and that the widow was entitled to a third share of a fourth part of the property and accumulations without prejudice to her right as a Hindu widow, when the property should be divided. SONATUN BYSACK *v* JUGGUTSOONDAREE DOSSEE [8 Moore's I. A., 66

17. ——— **Bequest for religious purposes**—*Legacy by an undivided father of a Hindu family*—A Hindu made his will whereby he bequeathed R600 to supply a silver image for a pagoda, and died leaving the defendant his undivided adopted son, him surviving He was not shown to have been possessed of any separate property In a suit by the trustee of the pagoda to recover the above amount—*Held* that the legacy was not binding on the defendant RATHNAM *v* SIVASUBRAMANIA I. L. R., 16 Mad., 353

18. ——— **Power to dispose by will**—*Paternal grandmother inheriting property from maiden granddaughter Estate taken by grandmother* A paternal grandmother in Gujarat inheriting moveable and immoveable property from her maiden granddaughter takes an absolute interest in [illegible]

19 ——— **Will omitting to provide for widow** *Validity of will—Semble*—The will of a Hindu would not be invalidated merely by its omitting to provide for his widow VALLINAYAGAM PILLAI *v* PACHCHE 1 Mad., 326

20. ——— **Omission to provide maintenance for brother's widow**—*Validity of will*—A will is not invalidated by the circumstance that another than the devisee is competent to confer a greater amount of spiritual benefit upon the testator, nor on the ground of its making no provision for the maintenance of the widow of the testator's deceased brother POORNOMEE DEBIA *v* KRISHNO CHUNDER MISSER 20 W. R., 147

21. ——— **Devise to prejudice of wife**—*Zemindar without issue*—By the Hindu law a zemindar having no issue is capable of alienating by deed or will a portion of his estate which in default of lineal male issue and on intestacy would vest in his wife, without her consent. MUTTAI LACHMIA *v* CHILAKAMY VENCATA RAMA JAGANATHA ROW 2 Moore's I. A., 54

HINDU LAW—WILL—*continued.*

4. ATTESTATION AND PROOF OF WILLS —*concluded.*

D brought her suit to establish her right as widow of *C* to a moiety of the family property. The representatives of *B* set up an instrument, which they alleged to be the will of *C* whereby he bequeathed his share to *B*, reserving the maintenance to *D*. The Judge of the Zillah Court of Nuddea held that the alleged will of *C* was genuine, and dismissed *D*'s suit. The High Court, on appeal, held (1) that *D* ought, firstly, to have shown her title to sue,—*i.e.*, having admitted the family came from *Mithila*, she ought to have shown that they were no longer governed by the Mitakshara law; (2) that for several generations the rule of inheritance had been according to the Dayabhaga; (3) that the alleged will was not proved (there was evidence before the Court of the factum of the will adequate to the proof of an ordinary will, but the Court held that this evidence was outweighed by the internal improbabilities); (4) that if the rule of inheritance was not according to the Dayabhaga, the will was invalid... On appeal to the Privy Council,—*Held*, first, it would be a rash conclusion on the state of the [illegible] ...ence of the [illegible] ...he mind of [illegible] ...foundation for treating the will as unofficious. Second, it was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitakshara. Third, the evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will sufficient to discredit it. SURENDRA NATH ROY *v.* HIRAMANI BARMANI

[1 B. L. R., P. C. 26: 10 W. R., 35
12 Moore's I. A., 81

51. ———— *Proof of execution of will—Handwriting.* By will dated in 1847 a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1848 she adopted a son under the will with the knowledge of the members of the family, and the will was for a period of twenty-seven years generally recognized and acted on by the testator's family. The Judicial Committee held (reversing the decree of the High Court) in accordance with the finding of the Principal Sudder Ameen, that the will was proved. Where a will was executed by the testator signing with the Bengali letter "M" and it was argued that the testator being in very weak health, the firm way in which the "M" was written threw discredit upon it, the Judicial Committee preferred the decision of the native Judge on this point to that of the English Judges of the High Court, and expressed doubt as to the value of the style of such writing as evidence in favour of the will being [illegible]. RAJENDRA NATH HALDAR *v.* JOGENDRA NATH HALDAR 7 B. L. R., 216

[15 W. R., P. C., 41: 14 Moore's I. A., 67

5. CONSTRUCTION OF WILLS.

(a) GENERAL RULES.

52. **Ascertaining meaning of testator in particular phrase.**—To ascertain the meaning to be applied to a particular phrase, it is necessary, first, to consider the words of the will and next the surrounding circumstances, which may affect the testator's meaning. *See* [illegible] *D*[illegible] *v.* *Dowlut*[illegible] *Mullick*, [illegible] BHUGOBUTTY PROSONNO SEN *v.* GOORGO PROSONNO SEN I. L. R., 25 Calc., 112

53. ———— **Statute of superstitious** [illegible]

JUDAH *v.* JUDAH 5 B. L. R., 433

54. ———— **Necessity of words of inheritance** *Interest in freehold estate.*—No words of inheritance are requisite to continue to his heirs a Hindu's interest in a freehold estate. ANUNDMOYEE DOSSEE *v.* DOE . 4 W. R., P. C., 51
[8 Moore's I. A., 43

55. ———— **Person in existence at death of testator** *Person competent to take under a will.* The doctrine laid down by the Privy Council in the *Tagore case*, 9 *B. L. R.*, 377, that only a person, either in fact or in contemplation of law, in existence at the death of a testator can take under his will, is a general principle of Hindu law applicable as well to Hindus governed by the law of the Mitakshara as to those governed by the Dayabhaga. MANGALDAS NATHUBHOY *v.* KRISHNABAI
[I. L. R., 6 Bom., 38

56. ———— **Devise to persons who would be heirs** *Nature of interest taken by them.* *Quære*—Whether when a Hindu devises to his sons property which in the absence of such devise, they would take as heirs, the sons must be considered to take as devisees or as heirs. VALLOO CHETTY *v.* SOONDAR CHETTY
[I. L. R., 3 Mad., 253

57. ———— **Rule of English law as to undisposed-of residue** *Residue. Distribution.* The rule of English common law that the undisposed-of residue of personal estate vests in the executor beneficially does not apply to the will of a Hindu testator in India. LAKSHMIBAI HARIBHAI *v.* MANEKVABAI . . I. L. R., 2 Bom., 343

58. ———— **Misdescription of legatee.** [illegible] ... ...was ... that ... was ... [illegible] ... and that ... [illegible] COURT OF WARDS *v.* VENKATA SURYA MAHIPATI RAMA KRISHNA RAO . I. L. R., 20 Mad., 167

(b) ESTATES ABSOLUTE OR LIMITED.

59. ———— **Direction as to enjoyment between widow and son** [illegible] ... of [illegible]

HINDU LAW—WILL—*continued.*

1. POWER OF DISPOSITION—*continued.*

22. ———— Right to deprive by will a widow of her share on partition—*Widow's share on partition.*—Under the Hindu law in Bengal, a person has the right to dispose of his property by will so as to deprive his widow of her share on partition. *Bhobunmoyee Dabea Chowdhrani* v. *Ramkissore Acharj Chowdhry, S. D. A. Rep., 1860, p. 485,* followed. DEBENDRA COOMAR ROY CHOWDHRY *v.* BROJENDRA COOMAR ROY CHOWDHRY. PROSUNNOMOYI DASI *v.* BROJENDRA COOMAR ROY CHOWDHRY **I. L. R., 17 Calc., 886**

23. ———— Will against interests of widow and reversioner—*Inofficious will.*—The will of a childless Hindu giving power to adopt a son, though opposed to the interests of the widow and the next heir in reversion, is not inofficious. SARODA SOONDERY DOSSEE *v.* TINCOWRY NUNDY **[1 Hyde, 223**

24. ———— Effect on will of subsequent adoption—*Validity of will.*—Where a separated Hindu made a will and subsequently adopted a son, the boy adopted and his father being aware of the provisions of the will, in which an adequate provisions was made for the adopted son, it was held that the subsequent adoption did not invalidate the will. VINAYAK NARAYAN JOG *v.* GOVINDRAV CHINTAMAN JOG . . . **6 Bom., A. C., 224**

25. ———— Dêvise away from remote kinsman—*Separate property.*—The title of a remote kinsman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsm had not been united in food, worship, or estate, not prevail against the title of a devisee testator, whether such property was by th self-acquired or held in severalty, either a partition, or of the non-existence, ever exist, the extinction of co-par TAM JAGJIVAN *v.* NARSANDAS HU

26. ———— Alienab of his undivided sh perty—*Mitakshara l* tended that as a fath life co-parceners co-parceners beir the Court, by of his und followed t one-thir law disposo of the alien share, withou not be extended, decided cases. The co-parcener could not, w sent, either give or devise alienation must be for value. had ruled that, although a co-parcen his share by gift, that right was itseli the right to partition, and died with the co-p the title of the other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will were h to be sound and sufficient to support that deci LAKSHMÁN DADA NAIK *v.* RAMCHANDRA NAIK . . . . **I. L. R., 5 B**
[L. R., 7

Affirming the decision of the High Co
[I. L. R.

27. ———— Power of c dispose of ancestral proper an adopted son to set aside a wil disposing of immoveable an that the will was of no ef property. At the mome survivorship was in conf and the right by sur took precedence to t VITLA BUTTEN

See GOORO TEN .

28. — unbo *pro* ob

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

estate equally with the senior widow, a claim which was dismissed. INDAR KUNWAR *v.* JAIPAL KUNWAR

I. L. R., 15 Calc., 725
L. R., 15 I. A., 127

62. ———— Life-estate—*Bequest of property to an unmarried grand-daughter of testator, and after her death to her children, if any, is a gift of life-interest in such property.*—The will of a Hindu contained the following devise in favour of the testator's grand-daughter K, who was unmarried at the date of the testator's death: "When K may marry, there is to be given to her out of my immoveable property one house which has been purchased from Shah Virji, Narsi's widow Dhalabai. . . . That (house) is to be given to Choru K as kanyadan. The rent, which it may yield, K may enjoy after (she) my grand-daughter shall have married. And after K's decease (the ownership of) the said house shall duly be enjoyed by K's children. If by the will of God K should die without (leaving) descendants, then my Trustees are duly to take back the said house into their possession." *Held* that, under the above clause K was entitled only to life-estate in the house. KARSANDAS NATHA *v.* LADKAVAHU

I. L. R., 12 Bom., 185

63. ———— *Bequest to sons with gifts over—Succession Act (X of 1865), ss. 82 and 111—Absolute estate given.*—This appeal related to three clauses in the will of a Hindu, who bequeathed his property to his two sons, one of whom had a son. The other son was childless, his only issue having died before the will was made. There were gifts over on the death of either son. The Courts below, construing the first of the three clauses, decided that each of the two sons took a life interest in the property comprised in that clause, as tenants-in-common; and that the ulterior interest, not having been validly disposed of, fell into the residuary estate. On this appeal, with reference to s. 82 of "the Indian Succession Act, 1865," made to apply to wills made by any Hindu in the town of Bombay, by s. 2 of the Hindu Wills Act, 1870, a doubt was expressed by the Judicial Committee whether in the clause it sufficiently appeared that the estates given to the sons were only estates for life. It was, however, in the view taken of the other clause of which the construction was in dispute, unnecessary to determine that point. In the second clause to be construed there were words which had been held by the appellate High Court to give to each of the two sons of the testator only a life-estate in a half share of the residuary estate. Whether these words, which form the gift to the testator's two sons of the whole residue in equal shares, were so clear that only the life-interest was intended to be given to them, was considered, likewise, to be open to doubt, [illegible] regard to the rule of construction imposed by s. 82. But this was also not required to be determined, as the clause the 13th in the will was [illegible] the circumstances. It was now determined that the third and last of the disputed clauses, No. 19 in the will, clearly gave the residuary estate to the testator's two sons in equal shares each an absolute estate, except in the case of the [illegible] daughter. Between clauses 13 and 19 [illegible] They were each [illegible] circumstances. *Held* that the two sons of the testator must be declared to have each taken an absolute interest in the half share of the residuary estate. DAMODARDAS TAPIDAS *v.* DAYABHAI TAPIDAS

I. L. R., 23 Bom., 833
2 C. W. N., 117

64. ———— [illegible]—*Estate vested in trustees.*—One D had two sons, G and H. His will contained the following clause: "5. As to the immoveable property which I have, the particulars thereof are as follows. There is one vadi (oart) situated on the [illegible] Back-bay. In it there are small and large bungalows, chawls, stables, [illegible] in all thirteen buildings. Thereof one bungalow bearing No. 23, shall be given to my two sons G and H, and to K, the widow of my brother A M, a denizen of paradise (i.e.) to these three persons to reside therein, and the remaining bungalows, chawls, stables, and the large bungalow in which I live shall be let for rent. And out of the rent that may be realised therefrom the expenses of repairs, Government taxes and the servants' wages being paid, the surplus shall be paid to my son G. Out of such surplus the my son G shall pay the expenses of my house [illegible] my sister-in-law [illegible] Rs. 115 per [illegible] Thakorji of my house. [illegible] heirs in my family. And when there may be no [illegible] (i.e.) [illegible] in my family the whole property shall [illegible] My two sons and my sister-in-law [illegible] bungalow No. 23. And if [illegible] my two sons [illegible] Back-bay and [illegible] (G) [illegible]

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

with other executors, directed that his executors should divide the estate amongst his sons in accordance with the shastras after his youngest son had attained majority,—*Held* that such direction did not amount to an absolute bequest to his sons so as to exclude the widow from being entitled to a share upon a partition between the sons. KISHORI MOHUN GHOSE *v.* MONI MOHUN GHOSE . **I. L. R., 12 Calc., 165**

60. ———— **Words "share and share alike"**—*Life-estate of widow in immoveable property.*—*V* and *M*, Hindus residing in Bombay, made a deed of partition in 1823 of the whole of the family property, moveable and immoveable, which had come into their joint enjoyment on the death of their father. *V* died in 1850, having made a will prepared by an English solicitor, in the English language and form, by which, after various bequests to members of the family, he disposed of the residue of his estate, one-third share to his son *V* absolutely; another third to his son *L* absolutely; "and the remaining clear third share to my grandsons, *K*, *V*, *G*, and *N*, the sons of my late son *M*, deceased, their and each of their respective heirs, executors. administrators, and assigns, share and share alike." These residuary bequests, it was provided, were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life; but the estate was divided by the award of arbitrators in 1855, after making a provision for the widow, in substantial accordance with the directions of the will. *V* and *L* immediately thereafter took possession of their respective third shares of the moveable and immoveable estate, but the third share allotted to the four sons of *M*, who were all still infants, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property allotted to them remained unapportioned, and was managed, first, by the widow of *M* till her death in 1855; then by his eldest son *K*, till his death, without male issue, in 1859; then by the next eldest son *V* till his death, without issue, in 1864; and afterwards by the elder of the two surviving sons; and the proceeds were treated throughout as though the property was held in co-parcenary by the four sons as a joint and undivided Hindu family. In a suit brought by *L*, the widow of *K*, against *K*'s surviving brothers, and *S*, the widow of his brother *V*, in which *L* claimed to be absolutely entitled as heir of her husband [and also as heir of her daughter, who died after her husband's death, childless and unmarried] to a fourth part of the third share of the estate allotted by the award of 1855,—*Held* in the lower Court (1) that the words "share and share alike," occurring in the will of *V*, ought not to be construed as necessarily constituting a tenancy-in-common, with all the incidents attached thereto in English law, but that each of the four sons of *M* took a separate share in the third of the testator's residuary estate; the share of each son going on his decease to those who would, according to Hindu (and not according to English) law, be his heirs as a separated Hindu; (2) that with regard to the immoveable property devised by the will and allotted by the award to the sons of *M*, there never was a union of estate, a co-parcenary, from the commencement; and consequently there was no re-union in the sense of the Hindu law, notwithstanding joint enjoyment and common residence; but only postponement for a time, and for purposes of convenience, of an apportionment of the estate, which was accordingly (among other things) decreed. LAKSHMIBAI *v.* GANPAT MORABA . . **4 Bom., O. C., 150**

Held on appeal that the language of the testator showed an intention that his grandsons should take the one-third between them in severalty and as members of a divided family, and that the will must be so construed. And the doctrine that ancestral property after partition can be disposed of as self-acquired property was disapproved of as being opposed to the authorities and general spirit of Hindu law. GANPAT MOROBA *v.* LAKSHMIBAI

[5 Bom., O. C., 128

61. ———— **"Maharani Sahiba," Meaning of, as applied to wife or wives**—*Oude Estate Act (I of 1869), ss. 8, 13, and 22—Unregistered will of talukhdar—Decree for maintenance to widow under the will on which her suit was based, though her claim was for a different relief.*—A talukhdar who died childless, but leaving two widows, bequeathed, by an unregistered will, to the "Maharani Sahiba" his entire estate, and gave a power to the same to adopt a son to him; also providing maintenance for both his widows after such adoption. *Held* that to determine whether the will referred, in such bequest and power, only to the elder or to both of the testator's wives, extrinsic evidence of his intention was not admissible; but that the true construction was that which would indicate a reasonable and probable intention consistent with his views. as evidenced by his conduct, and his will generally. *Abbott* v. *Middleton, 7 H. L. C., 389,* referred to and followed. As his views appeared to favour single heirship, and the whole state of things, as well as the language of the will, pointed to the owner of the estate being one, and the donee of the power to adopt being one,—*Held* that accordingly the words "Maharani Sahiba" were not here used as a collective term for both widows, but signified only the elder, although, when qualified, as they were in another part of the will, they might include both. *Held* also that, as if there had been no will, the junior widow would have succeeded to an estate expectant on the determination of the life-estate of the senior, but subject to be defeated by an adoption by the latter, this was an interest bringing her within the meaning of s. 13, para. I of Act I of 1869; so that maintenance bequeathed to her by the will was payable, notwithstanding its not having been registered (as that section required in other cases) as well out of the talukhdari as out of the non-talukhdari estate of the testator. *Held* also that this had been rightly decreed to he as she had sued upon the will, although her direcr claim in her plaint was not for this, but to share the

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued*

estate equally with the senior widow a claim which was dismissed. INDAR KUNWAR *v* JAIPAL KUNWAR [I L R, 15 Calc, 725 L R, 15 I A, 127

62. ———— Life estate—*Bequest of property to an unmarried grand daughter of testator*

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the testator's grand daughter *K*, who was unmarried at the date of the testator's death " When *K* may marry, there is to be given to her out of my immoveable property one house which has been purchased from Shah Virji, Narsi's widow Lilabai . . That (house) is to be given to *Chotu K* as kanyadan The rent, which it may yield, *K* may enjoy after (she) my grand daughter shall have married. And after *K*'s decease (the ownership of) the said house shall duly be enjoyed by *K*'s children If by the will of God *K* should die without (leaving) descendants, then my 'Trustees' are duly to take back the said house into their possession " *Held* that, under the above clause, *K* was entitled only to life estate in the house KARSANDAS NATHA *v* LADKAVAHU [I. L. R, 12 Bom, 185

63 ———————— *Bequest to sons*

his property to his two sons, one of whom had a son

comprised in that clause, as tenants-in-common, and that the ulterior interest, not having been validly disposed of, fell into the residuary estate On this appeal, with reference to s 82 of " the Indian Succession Act, 1865," made to apply to wills made by any Hindu in the town of Bombay, by s 2 of the Hindu Wills Act, 1870, some doubt was expressed by the Judicial Committee whether in the clause it sufficiently appeared that the estates given to the sons were only estates for life It was, however, in the view taken of the other clause of which the construction was in dispute, unnecessary to determine that point In the next clause to be construed there were words which had been held by the appellate High Court to give to each of the two sons of the testator only a life estate in a half share of the residuary estate Whether those words, which followed a gift to the testator's two sons of the whole residue in equal shares, were so clear that only this restricted interest was intended to be given to them, was considered, in like manner, to be open to doubt in regard to the rule of construction imposed by s 82 But this was also not required to be determined, as this clause, the 13th in the will, was not applicable under the circumstances It was now determined that the third and last of the disputed clauses, No 18 in the will, clearly gave the residuary estate to the testator's

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

Committee's opinion intended to be read together and reconciled, nor were they mutually explanatory. They were each intended to provide for different circumstances *Held* that the two sons of the testator must be declared to have each taken an absolute interest in the half share of the residuary estate DAMODARDAS TAPIDAS *v* DAYABHAI TAPIDAS I. L. R., 22 Bom., 833 [2 C W. N, 417

64. ———————— *Absolute estate*

is one vadi (cart) situated on the Girgaum Back Road In it there are small and large bungalows, chawls, stables sepoys' and malis sheds, making in all thirteen buildings Thereof one bungalow, bearing No 23, shall be given to my two sons, *G* and *V*, and to *K*, the widow of my brother *K M*, a

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be let for rent And out of the rent that may be realized therefrom the expenses of repairs Government taxes and the servants' wages being paid the surplus shall be paid to my son *G* Out of such surplus this my son *G* shall pay the expenses of my house, of the maintenance of the said two sons and of my said sister in law, *i e* all such expenses as I carry on, and also R15 per month for the worship of (the

he shall go out of the said vadi at the Girgaum Back Road and reside elsewhere, and as to his (*V*'s) expenses out of the money which my son *G* may receive from the trustees for defraying the household expenses, he (*G*) shall continue to pay at the rate of R30 per one month to *V* for his (*V*'s) own expenses during his and his son's lifetime. And if this my son *V* should not act peaceably and harmoniously towards this my son *G* and towards my (said) sister-in law, then the above-mentioned money shall not be paid to him for expenses" The Court of first instance held that, under the will, *G* was entitled to the property absolutely *Held* by the Appeal Court that the proper construction of the will was that *G* was not entitled to an absolute estate, but was entitled to be paid by the trustees the income for his life, to

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the estate given to *G* and *V* or either of them being

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

with other executors, directed that his executors should divide the estate amongst his sons in accordance with the shastras after his youngest son had attained majority,—*Held* that such direction did not amount to an absolute bequest to his sons so as to exclude the widow from being entitled to a share upon a partition between the sons. KISHORI MOHUN GHOSE *v.* MONI MOHUN GHOSE . I. L. R., 12 Calc., 165

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HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

until she arrives at majority and bears a son" "9 If my daughter's daughter should be barren or a sonless widow, or if she should be otherwise disqualified, she shal
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a sonless widow, or be otherwise disqualified, then the whole of my properties shall pass into the hands of the Government" The will further directed the use of the money by the Government in that event, for certain charitable purposes In an administration-suit brought by the Secretary of State in Council against the testator's brother, wife, and grand-daughter, for the carrying out of the trusts of the will, —*Held* that cl. 7, if it stood alone, would confer an absolute estate on the daughter's daughter on the death of the widow, that the disqualifications in cl 9 must come into operation, if at all, at or before the death of the widow, and that it was unnecessary to decide whether, if they had been conditions subsequent, they would or would not have been in violation of Hindu law, that cl. 20 was supplementary to cl. 9, and that by it the gift over to the Government was to take effect, if at all, immediately upon the widow's death in the event of the grand-daughter
borne a son, or
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will, *viz*, that
the widow, having borne a son, their Lordships did not decide what would happen on the occurrence of that event. The rights of a son yet unborn would not, in the case supposed, be affected by any judgment in these proceedings *Lady Langdale* v. *Briggs, 8 De Gex., M and G., 391*, as explained in the *Tagore case, 9 B L. R., 377*, approved. RAMLALL MOOKERJEE v SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 7 Calc., 304 : 10 C. L. R., 349
L. R., 8 I. A., 46

67. ——— "Malik," Meaning of, as applied to female legatees—*Contingent bequest*

of any of the daughters ... brother dying childless, her share "shall devolve in equal shares on the surviving daughters, but such share shall have no connection with her husband's family." The will made a further provision that the daughters "shall not have on any account the right to sell or alienate their shares." *Held* (1) the expression maliks ordinarily implies an absolute gift, and there is no authority for introducing into the will the idea that a female ought not to obtain anything beyond an estate for her lifetime (2) Having regard to s 111 of the Indian Succession Act (applicable under the Hindu Wills Act, 1870) and the Privy Council case of *Norendra Nath Sircar* v. *Kamalbasini Dasi, I. L R, 23 Calc, 563*, the provision of survivorship applied only to the case of a daughter dying during the lifetime of the testator, and did not take effect in the present case, the daughter whose share was in question having died several years after the testator's death (3) As to the direction against alienation, s. 125 of the Indian Succession Act provides for a case like this, and the daughters receive their shares as if there was no such direction (4) The will was not open to the construction that there was a life-estate only conferred by it on the daughters LALA RAMJEWAN LAL v DAL KOER . . **I. L. R., 24 Calc., 406**

68. ——— "Malik"—*Power to widow to*

of another daughter (the defendant). *N* died, having, in February 1844, made his will, which

there exist and receive whatever dues there are receivable, and I have given commandment (permission) to my wife to adopt a son When the adopted son attains his age, he will become the malik of the whole of my property and will perform the shrad and tarpan of my father and father's father, and in the event of any good or evil befalling the said adopted son, she will again adopt a son . . . and upon the adopted son attaining his age, he will become 'the malik' of the whole of the property." *K*, who survived the testator, did not adopt, but took possession of the property and remained in possession till she died in 1875, and after her death the testator's children held the properties in equal shares, with the exception of a house, which the defendant had taken sole possession of. The plaintiff brought this suit for partition, and for an account of that part of the property which had been in sole possession of the defendant. The defendant contended that her mother took an absolute estate

the widow should only take a limited estate, and that the word "malik" as applied to the widow could not therefore be interpreted as giving her a larger interest. PUNCHOOMONY DOSSEE v. TROYLUCKO MOHINEY DOSSEE

[I. L. R., 10 Calc., 342

69. ——— Disposition to widow as "malikatwa"—*Dayabhaga law.*—*K*, a Hindu, died

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

[illegible]

I. L. R., 14 Bom., 260

65. [illegible] Chukkun Lal Roy v. Lalit Mohun Roy

[I. L. R., 20 Calc., 906

In the same case on appeal to the Privy Council it was *held* there are two cardinal principles in the construction of wills, deeds, and other documents. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is that technical words, or words of known legal import, must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not use the technical terms in their proper sense. *Doed. Gallini v. Gallini, 5 B. & Ad., 621,* referred to and followed. In a Hindu will an heritable and alienable estate is to be understood by the use of the words "shall become malik," unless the context indicates a different intention. The words putra poutradi krame have acquired a technical force, and are used as meaning an estate of inheritance. That a testator may have imperfectly understood the words which he has used, or the effects of conferring an hereditary estate, would not justify the giving an interpretation to his words other than their legal meaning. A will contained the following in favour of the testator's [illegible] that he "I coming my sthalabhishikto [illegible] shall become malik of all my estate and [illegible] shall [illegible] enjoy, with son, grandson and [illegible] in succession (putra poutradi krame) the pro[illegible]." Provision followed for the main[illegible] of this nephew's widow and of this daughter, [illegible] and a gift over that, "in the absence [illegible] of the said nephew [illegible] grandson, great-grandson, and [illegible] of the [illegible] of my sisters . . . the eldest, with son, grandson and so on in succession, shall [illegible] the [illegible]ship. On a claim by the [illegible] of the testator against the [illegible] for the construction of the will,—*Held* that [illegible] the true construction of the entire will, the *prima facie* legal meaning of the disposing words used was [illegible] by the context so as to establish any [illegible] by making it clear that the words were [illegible] in their proper sense, that there was [illegible] expressed to give a succession of life-[illegible] to the nephew and his male issue only—a disposition which would not have accorded with Hindu law; but that an alienable and heritable estate was devised to him. Specified property was given by the will in trust for the income to be expended for religious and charitable purposes, with an express prohibition of alienation of this property. There was also a gift of the testator's estates to Government for charitable purposes in the event of no one entitled to be the testator's sthalabhishikto remaining alive. If expressed as to the heritable estate in which the beneficial interest accompanied the gift, the prohibition of alienation would have been merely void, without any effect upon the disposition of that estate. *Held,* however, as to property given for religious and charitable purposes, it was valid by Hindu law. No decision as to the effect of the gift over the secular heritable estate was required, inasmuch as the contingency upon which it was limited to go over had not occurred, and might not occur. LALIT MOHUN SINGH ROY v. CHUKKUN LAL ROY. BEPIN MOHUN SINGH ROY v. CHUKKUN LAL ROY. PRIAMBADA ROY v. CHUKKUN LAL ROY

[I. L. R., 24 Calc., 834
L. R., 24 I. A., 76
1 C. W. N., 387

66. ——— Use of words "putra poutradi krame"—*Condition subsequent.*—In a will, the words "putra poutradi krame," recognized as apt for conveying an estate of inheritance, do not limit the succession to male descendants and will include female heirs of a female, where by law the estate would descend to such heirs. The will of a Hindu, who died, leaving only a widow, a daughter's daughter, and a brother, directed as follows: "7. If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my grand-daughter (daughter's daughter) shall become the proprietress of my property, and shall remain in undisputed possession thereof, 'putra poutradi krame.'" "8. If the death of my wife should take place before my daughter's daughter arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards

HINDU LAW—WILL—*continued*

5. CONSTRUCTION OF WILLS—*continued.*

should take a moiety with the incidents attaching to property held by an undivided family Upon the true construction of the will therefore, the widow was not intended to take any other estate than she would have taken if there had been an intestacy SESHAYYA v NARASAMMA I. L. R., 22 Mad., 357

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trary to the terms of the will should be deprived of his interest which should, in due course, devolve on the other heirs It was found on the evidence that forfeiture under cl 4 of the will had been incurred by the defendant *B*, the younger widow of the testator, by reason of her having broken the condition relating to residence *Held* that s. 82 of the Indian Succession Act (X of 1865), which enacts that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him," applied to the case *Held* also that the will gave only a restricted interest to the widows, and that cl 2 of the will should be construed as giving to the widows as joint tenants a life interest in a

next reversionary heir after his widows, was entitled to take under the gift over, and not the heirs to the stridhan of *P*, the elder widow of the testator BHOBA TARINI DEBYA v PEARY LALL SANYAL

[I. L. R., 24 Calc., 646
1 C. W. N., 578

75. ——— Bequest to daughters—*Life-estate*.—A Hindu testator died leaving three daughters By his will he gave certain property in equal shares to his younger daughters and their descendants and disposed of the rest for the benefit of his elder daughter *S* and her son *R* as follows "All the remaining rent should be collected by *S* and her son *R*, they shall when necessary, let the land to other tenants and have it cultivated and *R* shall pay the assessment and, subject to the directions of his mother, shall enjoy the land and shall not in any way alienate the property" *R* predeceased *S* *Held* that the testator's daughter took a life-estate with remainder to her son, and that on her death the property passed to the heirs of the son SIVA RAU v VITLA BHATTA

[I. L. R., 21 Mad., 425

76. ——— Gift to daughter—*Absolute estate—Daughters' estate*.—A Hindu by will bequeathed to his daughters his separate property to be enjoyed by them "as they pleased" *Held* that the daughters took an absolute estate KAMARAZU v VENKATARATNAM I. L. R., 20 Mad., 293

77. ——— Bequest to daughters -

dividing it, and that, if they should disagree, the income only should be shared between them, added

[I. L. R., 18 Mad., 347
L. R., 22 I. A., 119

78. ——— Gift to sons—*Life-estate*—

him in the testator's lifetime, but both had died in infancy and before the date of the will This fact

without issue leaving him surviving a widow *B*, having made and published his will wherein he stated, "I appoint my wife *B* to the 'malikatwa' after my demise as exercised by myself in respect of the family dwelling-house . . . . wearing apparel, utensils, etc., whatever there is in respect of all the property aforesaid." *B* upon the death of *K* took possession of his properties. Upon *B*'s death the plaintiffs, who claimed to be *K*'s nearest of kin, brought this suit contending that the words of the will only conveyed a life-estate to his widow *B*, and that after her death they were entitled to *K*'s properties. The defendant, who claimed to be *B*'s nearest of kin, contended that the words of the will gave *B* an absolute estate in *K*'s properties, and that he was entitled to the whole estate. *Held* that the intention of the testator was to give his widow *B* an absolute heritable and alienable estate in his properties. RAJNARAIN BHADOORY *v.* ASHUTOSH CHUCKERBUTTY . I. L. R., 27 Calc., 44

and on appeal (affirming the above decision). RAJNARAIN BHADURI *v.* KATYAYANI DABEE

[I. L. R., 27 Calc., 649
4 C. W. N., 337

70. ——— Testamentary bequest contained in wajib-ul-arz—*Devise by a Hindu in favour of a female—Presumption as to intention of testator concerning the estate to be taken by the devisee.*—One *M R*, a separated Hindu, died in 1882, leaving him surviving two daughters and a daughter-in-law *S*, the widow of a pre-deceased son. During his lifetime *M R* had caused to be recorded in the wajib-ul-arz of two villages, D and A, owned by him—"*S*, wife of my son *S R*, shall be regarded as owner after my death." In the wajib-ul-arz of a third village the following entry was recorded—"After my death *G*, the adopted son, and *S*, the wife of *S R*, shall have a right to the property." Subsequently to the death of *M R*, the nature of the estate taken by *S* in the villages D and A came before a Court of law, and *S* did not challenge the decree which was then passed declaring her interest to be only a life-estate. *Held* that, under the above circumstances, and having regard to the sentiments prevalent amongst Hindus on the subject of the devolution of immoveable property upon females, the devise of the villages D and A must be taken to convey an estate for life only and not the absolute ownership in the villages. *Soorjeemoney Dossee* v. *Denobundhoo Mullick, 6 Moore's I. A., 526,* and *Mahomed Shumsool Huda* v. *Shewukram, L. R., 2 I. A., 7 : 14 B. L. R., 226,* referred to. *Hira Bai* v. *Lakshmi Bai, I. L. R., 11 Bom., 573,* and *Koonj Behari Dhur* v. *Prem Chand Dutt, I. L. R., 5 Calc., 684,* considered. MATHURA DAS *v.* BHIKHAN MAL . . . . I. L. R., 19 All., 16

71. ——— Bequest to widow—*"Take possession of and enjoy as owner"—Life-estate—Qualified power of control of Hindu widow.*—Where a Hindu by his will directed that after his death his wife was to "take possession of and enjoy my property," and in another passage declared that "just as I am the owner so she is to be the owner," but there were no words of inheritance used, nor did he directly give his wife any power of disposition over the property. *Held* that she took only a life-interest in the property. The Courts have always leaned against such a construction of the will of a Hindu testator as would give to the widow unqualified control over his property. HARILAL PRANLAL *v.* BAI REWA

[I. L. R., 21 Bom., 376

72. ——— Devise to widow—*Widow's estate—Stridhan.*—One *D*, a separated sonless Hindu, made a will in favour of his wife, of which the material clause was as follows:—"After my death the said Musammat * * * is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by *right of this will.*" *D* died, leaving a widow and a daughter who was married to one *J*. The widow obtained possession of the property comprised in the will on the death of *D*. The daughter died in the lifetime of the widow, who thereupon made a will leaving the property which had come to her from *D* to *J*. On the death of the widow, certain persons alleging themselves to be the nearest reversioners to *D* claimed the property. *Held* that on the wording of the will and having regard to the surrounding circumstances of the case, the testator having no near male heirs, and the plaintiffs, if reversioners at all, being remote reversioners, the intention of the testator *D* was to leave the property in question to his widow as her stridhan, to descend to her heirs. *Koonjbehari Dhur* v. *Premchand Dutt, I. L. R., 5 Calc., 684,* dissented from. *Mahomed Shumsool Huda* v. *Shewukram, L. R., 2 I. A., 7 : 14 B. L. R., 226,* and *Hira Bai* v. *Lakshmi Bai, I. L. R., 11 Bom., 573,* distinguished. JANKI *v.* BHAIRON . I. L. R., 19 All., 133

73. ——— Disposition in favour of a widow and an adopted son—*Nature and extent of widow's interest thereunder.*—By his will a Hindu testator, after providing for various bequests, dealt with the residue of his estate as follows: "My daughter-in-law and grand-daughters shall receive half of my whole estate, and my wife and my adopted son shall receive the other half." On the question as to what was the nature and extent of the interest to which the testator's widow was entitled thereunder,—*Held* that, having regard to the rule of construction which has been repeatedly applied to gifts by Hindus in favour of their wives, the intention of the testator was not that his wife should take an absolute estate. The supposition is that a Hindu donor intends to act in accordance with the ordinary notions and wishes of Hindus regarding the devolution and enjoyment of property among the members of his family. Though it was competent for the testator to provide for his wife in such a way that she should have absolute control over the property given her, that is not the provision which the Hindu law makes for a widow. The language of the will was not inconsistent with an intention on the part of the testator that the son, with his adoptive mother,

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

as after her death,—*Held* that on the true construction of the will the testator did not intend the brother to have any power of alienation during the widow's lifetime PERIYA AYAL *v* NARAYANA PADAYACHI

[I. L. R, 23 Mad, 256

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circumstances regarding the in immoveable property it must be presumed that testator only meant to bequeath a life interest *Held* also that the heir at law was not liable to make good moneys expended on the premises by one holding under the widow with knowledge of the contents of the will NUNNU MEAH *v* KRISHNASAMI

[I L R., 14 Mad, 274

(c) ADOPTION

84 ———— **Adoption directed by will** —*Bequest of property by will to the boy named for adoption by testator—Conditional gift on adoption —Conditions proposed by natural father before consenting to give his son in adoption* —*G I* a Hindu of the Bhatia caste died on the 6th September his will dated the same day

During my should a child (begotten) by me not be born of the womb of my wife *S* then I direct and order and appoint as follows There is my nephew *D* He has now one son to whom he has not as yet given a name My wife *S* is to take that son in adoption after my decease and he is to be made my adopted son And after what is mentioned in (this) my testamentary writing has been done accordingly, I give (him) as an inheritance all the residue of my property left at the time and I appoint him as my heir This lad is to perpetuate (my) own name as (if he were) the son of my loins and (he) is to pay as much respect to my wife *S* as (if she were) his own mother and agreeably to her directions he is to act righteously And my wife is to have this lad married as (though he were her) own son, and upon his marriage R20 000 are to be expended out of my property And during the lifetime of my wife should this lad die without coming of age, then my wife is duly to take in adoption such other (or second) son of *D* as may be (living) at the time, and he is duly to be treated as my son (All) are duly to act towards him in all respects agreeably to what is written above and he is to obey my wife *S* If by the will of Providence it should so happen that there may be no other son of *D* then I appoint my nephew *D* as the heir of my property And to him I give as an inheritance all the residue of my property left at the time (It is given) in the following manner" In 1870 this suit was filed by the plaintiffs (the widow and

S D and had no other son In his written statement that he had In a subse March 1872 he informed the Court that a second son (*N*) had since been born to him and he submitted to the

she had refused to consent to them or to anything which would in the least interfere with her authority as a mother over the boy when adopted He stated that

by the testator which he suggested were imposed upon the plaintiff, the moral character of his son if adopted would be in danger of fatal injury *Held* that the infant sons of the first defendant took nothing under the will unless adopted *Held* also that the plaintiff was under no obligation to take the infant *S D* in adoption on the conditions proposed by the first defendant his natural father SHAMAVAHOO *v* DWARKADAS VASANJI I L R, 12 Bom, 202

perty to s Hindu test death decl nephew *K* to do so in his widow of a deceased son *H*) was 'to take the said *K* in adoption' His will then continued 'His

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

the event of the decease of my wife, *N*, my sons, Damodar and Dayabhai, may take in equal shares, half and half, the income that may be received, and may enjoy and may expend and may make donations for religious and charitable purposes, and the heirs also of both these my sons may always take the income from time to time, and may divide and take the income. To the same no one has any claim or title." "13. Afterwards giving to all what is written in this will, all the residue of the estate (iskamat), the whole of it should be divided and taken in equal shares by my sons, Damodardas and Dayabhai . . . . And on the death of the two sons (kaza razae), he who may have issue sons, that issue is in every way the heir of his father's property, and if in the lifetime of the two above-mentioned sons one should not have issue sons, then, on his death, if my other son should be alive, he should get all the estate, cash and whatever else there may be, in that no son can raise a dispute . . . . . . As to the rest, whichever son of mine may survive (hayatimo hoe) should get all that is given by me, and should there be no survivorship of that child, and should he have a son or sons, then he (or they) should get all, according to what is written above; in that no one can raise an objection." *Held* (confirming CANDY, *J.*) that under cl. 8 Damodar and Dayabhai took only a life-interest in the house as tenants-in-common, and that the ulterior interest therein, not being validly disposed of, fell into the residue. *Held* also (varying the decree of CANDY, *J.*) that Damodar and Dayabhai each took a life-estate in a moiety of the residuary estate, and that, if Damodar died without leaving a son, his moiety would devolve upon Dayabhai, or, if he were dead, upon his son *K* (if then living), and if Dayabhai would die without leaving a son, his moiety would devolve upon Damodar if then living. DAMODARDAS TAPIDAS *v.* DAYABHAI TAPIDAS

[I. L. R., 21 Bom., 1

79. ———— **Beneficial interest in surplus**—*Prohibition of alienation.*—A Hindu lady left by will to her sons lands belonging to her to support the daily worship of an idol, and defray the expenses of certain other religious ceremonies, with a provision that, in the event of there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family. *Held* that this provision amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and ceremonial trusts, might be considerable, and could not be presumed to be valueless. *Held* also that directions given by the testatrix in her will to the effect that her heirs should have no power of gift or sale over the property bequeathed, and that it should not be attached or sold on account of their debts, being inconsistent with the interest actually given, were wholly beyond her power, and must be rejected as having no operation. ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE

[I. L. R., 5 Calc., 438 : 5 C. L. R., 296
L. R., 6 I. A., 182

80. ———— **Direction in will operating as gift**—*Power to adopt conferred on testator's widow determined on estate vesting in his son's widow—Gift of beneficial interest.*—The following points were ruled in construing the will of a Hindu testator: (*a*) a direction to make over the estate to the son when he came of age is equivalent to a gift to him to take effect at that time; (*b*) a provision to meet the contingency "if my son dies," in order to be consistent with an absolute gift on his attaining majority, must mean if my son dies during minority; (*c*) dakildar, though ordinarily meaning "occupant," must be construed in reference to the context and held to mean possessor or manager, though without beneficial interest. *Held* that the testator's widow took no power to adopt under the will in the event which happened, *viz.*, of his estate having vested in his son and afterwards in the son's widow. *Thayammal* v. *Venkatarama Aiyan, L. R., 14 I. A., 67 : I. L. R., 10 Mad., 305,* followed. TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI **L. R., 16 I. A., 166**

[I. L. R., 17 Calc., 122

81. ———— **Executor and residuary legatee, Powers of, to alienate when there is restriction against alienation in will.**—*D*, residuary legatee under a will, which provided that he should not be competent to alienate the properties he took under it, having obtained an order for grant of probate in his favour, sold certain properties covered by the will to *J*. In execution of a decree passed against *D* in his personal capacity, the properties were attached, and *J* preferred a claim on the ground of his purchase. The claim was allowed and the properties were released from attachment. In a suit brought by the decree-holder for a declaration that the properties were liable to be sold in execution of his decree, it was *held* that the position of *D* under the will being not merely that of an executor, but that of a residuary legatee as well, and the restrictions imposed upon *D* by the will invalid under the ruling in *Ashutosh Dutt* v. *Doorga Churn Chatterjee, I. L. R., 5 Calc., 438 : L. R., 6 I. A., 182, D* had power to make the alienation in favour of *J*. JAGOBANDHU DEY PODDAR *v.* DWARIKA NATH ADDYA

[I. L. R., 23 Calc., 446

82. ———— **Devise of lands to brother to be enjoyed jointly with the testator's widow**—*Power of alienation during widow's lifetime.*—A testator by his will directed that his lands should be enjoyed by his brother from generation to generation and for ever, with power to alienate the same by sale, gift or otherwise, but that he should enjoy them jointly with the testator's wife. Upon its being contended that the provision in favour of the wife merely conferred upon her, or recognized, a right to maintenance and that the power of the brother to alienate was as extensive during the life of the widow

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

89 ——————— *Gift—Condition precedent—Persona designata*—Assuming that the testator, in using the words, "According to our shastras, the said two adopted sons will perform our
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the character of adopted sons SIDDESSORY DOSSEE *v* DOORGACHURN SETT

[2 Ind Jur, N S., 22. Bourke, O C, 360

90. ——————— *Testamentary gift—Intention—Subsequently adopted son—Res judicata—Pending administration suit—Persona designata*—*P*, a Hindu inhabitant of Calcutta of the Sudra caste, having two wives,—*M*, the elder wife, and *N*, the younger—but no issue by either of them, adopted two sons, the plaintiff and *S* This double adoption took place on one and the same occasion, but the plaintiff went through the necessary ceremonies in point of time before *S P* gave the plaintiff in adoption to his wife *M*, and *S* to his wife *N* *P* afterwards died, leaving *M N*, the plaintiff, and *S*, and leaving property and a will in
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pose of protecting and preserving the property after my decease, I appoint my elder uterine brother *A* executor, and my said two wives *M* and *N*, executrixes If either of these my two sons depart this life without issue (which God forbid!), I direct either of my wives whose foster son shall have died to take another son in adoption pursuant to this my direction and having done so, should a similar misfortune happen she shall have the option of adopting other sons in succession, and that son shall inherit the share of my deceased son. Further, besides one-half share of the moveable and immoveable properties of which I am possessed jointly with my elder uterine brother, whatever, etc, belonging to me in my separate, etc, account, my said executor and execu

my executor and executrixes shall account for and give them their shares on their becoming of age If they continue to be unanimous well and good if not, they may divide and receive their respective shares of the property and live separate as to food etc, etc" The executor and two executrixes proved the will Afterwards *S* died an infant and unmarried, and thereupon *N*, his mother in adoption, assuming to act under the will, adopted the defendant *O* in his place the other son, the present plaintiff, still living The plaintiff and *O* afterwards while still infants, filed a bill by their next friend against *P*'s executor and executrixes for the administration of the estate *N* afterwards died before the present suit which was brought by the plaintiff against *M*, the surviving wife, and *O*, praying that the plaintiff

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued*

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no bar to the present suit And held by TREVOR, *J*, dissenting from the rest of the Court on the appeal that the instrument executed by *P* was partly a will and partly a permission to adopt, that as to the first part of the instrument, there was sufficient designation of the persons as held by the rest of the Court, and as to the second part, that it was a condition precedent to any one taking under that permission that he should be a validly adopted son according to the Hindu law MONEMOTHANATH DAY *v* ONOTHANATH DAY 2 Ind Jur, N. S, 24

S C in Court below Bourke, O. C, 189

91. ——————— *Gift by implication—Persona designata—Power to adopt.*—

daughter be born, she will in that case adopt the twain mentioned below (the plaintiff and one *S G*), and whatever property there shall exist consisting of moveable and immoveable, my executors shall divide

The testator only intended him and *S G* to take under the will in the event of their being adopted *Dossmoney Dossee* v *Prossonomoye Dossee, 2 Ind Jur, N S, 18* not followed. ABHAI CHARAN GHOSE *v* DASMANI DASI 6 B. L. R., 623

92 ——— Persona designata—*Bequest to person not holding character supposed by testator*—Plaintiff sued as the widow of an adopted son for the property of the adoptive father, and also on the ground that the adopted son was the devisee of the adoptive father The Civil Judge decided that the adoption of the plaintiff's husband was invalid according to Hindu law, and that the devise, having been made to the plaintiff's husband as adopted son, was invalid *Held* (reversing the decision of the Civil Judge) that as the language of the testator sufficiently indicated the person who was to be the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law could not be sustained JAVANI BHAI *v* JIVU BHAI

[3 Mad., 462

93. ——————— *Son about to be adopted—Adoption.*—Where in a will there was

adoption ceremony is to be performed. My property, which may remain as a residue after all the things mentioned in my will have been done, I give to this lad as his inheritance, and I appoint him as my heir." A subsequent clause of the will directed as follows:—"In the twenty-eighth clause above it has been directed (that a son) should be adopted. In accordance therewith, after the said *K* shall have been adopted, should he die without (leaving) any descendants, then *Choru L* is duly to adopt, out of my father *J A*'s descendants, any lad who may be found fit. And if the said *L* should not be living at that time, then (any) lad (begotten) of the loins of my father, *J A*, who may appear to my executors to be fit, is duly to be appointed my heir. And to him my property as mentioned above is duly to be given in inheritance. And his adoption ceremony is to be performed. And the outlays on the occasion of his marriage also are duly to be made as written above." *Held* that the direction by the testator to his daughter-in-law to adopt a son was a direction to her to adopt a son to herself and her deceased husband and not to adopt a son to the testator; the former being the only adoption which she was by Hindu law competent to perform. *Held* also that, unless *K* was adopted as directed by the will, he was not entitled to the testator's property. His adoption was a condition precedent to his inheritance. KARSANDAS NATHA *v.* LADKAVAHU . I. L. R., 12 Bom., 185

Held on appeal that adoption was a condition precedent, and that the boy not having been adopted could not take under the will. *Bireswar Mukerji* v. *Ardha Chunder Roy, L. R., 18 I. A., 101 : I. L. R., 19 Calc., 452*, distinguished. *Shamavahoo* v. *Dwarkadas Vasanji, I. L. R., 12 Bom., 202*, followed. KARAMSI MADHOWJI *v.* KARSANDAS NATHA . . . I. L. R., 20 Bom., 718

On appeal to the Privy Council,—*Held*, affirming the decree of the High Court, that the adoption was a condition precedent, and that the boy, not having been adopted, could not take under the will. KARAMSI MADHOWJI *v.* KARSANDAS NATHA

[I. L. R., 23 Bom., 271

86. ——— **Gift to person as an "adopted son," though not actually so**—*Gift, whether conditional—Persona designata.*—Where a testator recited in his will that he had been keeping a minor as his adopted son, and thereby gave properties to him absolutely, describing him as adopted son,—*Held* that by the true construction of the will the gift was not conditional upon adoption having been effected. SUBBARAYER *v.* SUBBAMMAL

[L. R., 27 I. A., 162
4 C. W. N., 805

87. ——— **Omission or refusal to adopt**—*Widow with authority to adopt.*—A Hindu will contained the following clause: "I give out of my two-anna share of the whole of my personal estates R7,000 to my mother (one of the defendants), and R5,000 to my wife (the plaintiff). Besides the two-anna share of the wealth in ready money and landed property which remains, you my brother will keep under your own charge; you are at present malik of the whole of the property; as master and manager of the entire property, you will perform all acts, you will cause one of your sons to be received in adoption." The brother died leaving a will, by which he committed to his wife and mother the charge of his own property and that of his brother, and also the duty of giving his son in adoption to his brother. The defendants,—*viz.*, his wife and mother,—proved the will and took possession of the property. The plaintiff omitted to adopt. Her husband died in 1851, and the suit was brought in 1867. *Held* that the plaintiff, notwithstanding her omission to adopt, succeeded to her husband's estate for a Hindu widow's interest therein. *Held* by PEACOCK, *C.J.*, and MARKBY, *J.*, that the estate descended to the widow, plaintiff, subject to the two legacies; and that she did not forfeit it even if she refused to adopt. PRASANNAMAYI DASI *v.* KADAMBINI DASI

[3 B. L. R., O. C., 85

88. ——— **Double adoption**—*Gift to sons by implication as devisees—Intention—Persona designata.*—*N C G*, a Hindu, died without issue, leaving a widow (the plaintiff). He left a will by which he gave a conditional power of adoption in the following words: "My wife is supposed to be pregnant with child; if her conception be true, and she be delivered of a male child, then there shall be no necessity for the adoption of children as mentioned below, but if a daughter be born, she will in that case adopt the twain mentioned below, and whatever property there shall exist consisting of moveables and immoveables, etc., my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority and if a son be born and happen to die before attaining majority, in that case she shall adopt the sons of my sisters mentioned below, and for that purpose I give her, that is to say my wife, permission that she, that is my said wife, shall, in conformity with our shastras, adopt the illustrious *S*, the third son of *R G*, and *O C*, the youngest son of *S G*, an inhabitant of Autpoore—that is to say, the two sons of my two uterine sisters, in doing which there shall be no deviation. Should my wife not adopt the children after my decease, then the executors named hereinafter shall, according to this will and in pursuance of the permission given by me, cause the said two children to be received in adoption. If any of the said adopted sons depart this life before attaining the age of majority, then one of the uterine brothers of the deceased adopted son shall be received in adoption according to law in the room of deceased adopted son," etc. The plaintiff did not give birth to either son or daughter, nor did she adopt either of the persons indicated by the will. *S* died in 1865, and *O C* was living at the date of the suit and was of age. *Held* that, whether the two persons indicated could or could not be legally adopted as pointed out by the will according to Hindu law, there was a gift to them as devisees by implication. DOSS MONEY DOSSEE *v.* PROSONOMOYE DOSSEE

[2 Ind Jur., N. S., 18

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued*

89. ———— *Gift—Condition precedent—Persona designata*—Assuming that

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[2 Ind. Jur, N. S, 22; Bourke, O C, 360

90. ———— *Testamentary gift—Intention—Subsequently adopted son—Res judicata—Pending administration suit—Persona designata*—*P*, a Hindu inhabitant of Calcutta, of the Sudra caste, having two wives,—*M*, the elder wife, and *N*, the younger,—but no issue by either of them, adopted two sons, the plaintiff and *S* This double adoption took place on one and the same occasion, but the plaintiff went through the necessary ceremonies in point of time before *S* *P* gave the

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cient designation of the persons as held by the rest of the Court, and as to the second part, that it was a condition precedent to any one taking under that permission that he should be a validly adopted son according to the Hindu law Monemothanath Day *v* Onothanath Day 2 Ind. Jur., N. S, 24

S. C in Court below. Bourke, O. C, 189

91. ———— *Gift by implication—Persona designata—Power to adopt*—A Hindu testator died, leaving a widow, and leaving

moveable and immoveable, my executors shall divide

Jur, *N* *S*, *18*, not followed. Abhai Charan Ghose *v* Dasmani Dasi 6 B L. R., 623

92. ———— Persona designata—*Bequest*

was invalid *Held* (reversing the decision of the

be sustained. Javani Bhai *v* Jivu Bhai [2 Mad, 462

93. ———— *Son about to be adopted—Adoption.*—Where in a will there was

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

adoption ceremony is to be performed. My property, which may remain as a residue after all the things mentioned in my will have been done, I give to this lad as his inheritance, and I appoint him as my heir." A subsequent clause of the will directed as follows:—"In the twenty-eighth clause above it has been directed (that a son) should be adopted. In accordance therewith, after the said *K* shall have been adopted, should he die without (leaving) any descendants, then *Choru L* is duly to adopt, out of my father *J A*'s descendants, any lad who may be found fit. And if the said *L* should not be living at that time, then (any) lad (begotten) of the loins of my father, *J A*, who may appear to my executors to be fit, is duly to be appointed my heir. And to him my property as mentioned above is duly to be given in inheritance. And his adoption ceremony is to be performed. And the outlays on the occasion of his marriage also are duly to be made as written above." *Held* that the direction by the testator to his daughter-in-law to adopt a son was a direction to her to adopt a son to herself and her deceased husband and not to adopt a son to the testator; the former being the only adoption which she was by Hindu law competent to perform. *Held* also that, unless *K* was adopted as directed by the will, he was not entitled to the testator's property. His adoption was a condition precedent to his inheritance. KARSANDAS NATHA *v.* LADKAVAHU . I. L. R., 12 Bom., 185

Held on appeal that adoption was a condition precedent, and that the boy not having been adopted could not take under the will. *Bireswar Mukerji* v. *Ardha Chunder Roy, L. R., 18 I. A., 101: I. L. R., 19 Calc., 452,* distinguished. *Shamavahoo* v. *Dwarkadas Vasanji, I. L. R., 12 Bom., 202,* followed. KARAMSI MADHOWJI *v.* KARSANDAS NATHA . . . I. L. R., 20 Bom., 718

On appeal to the Privy Council,—*Held,* affirming the decree of the High Court, that the adoption was a condition precedent, and that the boy, not having been adopted, could not take under the will. KARAMSI MADHOWJI *v.* KARSANDAS NATHA

[I. L. R., 23 Bom., 271

86. ———— **Gift to person as an "adopted son," though not actually so**—*Gift, whether conditional—Persona designata.*—Where a testator recited in his will that he had been keeping a minor as his adopted son, and thereby gave properties to him absolutely, describing him as adopted son,—*Held* that by the true construction of the will the gift was not conditional upon adoption having been effected. SUBBARAYER *v.* SUBBAMMAL

[L. R., 27 I. A., 162
4 C. W. N., 805

87. ———— **Omission or refusal to adopt**—*Widow with authority to adopt.*—A Hindu will contained the following clause: "I give out of my two-anna share of the whole of my personal estates R7,000 to my mother (one of the defendants), and R5,000 to my wife (the plaintiff). Besides the two-anna share of the wealth in ready money and landed property which remains, you my brother will keep under your own charge; you are at present malik of the whole of the property; as master and manager of the entire property, you will perform all acts, you will cause one of your sons to be received in adoption." The brother died leaving a will, by which he committed to his wife and mother the charge of his own property and that of his brother, and also the duty of giving his son in adoption to his brother. The defendants,—*viz.,* his wife and mother,—proved the will and took possession of the property. The plaintiff omitted to adopt. Her husband died in 1851, and the suit was brought in 1867. *Held* that the plaintiff, notwithstanding her omission to adopt, succeeded to her husband's estate for a Hindu widow's interest therein. *Held* by PEACOCK, *C.J.,* and MARKBY, *J.,* that the estate descended to the widow, plaintiff, subject to the two legacies; and that she did not forfeit it even if she refused to adopt. PRASANNAMAYI DASI *v.* KADAMBINI DASI

[3 B. L. R., O. C., 85

88. ———— **Double adoption**—*Gift to sons by implication as devisees—Intention—Persona designata.*—*N C G,* a Hindu, died without issue, leaving a widow (the plaintiff). He left a will by which he gave a conditional power of adoption in the following words: "My wife is supposed to be pregnant with child; if her conception be true, and she be delivered of a male child, then there shall be no necessity for the adoption of children as mentioned below, but if a daughter be born, she will in that case adopt the twain mentioned below, and whatever property there shall exist consisting of moveables and immoveables, etc., my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority and if a son be born and happen to die before attaining majority, in that case she shall adopt the sons of my sisters mentioned below, and for that purpose I give her, that is to say my wife, permission that she, that is my said wife, shall, in conformity with our shastras, adopt the illustrious *S,* the third son of *R G,* and *O C,* the youngest son of S *G,* an inhabitant of Autpoore—that is to say, the two sons of my two uterine sisters, in doing which there shall be no deviation. Should my wife not adopt the children after my decease, then the executors named hereinafter shall, according to this will and in pursuance of the permission given by me, cause the said two children to be received in adoption. If any of the said adopted sons depart this life before attaining the age of majority, then one of the uterine brothers of the deceased adopted son shall be received in adoption according to law in the room of deceased adopted son," etc. The plaintiff did not give birth to either son or daughter, nor did she adopt either of the persons indicated by the will. *S* died in 1865, and *O C* was living at the date of the suit and was of age. *Held* that, whether the two persons indicated could or could not be legally adopted as pointed out by the will according to Hindu law, there was a gift to them as devisees by implication. DOSS MONEY DOSSEE *v.* PROSONOMOYE DOSSEE

[2 Ind Jur., N. S., 18

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

declaration of his title under the will,—*Held* that all the provisions of the will relating to the plaintiff were intended by the testator to come into effect only in the event of the adoption being made, and consequently that the plaintiff had no right to the family property or to maintenance in the family ABBU v KUPPAMMAL . I. L. R., 16 Mad, 355

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testator's direction to his executor (who was his elder brother) to make over whatever remained of his estate, after payment of debts, to his, the testator's, son ("when he comes of age") had the effect of a gift to that son operating at that time, and that the words in the will, "if my minor son dies," meant in order to be consistent with the above,

by the will to adopt

without son or daughter (which he did), could not exercise this power after the estate had, consequently upon the son's death, vested in his widow for her widow's estate *Thayammal v Venkataramma Aiyan, L R, 14 I A, 67 I L R, 10 Mad, 205,* referred to and followed The testator's son, having

attaining full age, 'becoming dakhikar or my share as well as the share of my elder uncle," should maintain his, the testator's, mother and widow. *Held* that this was not an absolute gift of the beneficial interest, and that the claim of the children of the daughter of the parent testator was valid TARACHURN CHATTERJI v SURESH CHUNDER MUKERJI [I L. R, 17 Calc, 122 L. R, 16 I. A, 166

in no case shall such

control or dominion over my estate and effect until the death of my wife, after which events, I direct my said executors and trustees to make over the whole of my estate and effects, both real and personal, moveable or immoveable whatsoever and wheresoever and of what nature or quality soever, to such adopted son who shall survive my wife, if he shall have attained his age of eighteen years during the lifetime of my wife, or on his so attaining such age after her decease, to whom and his heirs I give, devise, and bequeath the same" *Held* that the adopted son was not presently entitled to the surplus income or profits of the properties until the death of his adoptive mother, nor to have the corpus (even after provision being made for the payments mentioned in

[I. L. R, 24 Calc, 589 1 C. W. N, 345

(*d*) BEQUEST TO IDOL

100 ——————— *Appointment of shebait*—A testator by will left certain property to

property would follow the course of the other properties left by the testator, and be divided with them among the devisees under the will SARODA SUNDARI DEBI v GOBINDMANI DEBI [2 B. L. R., A. C., 137 note

(*e*) BEQUEST FOR PERFORMANCE OF CEREMONIES

101. ——————— *Bequest for giving feasts to Brahmins—Bequest of undivided share of joint property*—A bequest by a Hindu for the performance of ceremonies and giving feasts to Brahmins is valid A Hindu has no power to bequeath his undivided share of joint family property LAKSHMISHANKAR v VAIJANATH [I. L. R, 6 Bom, 24

102. ——————— *Managers, Incapacity of, to act—Appointment of other managers*—Where particular persons have been appointed by will to be managers, and any of them become incapable and refuse to act, it does not follow that others should be appointed in their stead Where managers by becoming Vedantists are incapable themselves of performing ceremonies contemplated in the will, they may make over to any person concerned the requisite expenses for such ceremonies ANUND COOMAR GANGOOLY v RAKHAL CHUNDER ROY . 8 W. R., 278

(*f*) BEQUEST FOR IMMORAL CONSIDERATION

103. ——————— *Condition of future cohabitation—Invalidity of bequest—Succession Act (X of 1865), s 114*—A bequest by a Hindu testator, made conditional on the continuance of immoral relations between himself and the legatee, is void. TAYARAMMA v SITHARAMASAMI NAIDU I L R, 23 Mad, 613

(*g*) BEQUEST FOR CHARITABLE PURPOSES

104. ——————— *Dedication—Inheritance*—A Hindu testator in Bombay who left

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

a clear indication of the testator's intention before making an adoption to give the greater part of his property to the boy whom he was about to adopt, and the bequest was by name to the latter, who was not selected as being the adopted son, but for reasons which, though likely to lead to the adoption, were independent of it,—*Held* that the bequest was effectual, notwithstanding that there had been no adoption. BIRESWAR MUKERJI *v.* ARDHA CHANDER ROY. SHIB CHANDER ROY *v.* GOBIND MOHINI

[I. L. R., 19 Calc., 452
L. R., 19 I. A., 101

94. ——————— *False designation of person in bequest — Validity of bequest.* — A bequest was made to a person whom the testator falsely described as his "aurasa," or "naturally-born" son. This false description, not involving any condition that the legatee should be the testator's son, did not invalidate the bequest to the designated person. *Fanindra Deb Raikat* v. *Rajeswar Dass, L. R., 12 I. A., 72 : I. L. R., 11 Calc., 463,* distinguished. VENKATA SURYA MAHIPATI RAMA KRISHNA RAO *v.* COURT OF WARDS

[I. L. R., 22 Mad., 383
L. R., 26 I. A., 83
3 C. W. N., 415

95. ——————— **Adopted son where adoption is invalid**—*Endowment—Gift to shebaits—Effect of ikrarnama between widows in favour of sons whose adoption was invalid.*—A testator bequeathed all his property to a family thakur, and, to secure the debsheba, directed that his two widows should each adopt a son to him, the sons to become shebaits of the property dedicated, of which the widows, during the sons' minority, were to have control. When the two sons should have attained their majority, the two widows were, by the will, to make over to them as shebaits all the property dedicated; and out of the surplus income, after payment of the expenses of the debsheba, the two sons were to receive a fixed allowance, the residue being undisposed of. The widows, having purported to adopt according to the will, then bound themselves by an ikrarnama, each to the other, to bring up the sons as their mothers and guardians, and, after payment of the expenses for the debsheba, to divide the surplus income into two equal shares, making accumulations, which should be handed over by each to the son adopted by her on his attaining majority. In a suit by the son purported to have been adopted by the elder widow, who was then dead, against the younger widow, and the son purported to have been adopted by her, in effect for the administration of the testator's estate, with a claim for relief based on acts of the widows, including the ikrarnama executed by them,—*Held,* first, that it being settled law that such an adoption was not valid, the plaintiff could take nothing under the will, because there was no gift to him except in the character of shebait, there having been no intention on the part of the testator, who apparently had no doubt as to the legality of his scheme to bring in a stranger as shebait. *Monemothonauth Day* v. *Onauthnauth Day, Bourke, 189 : 2 Ind. Jur., N. S., 24,* distinguished. Secondly, that by the law of inheritance the widows as heirs took the office of shebait, and became entitled to the beneficial interest in the surplus income for their estates for life, so that each of them could contract to bind her own interest. Thirdly, that there was no trust imposed upon the surviving widow independently of the contract which she had made; but that the ikrarnama, taken as part of the series of acts, gave to the boys, so far as the widows' interests extended, the same benefit that they would have taken had they been heirs; and although they were not, and could not have been at their age, parties *to the ikrarnama,* yet that they could insist on the performance of the contract, by which each widow bound herself *to the other* to deal with the estate in their favour. Fourthly, that each boy was entitled on attaining majority to half of the surplus income during the life of the surviving widow, and to the accumulations thereon; and accounts were accordingly directed against her. This widow, however, having died pending the appeal, after it had been argued, the testator's heir was added to the record, it resting with the plaintiff to apply to the Court below to add necessary parties. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE

[I. L. R., 19 Calc., 513
L. R., 19 I. A., 108

96. ——————— **Restricted power to widow to adopt.**—A Hindu in 1884 made a will therein described as being executed in favour of the testator's wife in which he said, "you must adopt for me a boy you like from the children that may be born in the families of my brothers," and after making certain provisions as to his property, etc., added "the principal object of this will is that you should adopt for me any suitable boy." After the testator's death, the widow, as in exercise of the power conferred on her by the will, purported to adopt a boy who did not come within the description in the first of the above clauses, although one of the testator's brothers offered his own son in adoption. In a suit by the testator's brothers for a declaration that the adoption purported to have been made by the widow was invalid,—*Held* that, notwithstanding the general terms of the second of the above clauses, the widow's power to adopt was restricted by the first, and the adoption purported to have been made by her was invalid. AMIRTHAYYAN *v.* KETHARAMAYYAN . I. L. R., 14 Mad., 65

97. ——————— **Bequest to a boy directed by the testator to be adopted by his widow** —*Direction for the boy's maintenance—Rights of the legatee, no adoption having been made.*—A Hindu made his will whereby he provided that his property should be enjoyed by his widow, who should maintain certain persons, including the plaintiff, whom she was thereby directed to take in adoption, and added: "*My aforesaid wife shall enjoy all my abovementioned properties in every way as long as she may be alive, and after her death the same shall be taken possession of by the aforesaid adopted son.*" The testator died, not having taken the plaintiff in adoption, and his widow did not adopt him. In a suit by the plaintiff for maintenance and for the

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

apart And as to the property which may remain, my trustees shall make over the same to my heir, but the sum or houses thus set apart for the expenses of the sadavarats are to be separated *Held* (1)

The clear intention of the testator was that this sadavarat should be on the same scale as the one at Anjar, and there would therefore be no difficulty in ascertaining the nature of the sadavarat to be established and the sum to be expended upon it (3) That the bequest in cl 6 in the building of a well and cistern was valid as a charitable trust (4)

JAMNABAI v. KHIMJI VULLUBDASS

[I L. R , 14 Bom , 1

107. ——— *Sadavarat—Bequest to a definite sadavarat—Bequest to two charitable objects one of such bequests being invalid—Bequest of interest of a fund to A with invalid gift over of interest after A's death* —Where a testator by his will directed certain rents to be used for sadavarat' and where from the wording of the will it appeared that the testator intended his executors to establish a definite sadavarat in some definite place, and not merely at their discretion themselves to distribute the income of the property at any indefinite place, and perhaps at many places to Brahmins and travellers —*Held* that the bequest to charity was good and an enquiry was directed as to the place at which such sadavarat should, at the proper time be established and a scheme for its administration was ordered to be prepared A testator by his will directed that if his daughters died without issue the property of his daughters should be used by his executors for dharm and for sadavarat *Held* following *Hoare* v *Osborne L R, 1 Eq 585* that the bequest was good to the extent of one half in favour of the sadavarat The gift to dharm being invalid the other half was undisposed of A testator by his will directed that his wife should enjoy for life the interest of a sum of R4 000 which was deposited with a certain firm, and that after her death the

clause in the will the corpus of the R4 000 was undisposed of and went to the testator's widow MORARJI CULLIANJI v NENBAI

[I L R., 17 Bom , 351

108 ——— *Bequest to dharmada—Bequest void for uncertainty* —A bequest in favour on dharmada is void by reason of uncertainty The law on this point is the same in the mofussil as in the presidency town. DEVSHANKAR NARANBHAI v MOTIRAM JAGESHVAR

[I. L R , 18 Bom , 136

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

DAS GOVINDJI v VUNDRAVANDAS PURSHOTAM

[I. L R , 14 Bom., 482

110 ——— *Gift to dharam—General and indefinite charitable bequest* —One C S died without issue on 6th January 1869, leaving two widows C and N, who thereupon took a widow's estate in such of his immoveable property as was not validly disposed of by him By his will, dated 5th January 1869 he appointed the defendant V and two others his executors and trustees The two latter were dead at the date of this suit By his will he left two immoveable properties to his wife C for life and two to his wife N, and the residue of his property he left to his trustees directing them to apply the same in charity (dharam) The properties left to his widows were to revert on their death to the charity fund held by the said trustees C died in 1871 N survived till 1888 and died in November of that year leaving a will The plaintiff was the nephew (brother's son) and heir of the testator, and he sued to have his rights in and to his uncle's estate ascertained He contended that the bequests for dharam were void and that the property bequeathed for that purpose was undisposed of He claimed to be entitled to the whole of the testator's

PURSHOTAMDAS v CURSONDAS GOVINDJI

[I L R , 21 Bom , 646

under any control *Morice* v *Bishop of Durham, 9 Vesey 399 10 Vesey 521,* referred to and followed. RUNCHORDAS VANDRAVANDAS v PARVATI BAI

I L R., 23 Bom., 725
[L R., 26 I A , 71
3 C W N , 621

(h) ELECTION DOCTRINE OF

111 ——— The doctrine of election applies to wills made in India D, a Hindu widow, died making a will in respect of property which she had inherited from her husband. She

for half the immoveable property as heir *Held* that the plaintiff should be put to his election whether to take the legacy under the will or half the property as heir of the testator's husband MANGALDAS v RANCHHODDAS BHAVANIDAS

[I. L R., 14 Bom., 438

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

a nephew (son of a deceased brother) made a bequest for charitable purposes. The nephew, entitled either as heir or as legatee of the residue of the estate, contended that the only property of which the testator during his lifetime was in possession was joint family estate, and that under the law of the Mitakshara the testator had no power to dispose of it as he had attempted. A specific part of the testator's estate having after his death been set apart as applicable to the trust for the charitable purposes, and the nephew having received the residue, he agreed with the executors that he would act jointly with them in carrying out the trust, and became one of the trustees. *Held* that the property had been validly dedicated to the charitable purposes; whether or not, the will alone was sufficient, with regard to the nature of the testator's interest in the estate, to constitute the trust as against the heir. PARMANANDAS *v.* VENAYEKRAO

[I. L. R., 7 Bom., 19 : 12 C. L. R., 92
L. R., 9 I. A., 86

105. ——————— *Charitable gifts —Void gifts—Gifts void for uncertainty.*—A testator by his will directed that his executors should "get a Shiva's temple erected at a reasonable cost in a suitable place within the compound of the brick-built baitakhana-house inclusive of the building and garden thereto," in which he had constantly resided. *Held* that the direction was not void for uncertainty, and that under the circumstances 3 per cent. of the testator's moveable estate was a proper sum to allow for the cost of erecting the temple. *Held* also that a direction to the executors to "perform all the acts properly and *bonâ fide,* to the best of their respective information and judgment, and according to the provisions of this will," did not give the trustees an absolute discretion to fix the amount proper to be expended on the erection of the temple. The testator further declared that "the said executors or any of" his "heirs and representatives" should "not be able to make any kind of gift, sale, or alienation, or create any incumbrance on the" said baitakhana-house, "and none of" his "heirs" should "be able to claim it in his own right; but that the "executors" should "be competent to allow" the testator's "brother, *I L R,* and his sister's son, *S D R,* to use the said baitakhana and rooms, etc." *Held* that this clause did not operate to dedicate the baitakhana-house to the idol Shiva, nor to vest it in the executors, but that on the death of the testator it descended to his heir-at-law, freed from any prohibition against alienation. The testator further directed that his executors should "keep in deposit Government Promissory Notes of R9,500 (nine and half thousand rupees) for the preservation and suitable repairs of" the baitakhana "house in proper time, and for the daily and periodical worship of the said god Shiva, for his sheba (worship) and for the repairs of the temple," the expenses of these acts to be defrayed out of interest of the R9,500. *Held* that (there having been no dedication of the baitakhana-house to the idol) the sum of R9,500 must be apportioned, one moiety going to the heir-at-law, to whom the baitakhana-house had descende[d] and the other to the executors for the repairs of th[e] temple and the worship of the idol. The testato[r] further declared that, "if after the performance o[f] all the above acts there remains any money o[r] moveable property as surplus, then the executor[s] shall be able to spend the same in proper and jus[t] acts for the testator's benefit." *Held* that th[e] direction contained in this clause was void for uncer[-]tainty. *Held* also that such direction did not amoun[t] to a valid precatory trust. *Mussoorie Bank* v[.] *Raynor, L. R., 9 I. A., 70 : I. L. R., 4 All., 500* cited. Where Government securities in certai[n] specified amounts are bequeathed by will, the interes[t] thereon which has accrued due before the testator'[s] death does not pass to the legatees. GOKOOL NATH GUHA *v.* ISSUR LOCHUN ROY. ISSUR LUCHMUN ROY *v.* GOKUL NATH GUHA. SHAM DAS ROY *v.* ISSUR LOCHUN ROY . I. L. R., 14 Calc., 222

106. ——————— *Public charity —Sadavarat—Well—Cistern—Preference given to unmarried daughters over married daughter.*—*M,* a Hindu inhabitant of Bombay, died in 1886, leaving him surviving his widow, and three daughters, one married and two unmarried. The testator's will contained the following provisions: Cl. 6. "Should my wife die without leaving an heir, then as to whatever property of mine there may be left, the same be used as follows:—My trustees shall make the outlay for both the sadavarats and that for the work of repair of my property, out of my fund. And as to whatever surplus may remain out of the same, let my trustees pay to my brother *D M*'s son, named *B R,* R50 per one month for his expenses. As to the surplus moneys which may remain out of the same after taking *B R*'s advice are to be used in making the outlays for building a well and avada (*i.e.,* cistern of water for animals to drink out of). Such moneys are truly to be used by my trustees. 10. In my country, at the village of Shri Anjar, I am at present carrying on a sadavarat. Similarly, out of my fund my trustees are always to continue (the same), and if there be heirs of mine, those also are to continue the same. The sadavarat shall never b stopped. 16. After my death, my trustees shall out of my income set up a sadavarat in the town of Shri Nassik. In that sidho (articles of food) are to be given to each person as follows: Flour weighing sixty rupees. Dal (pulse) weighing eight rupees. Salt and chillies. 18. A sadavarat of mine is now going on in the village of Shri Anjar, and I have written for another sadavarat to be set up at Shri Nassik. Thus my trustees are to carry on both the sadavarats in a good manner. And they are to pay the expenses thereof out of my funds. And when my trustees shall make over my property to any of my abovementioned heirs, or to any one who may hereafter be appointed as heir, in order that the expenses of both the sadavarats may be properly defrayed out of the interest (or rents), a sum of money sufficient for that or houses, whichever my trustees may choose, *i.e.* property sufficient to maintain the expenses of both the sadavarats, shall be set

HINDU LAW—WILL—*continued*

5. CONSTRUCTION OF WILLS—*continued*

divide in three equal shares and receive the ready money and company's papers and bank's shares, etc, which I have, you will not be able to give in gift or

or demand for any share in my real and personal property, etc, and the debsheba and so forth. She shall not be able to make any claim on the plea of my having made a gift to her husband. Being for life under the control of my sons who may be in existence,

expe

etc,

whic

etc

family of such of my sons as shall be alive; those sons will preserve the said property and maintain her If she remain not under (their) control, then in that

of the surviving sons will get that property in equal shares" "20th section Besides the property of mine specified in this deed of gift whatever property will (i.e, may) be acquired after the date of this my will the same shall be taken by my sons in equal shares." "23rd section The property of which I have made a gift to my sons they shall not be competent to make a sale or gift thereof within twenty years, when there will be any grandsons in the male line, they shall get all that property, if any one of them do not have a son, (or) if there be no probability of (his) having a son at a subsequent period, he shall have power to make a sale or gift"

produced when probate of the will was taken out, it was sufficiently proved before the Court in the pre-

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued*

that the grandsons during the lifetime of their fathers took nothing, but after the death of their father respectively took among them equally their father's share, the share of each son going to his own son or sons only, and not to grandsons of the testator generally The restriction on alienation extended to both the moveable and immoveable property *Held* also that the widow of *T*, having received a sum of money from *M* and *G* in lieu of *T*'s share, that share went to *M* and *G* in equal shares for life, and on the death of either of them his share would go to his own sons absolutely SATCOWRIE SEIN v. GOVIND CHUNDER SEIN . **2 Ind. Jur., N. S., 56**

117. ——————— *Gift of estate subject to widow's vested interest—Curtailed enjoyment*—*V S*, a Hindu, died in 1858, leaving a will whereby he appointed *G* and *S* his executors to conduct his affairs as directed in the will After payment of debts, legacies, etc, *G* and *S* were directed to manage the residue of estate and not to sell it during the lifetime of *L*, the junior wife of *V S*, to whom a monthly payment for life was to be made by them, after the death of *L*, *G* and *S* were directed to divide the property that remained in equal shares between them and to continue to enjoy the s

S, wl

in a

V S

S, to

the death of *L*, declared and for an account—that there was no intestacy, and that the gift to *G* and *S* did not fail by reason of their deaths in the lifetime of *L*, but that *G* and *S* took a vested interest on the death of *V S* KOLLA SUBRAMAMAIN CHETTI v THELLANAYAKALU SUBRAMAMAIN CHETTI

I. L R, 4 Mad., 124

118 ——————— *Fund set apart by will for payment of monthly allowances prov-*

two widows and one daughter named *J* By cl 2 of his will, dated 4th July 1874, he directed, as to his share in the houses, that his wives should have a right to reside therein as long as they might live, and in the event of their decease, that his nephew *B*, the son of his brother *V*, should be the owner; and should the decease of *B* take place, then whoever might be the son of *V* should be the owner By a subsequent clause (the 16th) of his will the testator declared that, should the decease of his two wives take place, all his immoveable and moveable property should go to his nephews *B* and *M*, the sons of *V*.

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

(*i*) VESTED AND CONTINGENT INTERESTS.

112. ———————— *Inability of widow to recover property not in possession of husband.*—A Hindu testator, after the death of his widow, gave a moiety of his property to his brother *A*, and on his death to *A*'s two sons, *B* and *C*. *A* died in the lifetime of the testator's widow, and a complete division of all *A*'s property which was held in co-parcenary was agreed upon by *B* and *C*. *B* also died in the lifetime of the testator's widow, and on the death of the testator's widow *B*'s widow claimed his share. *Held* that *B* and *C* took *A*'s moiety under the will as tenants-in-common, and that each of them had a vested interest in a one-fourth share, though the actual enjoyment was postponed until the death of the widow; and that the claim of *B*'s widow was not barred by the doctrine of Hindu law that a widow succeeding as heir to her husband cannot recover property not in the possession of her husband, which doctrine was held to be inapplicable to the case of property in which the husband had a vested interest under a will or deed, though the actual enjoyment thereof was postponed during the lifetime of another. REWUN PERSAD *v.* RADHA BEEBY

[7 W. R., P. C., 35: 4 Moore's I. A., 137

113. ———————— *Joint tenancy—Tenancy-in-common—"Heirs of my property," effect of these words in Hindu will.*—*B* died in 1876, leaving *H*, his widow, and *N*, an adopted son, him surviving; and he directed by his will that *H* and *N* should be the heirs of his property." *N* died childless in 1880, leaving the plaintiff, *L* his widow, him surviving. *H* thereupon took possession of all *B*'s property claiming as a joint tenant with *N* under the will to be entitled by survivorship on *N*'s death. *Held* that, under the will, *H* and *N* had been tenants-in-common, and not joint tenants; and that the plaintiff, therefore, as *N*'s widow was entitled to *N*'s share. In the expounding of Hindu wills the Court should presume that the holder did not intend to depart from the general law beyond what he explicitly declares. *B*, while he had constituted his widow *H* as one of his heirs contrary to the general principles of Hindu law, which only gave her a right to maintenance, was silent as to how far her right of heirship was to extend. The right was to be construed in a manner most consistent with the general principles of Hindu law; and to hold that a joint tenancy had been created between *H* and *N* would be in distinct derogation of the joint family system, which is the keystone of Hindu law. It would be in effect to exclude the son's family, for the benefit of the widow, in total disregard of the relations and obligations of a Hindu family. The fact of *N* dying childless was an accident which could not be presumed to have been in the testator's contemplation. LAKSHMIBAI *v.* HIRABAI

[I. L. R., 11 Bom., 69

Held in the same case on appeal, affirming the decree of the lower Court, that under the will *H* took only a widow's estate in half the property, and that (subject to her right as a Hindu widow to a widow's estate in a half share) the entire property vested absolutely in *N*. On *N*'s death, the property (subject as aforesaid) vested in the plaintiff *L* as his widow and heir for a widow's estate, and she became entitled to joint possession with the defendant *H*. A widow taking under her husband's will takes only a widow's estate in the property bequeathed to her, unless the will contains express words giving her a larger estate. HIRABAI *v.* LAKSHMIBAI

[I. L. R., 11 Bom., 573

114. ———————— *Joint tenancy—Gift to husband and wife—Survivorship—Alienation by husband to creditor invalid.*—A Hindu by his will granted jointly to his brother's son and *N*, the wife of latter, certain land with power of alienation. The recitals in the will showed that the husband was included in the gift not because of his relationship to the testator, but because he was the husband of *N*. *Held* that the grantees were joint tenants and not tenants-in-common, and that the joint tenancy was not severed by an alienation of the land by the husband to a creditor. VYDINADA *v.* NAGAMMAL . . . . I. L. R., 11 Mad., 258

115. ———————— *Construction of right of transfer exercised by one of two legatees of property bequeathed equally to each—Alienation of share by widow—Severance of joint tenancy.*—Where a Hindu testator bequeathed a 4-anna share of a zamindari to his youngest widow and her son, "for your maintenance," with power to them to alienate by sale or gift the property bequeathed,—*Held* that on the true construction of such gift each of the two legatees took an absolute interest in a 2-anna share of his estate, and the words for your maintenance did not reduce the interest of either legatee to one for life only. *Held* also that the widow's conveyance of her share operated as a severance of a joint tenancy which had been created by the will between her and her son, and was effectual without her son's consent. *Vydinada* v. *Nagammal, I. L. R., 11 Mad., 258,* overruled. JOGESWAR NARAIN DEO *v.* RAM CHANDRA DUTT

[I. L. R., 23 Calc., 670
L. R., 23 I. A., 37

116. ———————— *Deed of gift—Devisees and donees.*—A Hindu inhabitant of Calcutta died in 1837, leaving three sons, *G*, *T*, and *M*, and several daughters; he left property, moveable and immoveable, and a will, dated 29th October 1836, as well as a deed of gift of even date, but executed in point of time prior to the will. By the deed of gift he gave his property as follows: To his three sons, *G*, *T*, and *M*, his self-acquired estate and his patrimony, *i.e.*, his own share, agreeably to the will of his father, giving to them power of making a gift or sale, and to hold and enjoy themselves, sons, grandsons and so on in succession. His family dwelling-houses to remain in equal shares, his sons to dwell therein, but not to be able to let or sell them to any one else; then followed certain provisions with regard to a family idol, for religious observances, *etc.*, after which the deed went on to say: "You will

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

Held, firstly, that by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite failure of male issue, but a failure of male issue of any of his sons at the time of the death of that son *Secondly*, that there is nothing in such a devise by a Hindu against public convenience, or generally mischievous or against the general principles of Hindu law SOORJEEMONEY DASEE *v.* DENOBUNDO MULLICK

[1 Ind. Jur, O. S, 37
4 W. R, P. C, 114
6 Moore's I. A, 526

121. ———— *Bequest by a Hindu to his wife—Life estate—Reversioner—Vested remainder—Contingent bequest*—One *J N* died in 1876, leaving a will which after stating his property in detail, provided as follows "When I die, my wife named *S* is owner of that property And my wife has powers to do in the same way as I have absolute powers to do when I am present. And in case of my wife's death, my daughter *M* is owner of the said property after that (death)" *Held* that *S* took only a life estate under the will with remainder over to *M* after her death *Held* also that the bequest to *M* was not contingent on her surviving *S*, but that she took a vested remainder which upon her death passed to her heirs LALLU *v.* JAGMOHAN

[I. L. R., 22 Bom, 409

122 ———— *Vested remainder—Words "malak and waras"*—A Hindu died, leaving a will which provided (*inter alia*) as follows "After my death, my wife, if she be alive, is the rightful heir, and if she be not alive, and after the death of my wife, my daughter *N* is my rightful heir (hakdar)" . "As to my daughter *N*, whom I have, after the lifetime of myself and of my wife, appointed heir to my property, and as to the surplus the heir to the same is my daughter *N*" The testator died in 1894, *N* in 1895, and the wife in 1897. Thereupon the testator's step mother claimed the property as his reversionary heir *Held* that

(*j*) ACCUMULATION

123. ———— Direction to accumulate income—*Omission to create beneficial interest*—*Per* TREVELYAN, J.—A Hindu testator cannot direct

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

the accumulation of the income of his estate for an ... eneficial interest ... render the gift, ... valid AMRITO ...

[I L R, 25 Calc., 662
2 C. W. N., 389

124. ———— *Direction to live jointly*—The meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to these subjects A testator directed his sons, using the words "living jointly in respect of food," to take care of and look after his property, moveable and immoveable, and carry on his trading business *Held* that this interest is not accurately represented by the words "joint estate" in England, nor is it analogous to the case of a testator in England who

son's son, and if the son dying left no son, that

ing to law, as from a consideration of the various terms of the will itself there was an absence of all directions on the part of the testator to accumulate the profits, or to dispose of the profits which were the property of the son PRANKISTO CHUNDER *v.* BAMA SOONDERY DOSSEE 9 W. R, P. C, 1

S. C BISSONAUTH CHUNDER *v* BAMASOONDERY DOSSEE 12 Moore's I A, 41

125. ———— *Contingent remainders—Executory devise*—There is nothing in the general principles of Hindu law, or public convenience, to prevent a Hindu testator devising self-acquired property by way of remainder, or executory devise, upon an event which is to happen on the close of a life in being The will of a Hindu testator, after devising all his real and personal estate among his five sons (a joint undivided family) contained this clause "Should any among my said five sons die, not leaving any son from his loins, nor any son's sons, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them will get any share out of the share that he has obtained of the immoveables and moveables of my said estate in that event, of the said property, such of my sons and my sons' sons as shall then be alive, they will receive that wealth according to their respective shares If any one acts repugnant to this it is inadmissible However, if any sonless son shall leave a widow, in that event she will only receive R10 000 for her food and raiment" The family remained joint. *S*, one of the sons, died after the testator's death without issue male, but leaving a widow his heiress at law *Held* that, by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

B and *M* both died in the lifetime of *C*'s two widows' *M* died first, childless and unmarried. *B* left a widow him surviving, who claimed that under cl. 2 *B* took a vested estate in the testator's share in the two houses, which on his death devolved upon her, and that under cl. 16 *B* and *M* took a vested estate in joint tenancy; that on *M*'s death his interest survived to *B*, and on his death devolved upon his widow. It was contended on behalf of the two widows of *C*, the testator, that the gift to *B* by cl. 2 and to *B* and *M* by cl. 16 was contingent, and had lapsed by their deaths; that the result was an intestacy so far as regards the property in question; that they consequently took a widow's estate in the immoveable property for their lives; and that upon their death the property should go to the testator's daughter *J*; and that, as to the moveables, they took absolutely. *Held* that under cl. 2 *B* took on the death of the testator not a contingent, but a vested estate in perpetuity, which on his death devolved on his widow; and that under cl. 16 *B* and *M* took a vested interest in joint tenancy in the whole of the residuary estate; that on the death of *M*, the survivor *B* took the whole absolutely, and on his death his interest was transmitted to his widow. *Held* also that the interest taken by *B* under the above clauses of the will was subject to the right of the testator's widows to reside in the houses, and to have their monthly allowances paid out of the moveable estate, and was subject also to the bequests, charitable and otherwise, contained in the will. By cls. 15 and 16 of his will the testator directed that certain monthly allowances should be paid to each of his widows out of the interest of certain Government promissory loan notes which were to be purchased by his trustees. *Held* that, if the particular sources of income, out of which the testator directed these allowances to be paid, should prove insufficient, the rest of the moveable property, or the income derivable from it, as well as the rents of the immoveable property, should contribute. The funds belonging to the testator's estate had, in accordance with the directions in his will, been kept in the firm of Visram Mowji, in which the testator had been a partner. *Held*, under the circumstances of the case, that the firm should be charged interest at the rate of six per cent. per annum. JAIRAM NARBONJI *v.* KUVERBAI . **I. L. R., 9 Bom., 491**

119. ———— *Executor, Estate of—Administrator, Suit by—Trustees—Notice—Charitable Trust—Parties.*—*B K*, a Hindu, by his will, executed in Bombay and dated 6th January 1802, bequeathed a house to his wife *R* for her life in trust to allow the impersonations of Valabh to reside in it, and appointed four executors by name, but made no gift over of the house to those executors or to any one else. The will was proved by the four executors on 24th September 1808. On 23rd June 1820, *R*, claiming as executrix according to the tenor, obtained an order granting probate to her as well as to the executors expressly appointed. The executors retired, and *R* acted alone in the management of the testator's estate. On 4th September 1862, *R* sold the house for its full value to the defendant, who had notice of the charitable trust affecting it. *R* died on 23rd March 1870. On 17th March 1871, the High Court, on the application of one *A T*, revoked the probate of *B K*'s will granted to *R*, but without prejudice to any act done in due course of administration by *R*, and granted letters of administration *cum testamento annexo* and *de bonis non* of *B K* to *A T*. On 13th July 1873 *A T* died. On 1st May 1875 the plaintiff, who was the only son and heir of *A T*, instituted the present suit for the purpose of recovering from the defendant possession of the trust premises sold to him by *R*. The plaintiff was also one of the surviving heirs of *B K*, and, by virtue of a release executed to him by the other heirs, was the sole surviving heir who had any beneficial interest in *B K*'s estate. The plaintiff, however, did not claim the house in the possession of the defendant as the beneficial owner, but to hold it for the purpose of giving effect to the trust created by the will of *B K*. On 28th January 1876 the plaintiff obtained letters of administration *cum testamento annexo* and *de bonis non* of *B K*, and it was on these letters that he now based his claim. *Held*, 1st, that the plaintiff had no ground of action as administrator of *B K*. *Held*, 2ndly, that independently of the provisions of the Succession Act and the Hindu Wills Act, 1870, which were not applicable to the case, the executors of a Hindu do not, in the character merely of executors, take any estate, properly so called, in the property of the deceased. That accordingly on the death of *R*, the devisee for life in trust, there being no gift of the premises to the executors named in the will, the ownership in the premises would devolve upon the surviving heirs of the testator subject to the trust, and such heirs would accordingly be trustees under or by reason of the will of their ancestor, though succeeding to the property in their character of heirs. That the trusteeship thus vesting in all the surviving heirs, the release, though operative to pass the legal estate, so as to vest it in the plaintiff alone, could not vest the trusteeship in him alone, and that accordingly the plaintiff could not maintain this suit unless joined by the other heirs of *B K*. *Held*, 3rdly, that even if the other heirs of *B K* had joined as plaintiff, still the suit, being one by trustees to disaffirm the completed act of a predecessor against the person claiming by virtue of such act, would not lie. *Semble*—That as it appeared that the impersonations of Valabh never had availed themselves, and never were likely to avail themselves, of the house, the sale of it by *R* to the defendant was not a breach of trust. MANIKLAL ATMARAM *v.* MANCHERSHI DINSHA . . **I. L. R., 1 Bom., 269**

120. ———— *Construction of will—Executor's interest.*—By the first clause of the will of a Hindu the testator devised all his real and personal estate to his five sons. By a subsequent clause the testator provided as follows: "But should peradventure any among my said five sons die not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them, will get any

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued.*

the testator's death It is not a violation of the principles of Hindu law to support estates which are to vest on the expiry of a life in being, in a case like the present, where the testator has given his property to trustees who have accepted it and are prepared to carry out his wishes Their acceptance would be sufficient if any is necessary KRISHNARAMANI DASI v. ANANDA KRISHNA BOSE ANANDA KRISHNA BOSE v. RAJENDRA NARAYAN DEB

[4 B. L. R., O. C, 231

128. ———————— *Trusts—Life-estate—Estates tail—Gifts inter vivos—Disherison*—*P K T* died leaving an only son, *G M* By his will after reciting, "I have already made such provision for my son *G M* as I consider sufficient, and he will take nothing whatever under this my

testator's death, after paying the funeral expenses, debts, and legacies, upon trust to sell and convert into money such portion of the personal estate as should remain unexpended, and not consist of money or security for money, and to vest the proceeds on good securities, and out of the annual income of the whole upon trust to pay the annuities given by

person or persons for the time being entitled to the beneficial enjoyment of the real property, or of the rents and profits or surplus rents and profits thereof, should fied, in itled to the beneficial or absolute enjoyment of the real property. As regards realty, upon trust, until all the

person desired for the or persons for the time being so far as was consistent with the trusts and provisions of the will, and further, he directed that out of the net annual income the person entitled to the beneficial enjoyment of the real property or of the income or surplus income thereof should receive for his own use every year, R2,500 a month or R30,000 a year, and that the various lega-

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued*

subject to such and the like limitations, provisions, and directions thereafter contained and expressed of and concerning "the real estate," so far as the then condition of circumstances will permit, and so far as such limitations and directions can be introduced into any deed of conveyance or settlement without infringing upon or violating any law against perpetuities which may then be in force and apply to the real estate or the conveyance or settlement of it as last aforesaid (if any such law there be) The testator then desired that all the gifts, devises, and limitations in his will thereinafter contained should be read and

to the use of *J M* for the term of his natural life, and from and after the determination of that estate, to the use of the eldest son of *J M* born during the testator's life for the life of such eldest son, and after the determination of that estate to the use of the first and other sons successively of the eldest son of *J M* the heirs cessively that estate, to the use of the second and other sons of *J M* born during the testator's life, successively, according to their respective seniorities, and upon the failure or determination of that estate, to the use

and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and taken before the younger of the sons of *J M* born in the testator's lifetime, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing And after the failure or determination of the uses and estates thereinbefore limited, to the use of each of the sons of *J M* who should be born after the testa-

before the younger of such sons and the heirs male of their and his respective bodies issuing' On failure of these estates there were similar limitations to other members of the testator's family and their sons, sons' sons, etc Further, the testator declared his will and intention to be "to settle and dispose of the estate in manner aforesaid as fully and completely as a Hindu born and resident in Bengal may give or control the inheritance of his estate, or a

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

failure of male issue, but a failure of male issue of any one of his sons at the time of the death of that son. *Held*, further, (1) that upon the death of *S* without male issue, his interest in the capital of the estate determined, and that his widow became entitled to hold and enjoy as a Hindu widow a fifth part of the accumulations from the testator's estate from the time of his death to the death of his son *S*; and (2) that she was also entitled absolutely in her own right to the interest and accumulations which had since *S*'s death arisen from such fifth part of the accumulations. By the decree *S*'s widow was declared entitled to the R10,000 given by the will with the benefit of a residence in the family dwelling-house, and participations in the means of worship. The question of the amount of her maintenance as a Hindu widow was left open by the Judicial Committee, as that point could be raised on further directions after taking the accounts. SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK

[9 Moore's I. A., 123

(*k*) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

126. ———— **Perpetuities**—*Trusts—Absence of disposition of beneficiary interest.*—A Hindu by will attempted to create a trust for the accumulation for 99 years of the surplus income (after certain yearly payments) of his estate in the purchase of zamindaris, etc., from time to time, and empowered his trustees to continue such trust after the expiration of the 99 years' term. The will contained no disposition of the beneficial interest in the zamindaris so to be purchased. *Held* that such trust was void. *Semble*—Perpetuity (save in the case of religious and charitable endowments) is not sanctioned by Hindu law. ASIMA KRISHNA DEB *v.* KUMARA KRISHNA DEB . . . **2 B. L. R., O. C., 11**

127. ———— *Trusts.*—A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereinafter described), to certain persons named, and "to their successors in the trusts of the settlement thereinafter provided," declaring the "trusts and objects" of his said will and settlement, and the methods, plans, and acts" he desired "to be performed and observed" by such persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will, the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, etc., in the eighteenth clause he directed: "With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like manner be invested, and that, when and so soon as the aggregate thereof shall amount to R3,00,000, it is to be transferred to, and divided among, my sons or the survivors, or survivor, together with the descendants of such of them as may be deceased, *per stirpes*; and as soon as new accumulations arise in the hands of the executors and trustees, that the same be again in like manner divided among my sons then living, or the survivor of their descendants, as before, and so on from time to time." In the twenty-first clause the testator made provision for the appointment of new "executors and trustees," "as it is my intent and desire that the disposition, the conditions, and control I am now devising in regard to the future arrangement and enjoyment of my property be perpetuated." In the Court below,—*Held per* MARKBY, *J.*, that trusts cannot be created by Hindus, but a testator may burthen his heir or devisee with a payment of a simple sum of money to a specified person (including an idol) in existence at the death of the testator. Such bequest cannot be held good as a trust created for the benefit of the legatee, but may be treated as creating an ordinary obligation for the payment of money. On appeal,—*Held per* PEACOCK, *C.J.*, that trusts have been and can be enforced against Hindus; the trustees in this case take upon such trusts as are valid; so far as they are invalid, the heirs are entitled to the beneficial interest. A Hindu cannot by his will do indirectly by intervention of trusts what he cannot do directly. *Per* MACPHERSON, *J.*—Both by Hindu law and the practice which has always prevailed in the Courts in India and in the Privy Council, a Hindu may legally deal with his property so as to create a trust or relation in many respects similar to, although not necessarily identical with, that known in English law as the relation of trustee and *cestui que trust*. Even if trusts are not expressly recognized by the old Hindu law, there is nothing in it forbidding them, or repugnant to them, or inconsistent with their existence. *Held*, both in the Court below and on appeal, that the general scheme of the will failed, because the trusts were intended for an illegal purpose, namely, for the purpose of creating a perpetuity. *Per* PEACOCK, *C.J.*—The eighteenth clause is repugnant and void, also bad, because the persons to take were unborn at the time of the testator's death, and on the ground of uncertainty, it being impossible to ascertain at the testator's death who would be entitled to participate in the several divisions of accumulation directed to be made. As to the bequests in the second, third, and fourth clauses of the will,—*Held* in the Court below *per* MARKBY, *J.*, that they could only operate in favour of specified persons in existence at the death of the testator. On appeal,—*Held per* PEACOCK, *C.J.*, that they operated as "gifts to the sons for life, with remainders to such children of the sons as were in existence at the time of the death of the testator *per stirpes*." *Per* MACPHERSON, *J.*—There was a good gift in remainder to the children of such sons as were alive at the time of

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

carried out, if ascertainable, to the extent and in the form which the law allows. Thus if an estate be

in terms of an estate inheritable according to law, with superadded words restricting the power of transfer which the law annexes to that estate, the restriction is to be rejected, if a gift be to *A* and his heirs to be elected from a line other than that

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void as such, and by Hindu law no person can succeed as heir to estates described in terms which in English law would designate estates tail. In order to make a gift under a will good by Hindu law, the donee, except in the case of an adopted child, or a child *en ventr*

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takes effect.
pursuance of a

tion of law begotten by that man. The law of wills among Hindus is analogous to the law of gifts, and even if wills are not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer, and the persons to whom it

for carrying out such intentions as the law recognizes. There is no reason why a Hindu should not by will create an estate for life. Where the testator left his property to *A* for life with remainders, showing that *A* should have no more than a life estate, but that the testator wished to tie up the estate by provisions in tail,—*Held A* could not be declared entitled to more than a life estate. Where a testator directed his property to go in a certain way on the "failure or determination" of estates created by him, it was held that such words contemplated the fact of those

The will directed that, as to the personalty, the trustees were, after all annuities and legacies had fallen in and been satisfied, to stand possessed of, and interested in, the corpus in trust absolutely for the person or persons entitled under the limitations

hands of the trustees after payment of the legacies

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

and annuities, but excluded him from any right to the subsequently accruing interest. *Held* that he

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at the time R7,000 a year their Lordships without

as to the rights of all parties. *Lady Langdale* v. *Briggs, 8 De Gex, M. & G., 391*, distinguished. JOTINDRA MOHAN TAGORE *v.* GANENDRA MOHAN TAGORE. GANENDRA MOHAN TAGORE *v.* JOTINDRA MOHAN TAGORE

[9 B. L. R., P. C., 377 : 18 W. R., 359
L. R., I. A., Sup. Vol., 47

129. ——— **Bequest to a class**—*Vested*

leaving the plaintiff, her husband, but no male issue her surviving. The plaintiff sued as heir of his son to recover the amount of the above bequest. *Held* that, as the daughter's son never acquired a vested interest in the bequest, the plaintiff's suit must be dismissed. SRINIVASA *v.* DANDAYUDAPANI

[I. L. R., 12 Mad., 411

130. ——— *Void residuary bequests—Trusts for maintenance and religious trusts—Perpetuities.*—A testator by his will directed as follows: "To my daughter *A B* I give the interest on a Government promissory note for R3,000, to be paid to her, as the same becomes due, during her life and if at her death there be any male issue of hers

directed, after having bequeathed five, "one-sixth share shall be retained by my executors, and the income thereof accumulated and invested in Government securities until the son or sons of my eldest son *H*, if he shall have any son, shall attain full age, and shall thereupon be paid to such son or sons if more than one, in equal shares and

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

Hindu purchaser may regulate the conveyance or descent of property purchased or acquired by him, and not subject to any law or custom of England, whereby an entail may be barred, affected, or destroyed; provided always, and I hereby declare, that if any devisee or tenant-for-life, or in tail, or otherwise, or any person entitled to take as heir by descent or adoption or otherwise in any manner, under the limitations hereinbefore contained, shall permit or suffer the property so devised, etc., to be sold for arrears of Government revenue, etc., then and immediately thereupon the devise and limitations in this my will declared and contained shall wholly cease and determine as to him," etc. Finally, he appointed the trustees executors of his will. *J M* had no son born during the life of the testator. *G M*, the son of the testator, sued to have the will set aside, except as regards the payment of debts, legacies, and annuities. He also charged the executors with waste and asked for an account. *Held*, both in the Court below and on appeal, that the devises were not void, merely upon the ground that the estates were devised upon trust, and that the testator had power to create by means of a devise to trustees such estates and beneficial interest as he could have created without the intervention of trustees. But the entails intended to be created by the will were void, estates-tail being wholly opposed to the general principles of Hindu law. The plaintiff could not claim maintenance, sufficient provision having been previously made for him by his father. *Held* in the Court below that, although the testator could not create an estate-tail, yet as it is clear that he intended to dispose of the whole inheritance, the devise must be construed as amounting to the creation of several successive life-interests, each commencing on the termination or the failure of the preceding, the whole completed by the gift of the entire estate of inheritance to take effect on the expiration of the last life-interest. The first series of such devises is not bad for remoteness, for there is nothing in Hindu law to prevent a testator from making a gift of property to an unborn person, provided the gift is limited to take effect, if at all, immediately on the close of a life in being; therefore, as concerns only the succession of gifts for life only to *J M* and his sons, terminated by the absolute gift of the inheritance to an unborn person, the will is unimpeachable, because each of these gifts must take effect, if at all, at or before the close of a life in being; and the like conclusion would hold with regard to each of the other series of devises taken alone; but taken in the aggregate they may violate the rule against perpetuities; but the first series could not be affected by this, and therefore, as long as it stands, the plaintiff has no claim to a decision of the Court upon the validity of a devise which is subsequent in order of time. The plaintiff's suit must be dismissed. He is not entitled to immediate relief of any kind. *Held* on appeal that the devise to *J M* was valid, though it created only a life-estate. The intention of the testator was that *J M* should take an immediate vested beneficial interest in the real estate, subject to the charges for payment of legacies, annuities, etc., and in the R2,500 a month. The devise to *J M* was not bad for uncertainty. But the devises of estates-tail must be rejected as void, and cannot be converted by the Court into devises creating larger estates than the testator intended. The words of the devise cannot be construed to pass a general and absolute estate. As *J M* had no sons born in the lifetime of the testator, the devise to the use of the first and other sons successively of the eldest son of *J M* lapsed. By Hindu law a gift cannot operate to pass property unless the donee is in existence, so that, as soon as the property is relinquished and passes out of the donor, it may vest in the donee. That in the case of a will would be at the time of the death of the testator, from which moment the will operates as a relinquishment (except in the case of a posthumous child of the testator or a son adopted by the widow of a testator). Therefore the devises to the sons of *J M* to be born or adopted after the death of the testator are not valid according to Hindu law. The gift to trustees does not cure the invalidity, for the law will not permit that to be done indirectly which cannot be lawfully done directly. The gift of the personalty fails because of the want of certainty at the time of the death of the testator, who would be the donee, and whether the donee was a person in existence or not. The gift over of the corpus of the personalty after the payment of the legacies and annuities was bad, and consequently the property in it is vested in the son and heir of the testator subsequently to the trusts for the payment of debts, legacies, and annuities, etc. But the right to receive the surplus rents and profits of the real estate and of the interest and dividends of the personalty, if there be any, is vested in *J M* for life, or until the time arrives for the conveying of the real estates, and the vesting of the corpus of the personalty. The heir-at-law cannot be disinherited by words expressing that he is not to take any benefit under the will. He will take by descent, by his right of inheritance, whatever is not validly disposed of by the will. Subject to the trusts for payment of the funeral and testamentary expenses and of the debts, legacies, and annuities, the plaintiff, as the heir-at-law of the testator, is entitled (notwithstanding the will) to a general estate of inheritance in reversion to the immoveable property of the testator, and by the terms of the will no estate, larger than an estate for life, has been validly created, and there is a resulting trust in the plaintiff's favour. The plaintiff is not entitled to a declaratory decree against the unborn sons of *J M*, or the subsequent unborn devisees. The plaintiff is entitled to have the question of waste tried. He is also entitled to have an account of the moneys and securities which have come into the hands of the trustees, and to see how they have been applied. GANENDRA MOHAN TAGORE *v.* UPENDRA MOHAN TAGORE

[4 B. L. R., O. C., 103

Held by the Privy Council on appeal. In construing transfers by gift among Hindus, a benignant construction is to be used, and the donor's intentions

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

and their children—Right of children under such gift independently of the parents —*B*, who died in 1833, left a will, in the English form, whereby he

thereof for ever He further directed as follows — "My son-in-law *N* with his wife *S* and children to live in the house for ever" *V* died in 1838, and his

N went to live in the house in question when the testator first went to reside there, and they and their family had lived there ever since Both the plaintiffs (her sons) were born in the testator's lifetime *N*

always occupied until April 1889, when the first four defendants, who were grandsons of *V*, dispossessed them. The plaintiffs filed this suit, praying for possession of the rooms, and for a declaration that they and their families were entitled to reside there The defendants contended (1) that there was no gift to *S*'s children independently of *N*, (2) that if there was a gift to the children, it was void, as being a gift to a class some members of which might have come into existence after the testator's death *Held* that the clause in the will should be construed as giving the right to live in the house to *S* and the children after *N*'s death The benefit was intended to be conferred not only on *N*, but also on his wife and children, that this was not a devise to a class in the sense in which that expression was used in *Leake* v *Robinson, 2 Mer, 363, viz*, a gift to a body of persons uncertain in number at the time of the gift to be ascertained at a future time, the share of each being dependent for its amount upon the ultimate number of persons The benefit which each member of the class was to take was in no way dependent on the number of the children, each had a distinct and independent right to reside in the house, and the number of persons who might ultimately belong to the class was in no sense regarded as a criterion of the interest which each was to take *Quære*—Whether *Soudaminey Dossee* v *Jogesh Chunder Dutt, I L R, 2 Calc, 262,* and *Kherodemoney Dossee* v. *Doorgamoney Dossee, I L. R, 4 Calc, 455,* are not overruled by *Rai Bishenchand* v *Asmaida Koer, I L R, 6 All, 560 L R, 11 I A, 164* KRISHNANATH NARAYAN v ATMARAM NARAYAN I. L R., 15 Bom., 543

135. ——————— *Gift to a class some of whom are not in existence at testator's death —Contingent gift—Subsequent gift valid, though prior gift void—Contingent gift—Succession Act, ss 98, 100, 102, 103—Power of appointment given by will, Effect of—General power of appointment*—*M P* by his will, dated 14th April 1873, after appointing his brother *J* to be his executor and directing the payment of legacies, bequeathed all his estate, moveable and immoveable, not otherwise disposed of to *J*, his executors, administrators and assigns, upon trust to collect outstandings and to pay debts and legacies and to stand possessed of the residue in trust (1) for his (the testator's) wife *B* and *A* the wife of his brother *J* during the life of both, or the survivor of them, for their or her sole use, (2) and from and after decease of the survivor of them in trust for the male issue of *J* if any there be, (3) and in default of such male issue in trust for any person or persons in any shares or share, and in such manner as his brother *J* should by any deed or deeds or writing or writings appoint with or without power of revocation or new appointment *J* proved the will and as executor managed the estate until his death on the 17th October 1888 He had no male issue, but he had two daughters who were the defendants in this suit Shortly before his death, *viz*, on the 7th October 1888, he made a will (as stated therein) in accordance with the authority given to him by the last clause of the will of *M P* He directed that twelve months after the death of *B* (*M P*'s widow), the estate should be divided equally between his two daughters, *K* and *M* *K* was born in *M P*'s lifetime, but *M* not until after his death *Held* that the trust in *M P*'s will in favour of the male issue of *J* was void under the rule laid down in the *Tagore case, 9 B L R 377 L R, I A, Sup Vol 47* The testator plainly meant that the male issue of *J* living at the death of the survivor of the tenants for life should take the estate according to the rules of Hindu law, without distinguishing between those born in the lifetime of the testator and those born prior to that event, but subsequently to his death. At the death of the testator, *J* had no male issue, and the bequest was therefore a bequest to a person or persons not in being and void *Held* also, regarding the subsequent creation of the power in favour of *J* as equivalent to a gift of the estate to him, that such gift was valid, although the prior gift was void It was a gift to him if he should have no male issue, a gift which, as he was alive at the death of the testator, was good under Hindu law It was not a gift over to him on an indefinite failure of his male issue. It came into force immediately on the death of the surviving tenant for life if at that time he should have had no male issue alive between the death of the testator and the latter event If a son had been born to him after the testator's death, the gift to him could not have come into operation It was only in the event of no son being born to him that he could take It would not therefore make any difference that the testator made an ineffectual and inoperative disposition in favour of such son if born The rule of the *Tagore case,* that the gift of an estate to take effect after the failure of previously created invalid estates is void, did not apply *Held,* further, that the power of appointment given by *M P*'s will operated to confer ownership upon *J* after the death of *B* upon

his death, he further directed that certain lands should be held by his executors on trust, to apply the rents and profits (1) in the celebration of certain poojas and in the performance of periodical turns of worship of the family thakoors and other religious festivals, at the same expense and in the same style as the testator himself had done, or at such expense and in such style as the executors should think fit; and (2) in the maintenance out of the surplus of the five younger sons, their wives, sons, and male descendants, and female descendants until their marriage. *Held* that the bequests to the children of the daughter and to the children of *H* were void. CHUNDER MONEE DASSEE *v.* MOTILALL MULLICK [5 C. L. R., 496

131. ——— *Remoteness—Applicability of English rules to Hindu wills.*—A Hindu testator died in 1837, leaving four sons and two grandsons by a deceased son. By his will, dated in 1837, after directing that his property should be divided into five shares, of which his four sons were to take one each, and his two grandsons the remaining one, the testator made the following devise: "On the death of any or either of my said four sons, or of the said *R D* and *M D* (his grandsons) leaving lawful male issue, such male issue shall succeed to the capital or principal of the share, or respective shares, of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of 21 years; but if any or either of my said four sons shall die without leaving any male issue, or if he or they shall die leaving such male issue, and the whole of such issue shall afterwards die under the age of 21 years, and without male issue, in such case the share or shares of my said sons so dying shall go to and belong to the survivors of my said sons and my said two grandsons for life and their respective male issue absolutely after their deaths in the same manner and proportion as is hereinbefore described respecting their original shares." *U*, one of the sons, died in 1853, leaving an only son *S*, born in the lifetime of the testator, who died shortly after his father intestate, and without male issue. In a suit by the widow of *S* claiming as his heir and representative to recover the share of *U* as having descended to *S* absolutely, and to obtain partition,—*Held* that, inasmuch as *U* survived the testator, the gift to the male issue of the testator's sons was void for remoteness as including objects who might have come into existence after the testator's death, and therefore be incapable of taking. The rule that where there is a gift to a class, and some persons constituting that class cannot take in consequence of remoteness, the whole bequest must fail, as well as the principle of the English Courts in deciding questions of remoteness, that regard is to be had to possible and not to actual events, is applicable to the interpretation of the wills of Hindus. The gift to the male issue being void, the subsequent limitations were also void. *S* therefore, and through him the plaintiff, was entitled to a share in such part of the testator's estate as by reason of the invalidity of the gifts in his will was undisposed of. SOUDAMINEY DOSSEE *v.* JOGESH CHUNDER DUTT [I. L. R., 2 Calc., 262

132. ——— *Class of whom some only are in existence.*—A bequest by a Hindu to a class of persons, some of whom are not in existence at the date of testator's death, is wholly void; and the fact that some of the class are then living and capable of taking will not enable the class to open out and let in any after-born members of the class. KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE . . . I. L. R., 4 Calc., 455
[2 C. L. R., 112: 3 C. L. R., 315

But *see* RAMLAL SETT *v.* KANAI LAL SETT [I. L. R., 12 Calc., 663

and RAI BISHEN CHAND *v.* ASMAIDA KOER [I. L. R., 6 All., 560: L. R., 11 I. A., 164

133. ——— *Gift to sons or daughters of M who may be alive at M's death—Gift to a class to be ascertained at future time—One member of such class in existence at testator's death—Tagore case—Hindu Wills Act (XXI of 1870), s. 3—Succession Act (X of 1865), s. 98.*—*P*, a Hindu, died in September 1886, and left two sons, *viz.*, the plaintiff and one *M*. By his will *P* left the residue of his property to trustees, who were to invest it in Government promissory notes and to pay the interest thereof to the wife of his son *M* and after her death to pay it to *M*. He further directed that after *M*'s death "the amount of the interest is to be paid from time to time to his sons or daughters who may be alive according to what may be considered proper." By a subsequent clause he directed that, if there should be no one living of his son *M*'s race or descent, the said Government notes should be given to a certain charitable fund. At the time of the testator's death the wife and one daughter (*C*) of *M* were living. Subsequently a son was born to *M*, but this child died shortly after its birth. The wife of *M* died in September 1889, and *M* himself died in October 1889. The plaintiff then filed this suit claiming the property in question as heir of the testator to the exclusion of *C*, the daughter of *M*. He contended that she could only claim as one of the class of "sons or daughters" of *M* mentioned in the will; that the gift to this class was void, as it included, or might include, persons who were not in existence at the time of the testator's death. *Held* that *C* was entitled to the property under the will. The primary intention of the testator was that all the members of the class specified should take and his secondary intention was that, if all could not take, those who could should do so. Here there was one member of the class who could take the property, and it might be inferred that the testator meant that she should take it, rather than that his intention should be defeated altogether. MANGALDAS PARMANANDAS *v.* TRIBHUVANDAS NARSIDAS . . . I. L. R., 15 Bom., 652

134. ——— *Gift to a class some of whom are not in existence at testator's death—Right to live in a house given to parents*

HINDU LAW—WILL—*continued*

5 CONSTRUCTION OF WILLS—*continued*

trust for which accumulation is directed is val d or invalid. KRISHNARAO RAMCHANDRA v BENABAI
[I L R, 20 Bom, 571

138 ———— *Members of a class not in existence at testator's death—Void g ft*
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exc
as directed. He further directed that after the

was made in certai events for the widows of his deceased sons He left him surviving h s five sons three grandsons and three grand daughters After

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had the primary intention of benefiting all tl e members of a class and if such intention fails by

be given to such secondary intention but not other wise For the purpose of ascertaining these primary

one wife at the same time *Ram Lal* v *Kanai Lal I L R 12 Cal 663 Krishnanath* v *Atmaram I L R 15 Bom 543 Mangaldas* v *Tribhovandas I L R, 15 Bom 652 Tribhovandas* v *Gangadas I L R 18 Bom 7* and *Krishnarao* v *Benaba I L R 20 Bom 571* referred to KHIMJI JAIRAM NARRAIJI v MORARJI JAIRAM NARRAIJI
[I L R, 22 Bom, 533

139 ———— Remoteness— *Descendants —Bequest creating series of life interests* —Under a bequest by a Hindu of R10 per month followed by a direct on to the following effect In th s manner continue to pay in the legatee's name so long as l e shall be alive after his death cont nue to pay tl e same to his descendants from generation to generat on —*Held* first that the legatee took only a life interest under the bequest second that the words from generat on to generation did not import more than what absolutely and for ever import in an English instrument third that the descendants in existence at the time of the tenant for l fe s death took absolutely as a class and fourth that such des cendants were entitled in equal shares to an amount sufficient to produce the monthly sum of R10

Remarks on the construction of Hindu wills Descendants ' of the testator in a Hindu will would include children and grandchildren living at h s decease but not the testator's brother or widow There is no rule of Hindu law imposing any restric tion in point of t me on the operat on of a bequest

very reluctant to construe a Hindu will so as to tie up property for an indefinite period ARUMAGAM MUDALI v AMMI AMMAL 1 Mad., 400

140 ———— *Estate tail—Accumulation* —A Hindu by his will d rected that h s estate should remain intact and that the profits

sons sons and great grandsons in succession should be ent tled to the profits no person having any right of alienation The testator then provided that his eldest son should act as manager and shebait and prepare accounts and that he should have no power of alienat on He then made provis ons for the pay ment of Government revenue and declared that of

members of the family and religious ceremonies the remain ng ten sixteenths to be carried to the credit of h s estate In case of d spute between h s eldest son and the testator's th rd wife the mother

the testator's third wife the remaining eleven six teenths was to go to her sons If no son was born then the eldest son was to take five and a half six teenths, and the sons of the third wife the remaining

from the six annas share In case of separat on the

the division of the ten annas share of the profits. He then provided for the maintenance of his third wife and minor sons out of the six annas share each son on attaining major ty to be entitled to h s

heirs died without male issue the widow of such heir should receive maintenance only and that his

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

his executing his will, and that the bequests given by his will to his daughters, the defendants, were valid bequests. *Held* on appeal that the devise in *M P*'s will in favour of the male issue of *J* meant in favour of such male issue as should be living at the time of the death of the survivor of the tenant for life, whether born in the lifetime of the testator or after his death; and as, at the death of the testator, *J* had no male issue, it was a gift to a person or persons not in being at that time, and therefore void under the rule in the *Tagore case. Held* also that the devise over, in default of such male issue, was an alternative gift to take effect on an event to be determined at the death of the survivor of the tenant for life, and consequently was not open to objection. *Held* further—as to the bequest to such person or persons as *J* should, by deed or writing, appoint—that there was no clear principle of Hindu law which forbade such a bequest being construed, and effect given to it, according to its plain and literal terms; always subject, however, to the same restrictions as the Hindu testamentary law imposes on the testator himself, *viz.*, that the appointment should be made, so that (i) the appointee might be ascertained when the event arose on which he was to take (in this case, therefore, before the death of the surviving tenants for life), and (ii) the appointee be a person who was alive at the death of the testator. *Held*, accordingly, that in making this bequest the testator's intention was clearly to give *J* the ultimate disposal of the property, but not that it should form part of *J*'s estate. The circumstance that English Courts, in such cases, treat the property, when the power has been exercised, as part of the estate of the appointor in the interest of creditors, and some other persons favoured by the Court of equity, could not affect the question as to what was the intention of *M P* when he made his will. Original Court's decree varied accordingly; the share in the residue appointed by *J* to his daughter *M* (born after the testator's death) being declared to be part of *M P*'s estate of which he died intestate, and to belong, therefore, to his (*M P*'s) heir. JAVERBAI *v.* KABLIBAI . . **I. L. R., 16 Bom., 492**

varying decree in S. C. in lower Court.

[I. L. R., 15 Bom., 326

136. ——————— *One member of such class in existence of date of gift—Will directing deed to be executed—Date of deed is date of gift.*—A Hindu died in 1856 leaving a will whereby he directed his widow and executrix *L* to purchase an estate worth R20,000 for his grandson *T*, and that this estate should be conveyed to trustees, to be held by them in trust for *T* for his life or until his insolvency, and after his death for his son or other male heir. The executrix purchased the estate, but no trust deed was executed. *T* therefore brought a suit in 1871 to have the will carried out and a trust deed executed. *T R* (one of the plaintiffs in the present suit), who was *T*'s uncle, was made a party to that and a consent decree was passed which ordered the executrix *L* and *T R* should execute a trust deed in accordance with the directions in the will. A deed was accordingly executed in 1876 whereby the property was conveyed to trustees on the trusts declared in the will. At the time of the testator's death, *T* had no sons, but at the date of the deed in 1876 he had one son *C* and in 1883 another son *G* (the defendant) was born to him. *T* died in 1890, *C* died childless in 1891. The plaintiffs, who were *T R*, the son, and *T R*'s son, the grandson, of the testator, now claimed the property. They contended that, as neither of *T*'s sons were in existence at the date of the testator's death, they could not take under his will or under the deed which was afterwards executed to carry out the will; that, although at the date of the deed in 1876 one of the sons (*C*) was in existence, nevertheless he could only claim as one of a class, and that class was not ascertained or ascertainable at the date of the testator's death, nor at the date of the deed, *G* not having been born until 1883. The whole class was therefore excluded and the property after *T*'s death was undisposed of. *Held* that, in view of the direction of the will that a deed was to be executed which should declare the trusts of the property, it was the date of the deed subsequently executed which should be regarded in order to determine the validity of the limitations of the property bequeathed, and not the date of the testator's death, and that, under the deed, on the death of *T*, his son *C* became entitled to the property. In the case of a gift to a class if there is a person in existence at the time of the gift capable of taking and whom undoubtedly the donor intends to benefit, he is entitled to take, although others of the same class subsequently come into existence whom the donor meant the gift also to benefit, but who cannot take because of their non-existence at the date of the gift. TRIBHUVANDAS RUTTONJI *v.* GANGADAS TRICUMJI . **I. L. R., 18 Bom., 7**

137. ——————— *Bequest to "children"—Meaning of the expression "children"—Gift to a class—Gift of income as required with trust for accumulation of balance.*—Considerations which only show that a testator has made a disposition in his will which the Court is surprised to find there, though they might have determined the sense in which the testator had used an ambiguous expression, cannot of themselves lead the Court to refuse to give effect to the plain language he has employed, *e.g.*, to read a bequest to "children" as a bequest to "sons" only. A bequest to "the children of *R* living at his decease," where some such children are in existence at the date of the will, need not be construed as a gift to a class of which some members might come into existence after the testator's death, when such a construction would manifestly defeat the primary object of the testator. A direction in a will to trustees to pay to a Hindu lady so much of certain dividends as she might from time to time require for her own use and support, etc., and to accumulate the surplus not required by her upon trusts, entitles the legatee to receive, if she requires it, the whole interest as it falls due, but not to claim afterwards amounts which she did not require as they fell due, and which have been accumulated, and this is so whether the

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued*

it should appear to the executrix or executors for the time being that they would not be able to protect the property, then they should form a family fund in the Government trust fund of all the property, and that the interest thereof should be employed in the performance of certain religious ceremonies and the family expenses, and then bequeathed as follows] —"Whatever Company's paper, moveable and immoveable property, etc, shall be formed into a family fund in the Government trust fund, my great grandsons shall, when they attain majority, receive the whole to their satisfaction, and they will divide and take the same in accordance with the Hindu law God forbid it, but should I have no great grandsons in the male line, then my daughter's sons, when they are of age, shall take the said property from the trust fund and divide it according *to the Hindu shastras in vogue.*" *The* testator left living at the time of his death one son's

but no

great

ness, *that the bequest to the daughter's sons was* dependent on, and not alternative to, the gift to the great-grandsons, and therefore a bequest void under s. 103 of the Succession Act. *Held* also that *A D* was invested under the will with only a representative *character, and was therefore not entitled* beneficially to any residue of the estate as against parties who might have any interest therein BRAJANATH DEY SIRKAR v. ANANDAMAYI DASI

[8 B. L. R., 280

143 ——————— *Successive*

succession unknown to the Hindu law, and in conferring successive estates, the rule is that an estate of inheritance must be such a one as is known to the Hindu law, which an English estate tail *is not.* It is competent to a Hindu testator to provide for the defeasance of a prior absolute estate contingently

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by way of gift over must be in favour of some person in existence at the time of the gift (as laid down in the *Tagore case, Jutteendro Mohun Tagore* v. *Ganendro Mohun Tagore, L R, I A., Sup Vol, 47 9 B. L. R*, 377), the latter case deciding not only that a gift to a person unborn is invalid, but that an attempt to establish a new rule of inheritance is invalid A testator bequeathed the residue of his estate to his executors *upon trust to pay the* income to his daughter during her lifetime, and after her death in trust to convey the residue to his two half-brothers, in equal moieties, and to the heir or heirs male of their or either of their bodies, on failure of whom upon trust to give the same *to the* sons or son of his daughter Both the half-brothers survived the testator. On the death of one of them, the daughter (to whom children, as well as to the half brothers, had been born), making all persons interested parties, claimed that the trust and limitations had become void as to one moiety of the residue bequeathed, and that she had become

du daughter.

the testator's

half-brother.

Held that

the gift of the residue, so far as it purported to confer an estate of inheritance on the half brothers and the heirs male of their bodies, was contrary to law and void, that the gift to the plaintiff's sons, unborn at the death of the testator, was incapable of taking effect, that each of the half brothers took an *estate for life in one moiety of the residue* bequeathed, in remainder expectant on the death of the plaintiff, and that accordingly, on the death of the half brother, who had died before this suit was brought, the inheritance of his moiety had devolved *on the plaintiff, as daughter and heir of her father,* and as she claimed KRISTOROMONI DASI v. NARENDRA KRISHNA BAHADUR

[I. L. R., 16 Calc., 383
L. R., 16 I. A., 29

144. ——————— *Male issue*—

years and without male issue, the share or shares

death of either of my sons without leaving any male issue his share is to go and belong to the survivors of my said sons and my two grandsons (named in the will) for life, and their respective male issue absolutely after their death in the same manner and proportions as hereinbefore described respecting their original shares, it was *held*, first, that a vested interest was conferred upon the issue *immediately upon the* death of the father. The expression "to be paid or transferred to them respectively on attaining the age of twenty-one years" was a mere attempt to

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

grandson by a daughter should get nothing, but his share should go over to the surviving sons. The testator finally directed that his eldest son, son's grandsons, and other heirs in succession, should perform the duties of kurta and shebait. In a suit by the widow of one of the testator's sons by his third wife, seeking to recover such a share of the testator's property as she would have been entitled to in case of intestacy,—*Held* that the intention of the testator in disposing of the profits of the six annas share was not an intention to create a valid estate in the corpus in favour of any individual, but to tie up such corpus and to give the profits only to his male descendants; or, in other words, to create a sort of estate in tail male in the profits, and that the bequest was void. *Held* also, that the disposition of the ten annas share of the profits was void, there being in one event a direction to accumulate for ever without a disposition of the profits; and in the other event, the gift was void for the same reasons as the gift of the six annas share. *Held,* further, that the disposition of the family dwelling-house, save in so far as it prohibited alienation, was good, and that there was a sufficient disposition of the moveable property. SHOOKMOY CHUNDER DAS *v.* MONOHARI DASI . . . . I. L. R., 7 Calc., 269 [8 C. L. R., 473

Held on appeal by the Privy Council, affirming this decision, that the Hindu law does not allow such a disposition of property as would have been made by a testator whose intention was to give to his descendants the profits only of his estate for their benefit, and for the maintenance of religious services, but not to dispose of the estate itself. *Held* that, according to the true construction of the will taken altogether, the testator's intention was not to pass the estate. This was confirmed by the clauses against alienation, and for the accumulation, as long as the family should remain joint, of a certain share of the profits; another portion being assigned for the religious services. This was not a case in which a testator, having expressed an intention that his estate should pass, had added a clause against alienation, in which case the latter clause would have been merely void. *Held,* accordingly, that this bequest was invalid. An account of the profits of the estate, from the date of the death of the testator, having been ordered by the decree of the Court below in favour of the inheritor of a share at whose instance the bequest was held invalid,—*Held* that this did not mean that enquiry should be made into the different payments by the manager for the time being, or moneys taken out by the members of the family, but that it should be ascertained to what portion of the savings of the family, or of the accumulations made, such sharer would be entitled; and that this order was accordingly correct. SHOOKMOY CHUNDER DASS *v.* MONOHARI DASI . . . I. L. R., 11 Calc., 684 [L. R., 12 I. A., 103

141. ——————— *Perpetuities—Trusts for worship—Recital in will as to intention to create perpetuity.*—The testator by his will, dated 24th December 1873, which recited that he was desirous of disposing of his moveable and immoveable estate, so as to ensure a perpetual income for the worship of the family idols, and the maintenance of his heirs, after making provision for his funeral and shradh, and for the payment of a pecuniary legacy, gave and bequeathed all his moveable estate to the Official Trustee of Bengal for the time being, on trust out of the income to pay over the same to the trustees of the will, to whom he devised and bequeathed all his immoveable estate and the income of his moveable estate in the hands of the Official Trustee on trust for the maintenance of the family idol, subject to the following trusts:—In the first place, out of the income of the moveable estate, to keep all the houses in the trust premises in repair; in the second place, to suffer his two widows, *K* and *L,* with their children and families to reside in the family dwelling-house, during their lives and on their deaths to suffer all his heirs, according to the Hindu law of succession, to reside in such house for ever; in the third place, to pay out of the moveable estate to his wife *K* monthly R5 during her natural life, and to her children monthly R95, during the same period, and on her decease to her children and their heirs according to Hindu law, monthly R100 for ever, for their support and maintenance. (Similar trusts in favour of *L* and her children followed.) The residue of the income of the moveable estate was directed to be paid, by moieties to the widows, and on the death of each, her share was to be given to her issue in the same way as the other sums were directed to be paid to them respectively. *Held* that the recital as to the testator's desire to establish a perpetuity did not invalidate the subsequent trusts, so far as they were otherwise good according to law; that the trust for the repair of the house was valid during the lives of the two widows and the survivor of them; that the trust to allow the two widows and their families to occupy the family dwelling-house was a trust for the widows and no one else, empowering them with their families and any others whom they might choose to make members of their families to reside in the house; that the trust to allow the testator's children, and their heirs on death of the widow, to occupy the house, was void; that the wives were entitled to R5 monthly, and the children of each, during the lives of their respective mothers, to R95, equally; that the trusts to pay R100 monthly to the children of each of the widows, on their respective deaths for ever, was void; that the gift of the residue to the widows in moieties was valid for their respective lives, but the gift to their issue on their respective deaths invalid, and that the trust for the worship, subject to the other trusts, so far as they were valid, was good. KALLY PROSONO MITTER *v.* GOPEE NATH KUR [7 C. L. R., 241

142. ——————— *Bequest void for remoteness.*—A Hindu testator died possessed of considerable property, and leaving a will, dated 12th September 1870, by which he appointed his wife executrix in the following words: "I appoint my wife, *A D,* executrix on my behalf, and vest her with

HINDU LAW—WILL—*continued*

5. CONSTRUCTION OF WILLS—*continued*

her life to the entirety of the said rents The testator further directed that after *M's* death the trust was to stand valid during the lifetime of her children (if any) and that afterwards the heirs of such children should divide and receive the property But if *M* had no children, then, after the death of the wife and *M*, the trust should become void, and the property was to be delivered to such person as *M* might by will appoint *Held* (1) that the provision for the future children (if any) of *M* failed under the ruling in the *Tagore case, 9 B L R, 377 L R, I A, Sup Vol, 47.* If any children should be born, the question would arise as to what would become of the property, (2) that the direction that the property should be delivered to such person

the death of the testator BAI MOTIVAHU *v* BAI MAMUBAI . I. L. R., 19 Bom., 647

had no children, and questions having arisen between the daughter and the widow as to the administration

designated the persons to take in the event of his daughter having no child, the gift would have been valid as an executory bequest, supported by preceding life interests, but valid only under the following restriction, *viz* that to render the gift valid, the taker so designated must have been, either actually or in contemplation of law, in existence at the death of the testator In this case, no principle of Hindu law stood in the way to prevent the testator from substituting his daughter for himself as the person empowered to designate, but the same limitation

HINDU LAW—WILL—*continued*

5. CONSTRUCTION OF WILLS—*continued.*

was valid It was not decided upon whom the property would devolve, if the power should not be exercised BAI MOTIVAHU *v* BAI MAMUBAI

[I. L R., 21 Bom , 709
L R , 24 I. A , 73
1 C. W. N , 366

149. ———————— *Executory bequest—Gift to an idol not in existence at the testator's death—Existence of idol—Dedication*—No valid gift or dedication of property can be made by will to an idol not in existence at the time of the testator's death The power conferred by will to make a gift must be a power to convey property to a person in existence, either actually or in contemplation of law, at the death of the testator *Bai Motivahoo v Bai Mamoobai, I L R, 21 Bom, 709 L R, 24 I A 93,* relied upon UPENDRA LAL BORAL *v* HEM CHUNDRA BORAL I. L. R , 25 Calc , 405
[2 C. W N., 295

150. ———————— *Succession Act (X of 1865), ss 101, 102 and 159—Power of disposition of moveable property—Effect of subsequent void gift—Gift of balance of rents of immoveable property, in hands of trustees—Evidence of intention to limit duration of enjoyment of bequest—Gift by implication, What is necessary to constitute—*

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the property in trustees, the right of *G's* sons to ask for an account, and the gift over to *G's* grandsons, all

HINDU LAW—WILL—*continued.*

6. CONSTRUCTION OF WILLS—*continued.*

defer the period of payment to, or enjoyment by, such issue. *Semble*, that the gift over was void, because the event on which it was to take effect might be indefinitely remote, even if the words "male issue" be construed as meaning sons. The bequest of "real property" [illegible]. *Held*, That in accordance with the ruling in the *Tagore case*, [illegible] 4 B. L. R., O. C. 103, a gift by a Hindu to a person not ascertained or capable of taking at the time of the death of the testator cannot take effect; therefore the gift to the unborn sons of the sons and grandsons of the testator must fail. Where there is a gift to a class, and some persons constituting such class cannot take on account of the remoteness of the gift or otherwise, the whole bequest must fail. *Held* also, in accordance with *Ganendra Mohun Tagore v. Jatindra Mohun Tagore*, 4 B. L. R., O. C. 103, that a Hindu cannot, under any circumstances, make a gift by will to an unborn person or persons. BHAGABATI DASI *v.* JADU CHANDRA DUTT . . 8 B. L. R., 400

145. ——— *Gift void for remoteness.*—Where a will gave the testator's widow permission to adopt and made provision for the adopted son entering into possession after her death, providing further that, if the adopted son died unmarried, the estate should pass to the testator's nearest sapindas,—*Held* that the gift or bequest was, according to the doctrine laid down by the Privy Council in the *Tagore case*, 9 B. L. R., 377, void and of no effect, because the nearest sapinda was a person who might not be in existence at the death of the testator, being one who could not be ascertained at that time. RAMGUTTEE ACHARJEE *v.* KRISTO SOONDUREE DEBIA [20 W. R., 472

146. ——— ——— *Hindu Wills Act (XXI of 1870), ss. 2, 3, and 6—Succession Act (X of 1865), ss. 98, 99, and 101—Gift to unborn persons.*—A Hindu testator, by his will made in 1872, provided that, should he never have a son, his daughter's sons, when they came to years of discretion, should receive certain properties in equal shares; and he directed that, if his daughters had no sons, or should not be likely to have sons, then that such of his daughters as should reside in the ancestral family dwelling-house should receive a certain monthly allowance. The testator died in 1873, leaving only his daughters him surviving. *Held* that, the will being governed by the Hindu Wills Act, the bequest to the daughter's son was valid. The rule of construction laid down in the *Tagore case, 9 B. L. R., 377,* does not apply to wills of Hindus made since the passing of Act XXI of 1871. The words "create any interests" in the last proviso to s. 3 of the Hindu Wills Act should be read as referring only to the estate or interest which can be given, without reference to the further question to whom it can be given. ALANGAMONJORI DABEE *v.* SONAMONI DABEE . I. L. R., 8 Calc., 157: 9 C. L. R., 121

Held, on appeal, a gift by will to persons unborn at the time of the death of the testator, whether made prior or subsequently to the passing of the Hindu Wills Act, is void. The words "to create an interest" in the fifth proviso to s. 3 of the Hindu Wills Act, apply both to the quantity and quality of the interest created, and in their natural and ordinary meaning include the capacity of a donee to take. ALANGAMONJORI DABEE *v.* SONAMONI DABEE [I. L. R., 8 Calc., 637: 10 C. L. R., 459

147. ——— ——— *Gift to grandsons after death of annuitants—Vesting, Postponement of—Inconsistent declarations rejected.*—A testator, after charging certain annuities and other payments on his estate, gave the whole of his property to his grandsons in these words: "I give the whole of my property to my grandsons; but until the portions of the said property and the monthly stipends which I have given to some to enjoy for the natural term of their lives shall revert to the estate after their deaths, my estate shall not be divided amongst any of my grandsons or my great-grandsons. After all the pensioners have died, and after the enjoyment of the said pensions and property shall have ceased, the executor's power shall be annulled, and then my grandsons and my grandsons' heirs—that is to say, my great-grandsons—shall be able to divide the whole of the property and take their father's shares." He further directed that, for five years after his death, his family should remain joint, and allowed to his executors R400 for family expenses. *Held* that the will contained sufficiently direct words of present gift to the grandsons, and that the clause in which it was attempted to postpone the enjoyment in possession, and other clauses which directed accumulation, must be rejected or disregarded as inconsistent or repugnant. *Held* also that the fact that the estate was subject to partial trusts or charges did not postpone the vesting in possession; nor would it, even according to English law, let in grandsons of the testator born after his death during the continuance of the trusts. *Alangamonjori Dabee v. Sonamoni Dabee, I. L. R., 8 Calc., 637,* discussed by PONTIFEX, *J.* KALLY NATH NAUGH CHOWDHRY *v.* CHUNDER NATH NAUGH CHOWDHRY [I. L. R., 8 Calc., 878: 10 C. L. R., 207

148. ——— *Gift of residue of income of property "to be used for the purposes of A and B as trustees think proper"—Gift to future children of testator's daughter—Power of appointment by will given to daughter in case no children born.*—A Hindu inhabitant of Bombay by his will directed that his immoveable property in Bombay should be formed into a trust, of which he appointed certain trustees. Out of the net income of the trust, the trustees were to pay R50 to his wife and his daughter *M* for their personal expenses, and the residue was "to be used for the purposes of my wife and my daughter *M* and her children in such manner as my trustees think proper." *M* was thirty years of age at the hearing of the suit, and had no children. *Held* that this was a gift of the residue of the net rents in equal shares to the wife and *M*, and that the survivor of them would be entitled during

HINDU LAW—WILL—*continued.*

5 CONSTRUCTION OF WILLS—*continued.*

effect was upheld by the Judicial Committee RAIKISHORE DASI *v.* DEBENDRANATH SIRCAR
[I. L. R., 15 Calc., 409
L. R., 15 I. A., 37

(*m*) RESIDUARY ESTATE

153. ———————— *Residue undis-*

alleged to be a forgery,—*Held*, on the evidence, that the will of *L C* was genuine By the said will, *L C* had directed R25,000 to be paid to the plaintiff's mother and her family. He appointed the defendant's father (*T L*) his executor, and gave him control and authority over the business He did not, however, in express terms dispose of the *residue of his property, and there* was after providing for the above legacy of R25,000, a considerable balance to the credit of the business at the time of the testator's death *Held* that such balance was a residue undisposed of by the will, and that the plaintiff was entitled to a half share of such residue which was to be divided as if there was no will But the business itself from the date of the *testator's death* was to go to *T L* Mere bequests of special portions of the testator's estate to the heir without language of disherison do not exclude him from the undisposed of residue TOOLSEYDAS LUDHA *v.* PREMJI TRICUMDAS
[I. L. R., 13 Bom., 61

(*n*) SURVIVORSHIP

154. ———————— *Gift to two persons for life jointly—Gift to a daughter and her children—Effect of power giving to a daughter if she had no children to dispose of property bequeathed by will—Bequest for house expenses—Bequest by testator of his wife's ornaments—Election —J*, a Hindu inhabitant of Bombay, died in November 1869, leaving a will, dated October 1869 *He left a widow and one child, the plaintiff M*, then about fourteen years of age She had then been married for two years but up to the time of this suit she had had no children By this will the testator directed that his immoveable property in Bombay should be formed into a trust, and that the trustees were to collect the income thereof By the fourteenth and fifteenth clauses of his will he directed that out of the trust fund R50 per month were to be paid both to his wife and daughter for their personal expenses. In the seventh clause he directed as follows "After deducting expenses . money is to be paid out of the net income, whatever it may amount to, for the personal expenses of my wife and my daughter *M*, and for the children of my daughter *M* after her death agreeably to the fourteenth and fifteenth clauses of this will, and after paying the same, whatever income may remain is to be paid for the purposes of my wife and my daughter *M* and her children in such manner as my trustees may think proper" The eighth clause directed that, if *M* should have children, the trust should stand valid during the lifetime, and the trust property should then be apportioned amongst the heirs It then proceeded "But should there be no children born of the womb of my daughter *M*, then after the death of *M* and my wife this trust is to become void, and the property delivered to such persons as my daughter *M* may direct it to be delivered by making her will." *Held* (1) that the direction in the seventh clause amounted to a gift of the residue for the use of the testator's wife and *M*, that his wife and *M* were, under the clause, entitled to the income of the fund in equal shares during their joint lives, and that the survivor would take the whole for her lifetime (2) That *M* having no children at the date of the testator's death, the provision for her future children was void under the ruling in the *Tagore case, 9 B L R, 377 , L R, I A, Sup. Vol, 47* (3) That the direction, that if *M* had no children she might dispose of the property by will, was valid, and amounted to an absolute gift to her if she gave the requisite direction by will The gift did not offend against the rule in the Tagore case The persons to whom the property is given would take it from *M*, and not from the testator The testator by his will further directed that R750 a month were to be paid to his wife for the purpose of defraying the expenses of the house and the worship of thakur (God) *Held* that no part of this sum could be awarded to *M* The testator expected that she would live with the testator's wife and made no provision for the event of her ceasing to do so The testator also disposed of ornaments described as "my own and my wife's ornaments" *Held* that the clause did not raise a question of election The wife's stridhan ornaments would not fall within the clause if there were other ornaments which she wore and of which the testator had power to dispose BAI MAMUBAI *v* DOSSA MORARJI . I. L. R., 15 Bom., 443

me equally Any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally" *Held* that these words gave a legacy to the survivors contingently on the happening of a specified uncertain event, which had not happened before the period when the property bequeathed was distributable, that period of distribution being the time of the testator's death It would be impossible to decide that the period was postponed by reason of the personal incapacity of some of the beneficiaries

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

showing an intention on the testator's part that the enjoyment of the bequest should be of limited duration within the meaning of s. 160 of the Succession Act (X of 1865). To constitute a gift by implication in a will, there must be a reasonable degree of certainty as to the persons intended to take and the nature of the estates which they are intended to take. A direction that until the son or sons of the tenant for life of immoveable property should attain a certain age, no person on behalf of such son or sons should ask the tenant for life for an account or raise any objection, does not sufficiently define the persons to take, or the estates in which they are to take, constitute a gift by implication. It would be difficult, if not impossible, for a Hindu to create by express terms the estates which arise by virtue of the doctrine of Hindu law in regard to the rights of male issue in ancestral property; and even where the hypothesis that the testator intended (under a misapprehension of the law) to create such estates affords a key to the will and gives an adequate explanation of the various estates which would have to be implied in order to give full effect to the different directions contained in the will, yet if the estates cannot be implied from the words used in the will, the Court cannot create such estates for the testator by implication, since to do so would be to construct a will for him based upon his supposed intention, not on the words which he has used. ANANDRAO VINAYAK *v.* ADMINISTRATOR GENERAL OF BOMBAY . . **I. L. R., 20 Bom., 450**

(*l*) BEQUEST EXCLUDING LEGAL COURSE OF INHERITANCE.

151. ———————— *Gift ineffectual so far as it departs from the law of inheritance—Gift over of accrued share.*—A testator gave by his will to three sons of his brother certain estates "for payment of the expenses of their pious acts." He also directed as follows: "The said three nephews shall hold possession of the above in equal shares, and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale, but they, their sons, grandsons, and their descendants in the male line shall enjoy the same, and shall perform acts of piety as they respectively shall think fit for the spiritual welfare of our ancestors. If any die without leaving a male child, which God forbid, then his share shall devolve on the surviving nephews, and their male descendants, and not on their other heirs." In a suit between the survivor of the three nephews and the testator's heir,—*Held* by the High Court a gift by will upon condition that the subject-matter should descend to heirs male only is void by Hindu law. *Held* also that the gift was bad in so far as it restricted the subject-matter of the gift to male descendants, but that the language used relating to the gift over to the testator's surviving nephew or nephews was not inconsistent with the intention of the testator that the whole augmented share should pass to the plaintiff, the sole surviving nephew; but that, having regard to the doctrine frequently acted upon by the Courts of India, he was only entitled to a life-estate therein. SHOSHI SHIKHURESSUR ROY *v.* TAROKESSUR ROY . **I. L. R., 6 Calc., 421**

Held on appeal by the Privy Council that a gift by will, attempting to exclude the legal course of inheritance, is only effectual, in favour of such person as can take, to the extent to which the will is consistent with the Hindu law; and it is a distinct departure from that law to restrict the order of succession to males excluding females; that the attempt to alter the legal course of inheritance failed, and that the estate taken under the above clause was only for life. The gift over of a life-estate was competent; it being to persons alive, and capable of taking on the death of the testator, and to take effect on the death of a person or persons then alive. On the death of one brother, his share went to the two other brothers, and on the death of one of the latter his augmented share, made up of his original and accrued share, went to the survivor. TAROKESSUR ROY *v.* SOSHI SHIKHURESSUR ROY. SOSHI SHIKHURESSUR ROY *v.* TAROKESSUR ROY [**I. L. R., 9 Calc., 952: 13 C. L. R., 62** **L. R., 10 I. A., 51**

152. ———————— *Restrictions on bequest—Restrictions upon estate bequeathed, Effect of, if contrary to Hindu law—Restriction separable from valid dispositions.*—In the will of a Hindu restrictions contrary to law made by the will upon valid dispositions, if they are separable from the latter, need not be held to invalidate them. Three documents, of which the second and third were executed by a testator after intervals of some years, together formed his will, containing a bequest of estate to his sons. This was held valid by the High Court, although the testator in the later documents had endeavoured to impose restrictions upon the estate contrary to law, and therefore inoperative; the principal of them being (*a*) prohibition of actual possession or alienation, by any son, of his share in the estate; and (*b*) direction that the whole estate should be managed in a common cutcherry, with religious trusts, the sons to get only the remaining amount of profit according to their respective shares in perpetuity. At the same time, the Court held good a provision for defraying the marriage expenses of sons from joint funds, with the direction in the will that until the youngest son should attain majority none of the sons should have a right to partition; any son who should separate from the others getting, up to the time of his attaining majority, merely maintenance, and not the profits accruing upon his share. A gift over was that on the death of a son surviving sons should take his share proportionately to their own, and that, if any of the sons so taking should die leaving sons, such sons should receive their proportionate parts of the deceased son's share: the first part of this provision was held good, not being invalidated by the second, which, as constituting a gift to an indefinite class, would take effect. The judgment of the High Court to the above

HINDU WILLS ACT (XXI OF 1870)
—*concluded*

See PROBATE—JURISDICTION IN PROBATE CASES . . I. L. R., 14 Calc., 37

See PROBATE—PROOF OF WILL
[10 C. L. R., 550

See PROBATE—TO WHOM GRANTED
[7 B. L. R., 563

See SUCCESSION ACT, s 96.
[I. L. R., 16 Calc, 549

——— s. 2.

See PROBATE—JURISDICTION IN PROBATE CASES . . I L R., 9 Bom, 241
[6 C. L. R, 138

See PROBATE—OPPOSITION TO, AND REVOCATION OF, PROBATE
[I. L R., 17 Calc, 272

See PROBATE—POWER OF HIGH COURT TO GRANT, AND POWER OF
[I. L. R., 6 Bom, 452, 703

See REPRESENTATIVE OF DECEASED PERSON . I. L R., 14 Mad., 454

See WILL—ATTESTATION
[I. L R, 1 Calc., 150
I. L. R., 6 Calc., 17
I. L. R, 20 Bom., 674

——— s 3.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS
[I. L. R., 8 Calc, 157, 637
I. L. R, 15 Bom., 652

——— s. 5.

See ADMINISTRATOR GENERAL'S ACT, s. 31.
[I. L. R, 21 Calc, 732
I. L. R., 22 Calc, 788
L. R., 22 I. A, 107

HOLIDAY.

See CIVIL PROCEDURE CODE, s 307
[I. L. R., 20 Bom, 745

See LIMITATION ACT, s 4
[I. L. R., 20 Mad, 469

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.
[I. L. R., 22 Calc., 176

——— Time expiring on—

See BENGAL RENT ACT, 1869, s 29
[I. L. R., 4 Calc, 50

See DECREE—CONSTRUCTION OF DECREES—PRE EMPTION I. L R., 3 All, 850
[I. L. R., 7 All., 107

See CASES UNDER LIMITATION ACT, 1877, s. 5

1. ——— Good Friday—*Admission of plaint.*—The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the

HOLIDAY—*continued.*

circular order of the Board of Revenue such day is an authorized holiday, is not illegal GOBIND KUMAR CHOWDHRY v HARGOPAL NAG
[3 B. L. R., Ap, 72: 11 W. R., 537

2. ——— Sunday—*Admission of plaint*—A plaint may be received and admitted by a Munsif on a Sunday or other holiday UNUNTORAM CHATTERJEE v PROTAB CHUNDER SHIROMONEE
[16 W. R., 231

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[illegible] he case hours n they s 174 [illegible] is- he it was a recognized holiday, have refused to attend QUEEN v HARGOBIND DATTA SIRKAR
[8 B. L R, Ap, 12

4. ——— *Judicial work—Duty of Magistrate*—Magistrates should not take up judicial work on Sundays GRIJAMONEE v ISHENCHUNDER W. R., 1864, Cr., 2

5 ——— *Judge, Duty of—Local investigation*—A Judge should not hold a local investigation on Sunday JHUBBOO SAHOO v. JUSSODA KOER 17 W. R., 230

6. ——— Close holiday—*Bengal Civil* [illegible] 17—*Proceeding on* [illegible] was framed in the [illegible] of the Courts, and probably also in the interests of the pleaders, suitors, and witnesses, whose religious observances might interfere with their attendance in Courts on particular days On a close holiday, a Judge might properly decline to proceed with any enquiry, trial, or other matter on the civil side of his Court, and any party to any judicial proceeding could successfully object to any such inquiry being proceeded with, and, in the event of any such enquiry having been proceeded with in his absence and without his consent, would be entitled to have the proceeding set aside as irregular, probably in any event, and certainly if his interests had been prejudiced by such irregularity. But, at the furthest, the entertaining and deciding upon a matter within the ordinary jurisdiction of the Court on a close holiday is an irregularity the right to which can be waived by the conduct of the parties, and a party, who on a close holiday does attend, and without protest takes part in a judicial proceeding, cannot afterwards successfully dispute the jurisdiction of the Judge to hear and determine such matter. *Bernett v. Potter, 2 C. & J., 622, Andrews v.*

HINDU LAW—WILL—*continued.*

5. CONSTRUCTION OF WILLS—*continued.*

absolute to each in equal shares and indefeasible on his death. NORENDRA NATH SIRCAR *v.* KAMALBASINI DASI . . **I. L. R., 23 Calc., 563**
[L. R., 23 I. A., 18

(*o*) FAMILY, MEANING OF.

156. ———— *Specific trusts—Residue, Illegal disposition of the—Period of trust, where one period prescribed illegal and the other legal.*—A testator, devised certain property in trust for the maintenance and support of his family. *Held* (*per* WHITE, *J.*)—The word "family" means the relatives of the testator, whether connected by marriage or blood, who were living at the time of the testator's death and then formed part of his household and were maintained by him. *Held* (by the Appeal Court)—It is doubtful whether the above construction was not too wide and whether the more nearly true meaning may not be "the testator's descendants and their wives living at the time of his death." Specific trusts or specific estates good in themselves are not invalidated by a subsequent illegal disposition of the residue or remainder. *Tagore* v. *Tagore, 9 B. L. R., 377,* and *Krishna Ramani Dasi* v. *Ananda Krishna Bose, 4 B. L. R., O. C., 231,* followed. Where a testator prescribes two distinct periods during each of which he wishes the trusts to be in force, and one of such periods is legal and the other not, the trusts will take effect during the period which is legal. KHETTER MOHAN MULLICK *v.* GUNGA NARAIN MULLICK
[4 C. W. N., 671 note

(*p*) MAINTENANCE.

157. ———— *Right of daughter to maintenance after her marriage—Married daughter in good circumstances—Trust for maintenance.*—A Hindu testator, after making the Administrator General of Bengal executor and trustee of his will, and giving his daughter an annuity of R5 a month for her life, provided for the payment to *G C B*, whom he constituted the guardian of his daughter and of his only son during their minority, of the sum of R225 "monthly and every month for the maintenance and education of my said son and the support of my said daughter and such other persons as live in my house and are supported at my expense," and further provided that all "the residue of my estate, moveable and immoveable, with all accumulations and additions" should be conveyed to his son on his attaining majority, "subject nevertheless to the trust of maintaining my said daughter." The daughter had married a man of means, and did not need any maintenance. *Held,* in a suit by the daughter for a construction of the will and for a specific sum to be set apart for her maintenance, that the plaintiff was not entitled to anything by way of a separate allowance for maintenance; she was only entitled under the will (apart from her annuity of R5 a month) to be provided for in case she were otherwise unprovided for. Where the construction of a will was not so difficult as to have required the assistance of the Court, it was *held* to be not a case where the estate should bear the costs. The suit was therefore dismissed with costs. NARAYANI DASI *v.* ADMINISTRATOR GENERAL OF BENGAL
[I. L. R., 21 Calc., 683

HINDU LAW—WILL—*concluded.*

5. CONSTRUCTION OF WILLS—*concluded.*

HINDU WIDOW.

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO PARTITION—WIDOW.

See CASES UNDER HINDU LAW—PARTITION—SHARES ON PARTITION—WIDOW.

See CASES UNDER HINDU LAW—REVERSIONERS.

See CASES UNDER HINDU LAW—WIDOW.

See CASES UNDER LIMITATION ACT, 1877, ART. 141.

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . **I. L. R., 1 All., 452**
[I. L. R., 6 All., 17
I. L. R., 7 All., 860

———— **Gift to—**

See CASES UNDER HINDU LAW—GIFT—CONSTRUCTION OF GIFTS.

———— **Power of alienation of—**

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

———— **Power of, to adopt.**

See CASES UNDER HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY.

See CASES UNDER HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.

———— **Right of residence in family dwelling-house.**

See CASES UNDER HINDU LAW—FAMILY DWELLING-HOUSE.

———— **with permission to adopt, Position of—**

See CASES UNDER HINDU LAW—ADOPTION—FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER.

HINDU WILLS ACT (XXI OF 1870).

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS.

See HINDU LAW—WILL—NUNCUPATIVE WILLS . **I. L. R., 1 Bom., 641**

See PARTIES—PARTIES TO SUITS—EXECUTORS . **I. L. R., 12 Bom., 621**

See PROBATE—EFFECT OF PROBATE.
[8 B. L. R., 208
I. L. R., 8 Bom., 241
I. L. R., 12 Bom., 621
I. L. R., 18 All., 260

HUNDI—*continued*

See STAMP ACT, 1879, s 3.
[I. L. R., 8 Calc, 284
I. L. R., 13 All., 66
I. L. R, 14 Mad., 32

See STAMP ACT, 1879, s. 10.
[I. L. R., 2 Mad., 173

——— **Dishonour of—**

See BOND I. L. R., 20 Bom, 791

See HINDU LAW—CONTRACT—BILLS OF EXCHANGE 2 W. R., 214
[12 C. L. R., 333

——— **Endorsement of, by debtor.**

See LIMITATION ACT, s 20
[I. L. R., 19 All, 307

——— **Execution of—**

See STAMP ACT, s. 16
[I. L. R, 19 Bom., 635

——— **Suit on—**

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS
[I. L. R, 18 Bom., 369

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS

See LIMITATION ACT, s 14
[I. L. R., 20 Bom, 133

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, ETC
[I. L. R, 1 Bom., 295

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY 7 B. L. R, 535

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . 4 C. L. R., 145

See STAMP ACT, s 34
[I. L. R., 18 Bom, 369

1 LAW APPLICABLE TO.

1. ——— **Application of English law**

CHATTERJEE . 2 Hyde, 259

2 ACCEPTANCE

the defendant. The defendant had endorsed them to one *M* The plaintiffs' Bombay firm was the agent of *M*, and *M* accordingly sent the hundis to the plaintiffs as his agents, for realization The hundis, however, were dishonoured, and *M* thereupon returned them to the defendant, and received

HUNDI—*continued.*

2 ACCEPTANCE—*concluded*

their value from the defendant who in this suit now sought to set off the amount so paid by them against the claim of the plaintiffs It was contended that the plaintiffs were not liable, as there was no proof that the hundis had been accepted by them, it not having been shown that the acceptance had

hundis,
laintiffs
Held
nplete,

and that the defendant was entitled to the set off claimed The hundis had come to the plaintiffs for acceptance on the 28th October 1884, and their non-acceptance had not been notified to *M* on the 3rd November That would be an unreasonable period during which to hold the hundis *in dubio* On the 30th October the plaintiffs had stated by letter to the

accepted

to make

entries i

hundis, afforded no inference that they were not accepted *Semble*—A communication of acceptance to the drawer, or to a previous holder, binds the acceptor as well as a communication to the present holder, inasmuch as the acceptance enures for the benefit of them as well as for the actual holder, and the primary contract is between the drawer and the acceptor PRAGDAS THAKURDAS *v* DOWLATRAM NANURAM . . I. L. R, 11 Bom., 257

3 ENDORSEMENT.

3. ——— **Necessity for endorsement** —*Hundi given for particular purpose—Hundi pay-*

same from the principal *Quære*—Whether a hundi made payable "to order" is, according to Hindu law and the custom of native merchants, negotiable without a written endorsement by the payee RAJROOPRAM *v* BUDDOO
[1 Ind. Jur, O. S, 93: 1 Hyde, 155

terms of the Bills of Exchange Act, and such a document is assignable without any regular form of endorsement if sufficient cause appears in the handwriting of an endorser to indicate an intention to assign it EAST INDIA BANK *v* VULLIE GOOLWANY
[1 Ind. Jur., N. S., 247

had not proved that the note had been endorsed back

HOLIDAY—*concluded.*

Elliott, 5 E. & B., 502 : 6 E. & B., 338 ; and *Bisram Mahton* v. *Sahib-un-nissa, I. L. R., 3 All., 333,* referred to. RAM DAS CHACKARBATI *v.* OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY [I. L. R., 9 All., 366

"HOMESTEAD," MEANING OF.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDING AND HOUSE MATERIALS. [I. L. R., 21 Bom., 588

HOROSCOPE.

See EVIDENCE ACT, SS. 17 AND 18. [I. L. R., 17 Mad., 134

See EVIDENCE ACT, S. 32, CL. 6. [I. L. R., 9 Calc., 613
I. L. R., 17 Calc., 849

HOSPITAL, BEQUEST TO—

See WILL—CONSTRUCTION. [14 B. L. R., 442

HOTEL-KEEPER AND GUEST.

1. ——— Lodging or boarding-house-keeper and lodger—*Inn-keeper—Liability for goods lost.*—This suit was brought to recover the value of certain articles stolen from the plaintiff's rooms at an hotel in Bombay. The defendant was the licensed proprietor of the hotel, who was in the habit of entertaining, for shorter or longer periods, all comers willing to pay the usual charges, and the plaintiff was an exchange broker, doing business in Bombay, who had lived at the hotel for more than a year, paying for his board and lodging, at first by the day, and afterwards by agreement at the rate of so much a month, but neither was the plaintiff under any obligation to remain, nor the defendant to accommodate him for any fixed time. *Held* that the relation of inn-keeper and guest (and not that of boarding-house-keeper and lodger) subsisted between the parties; and that the defendant was *primâ facie,* and without proof of actual negligence, liable to make good the loss sustained by the plaintiff. There is no law but the Common Law of England to regulate the relation of inn-keeper and guest in Bombay, in a case between a European and Parsee. WHATELEY *v.* PALANJI PESTANJI . 3 Bom., O. C., 137

2. ——— Liability of guest at hotel in respect of furniture used by him—*Contract Act (IX of 1872), ss. 148, 151, 152—Contract—Bailment—Liability of bailee.*—The defendant's wife went to stay at a hotel owned by the plaintiffs. While there, she was seized with cholera and died. In consequence of the infectious nature of the disease, the plaintiffs were obliged to destroy the furniture which was in the rooms of the defendant's wife and used by her during her illness. The plaintiffs subsequently sued to recover the value of such furniture from the defendant. *Held* that, in the absence of evidence to show that the deceased had not taken as much care of the furniture as a

HOTEL-KEEPER AND GUEST —*concluded.*

person of ordinary prudence would, under similar circumstances, take of his own goods, the defendant was not liable, having regard to ss. 151 and 152 of the Contract Act, 1872. *Shields* v. *Wilkinson, I. L. R., 9 All., 398,* referred to. RAMPAL SINGH *v.* MURRAY & CO. . . I. L. R., 22 All., 164

HOUSE-BREAKING.

See CRIMINAL TRESPASS. [I. L. R., 16 Calc., 657
I. L. R., 22 Calc., 994

See PRIVATE DEFENCE, RIGHT OF. [1 B. L. R., S. N., 8
2 W. R., Cr., 42

——— and theft.

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION. [I. L. R., 17 All., 120

——— Intent to have sexual intercourse which would be adultery.—The prisoner was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife. *Held* conviction valid, the object, if accomplished, being an offence. ANONYMOUS [8 Mad., Ap., 6

HOUSE TRESPASS.

See CRIMINAL TRESPASS. [I. L. R., 22 Calc., 123, 391
I. L. R., 19 All., 74

See TRESPASS—HOUSE TRESPASS.

HUNDI.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS. [I. L. R., 16 All., 157
L. R., 21 I. A., 6

See FRAUD—EFFECT OF FRAUD. [I. L. R., 24 Calc., 533

See STAMP ACT, 1869, S. 20. [I. L. R., 4 Calc., 259

HUNDI—*continued*

5. NOTICE OF DISHONOUR—*continued.*

urge that no notice of dishonour had been given to the manager (drawer) so as to make the latter liable under s 30 of the Negotiable Instruments Act KRISHNASHET v. HARI VALJI BHATYE

[I. L. R., 20 Bom., 488

16. ——— *law* —As regai with hundi tra try, although the strict rules of ... time within which service of such notice must be made do not apply, yet the endorsee is bound to give the endorser notice within a reasonable time of his intention to come upon him, *so as* to enable the latter to take the necessary steps for his own protection The question as to what is reasonable notice is to be settled by local custom, and where a party has been prejudiced by the want of such notice, this is to be taken into consideration. ANUNT RAM AGURWALLA v. NUTHALL . 21 W. R., 62

17. ——— *English law—*

within reasonable time to enable the drawee ... dorsee to protect himself against the claims of subsequent endorsers TULSHI SHAHU v NURSINGRAM

[12 C. L. R, 333

18. ——— *Demand of a peth —Notice to endorser* —In order to charge the endorser of a dishonoured hundi, the holder must give reasonable notice of such dishonour to the endorser he seeks to charge The demand of a peth cannot be deemed to be equivalent to a notice of dishonour. MEGRAJ JAGANNATH v GOKALDAS MATHURADAS

[7 Bom, O. C, 137

19. — evidenc *admissio tion* —In dently of of dishc RAJMAL ...

[I. L. R., 24 Bom., ...

20. ——— Sufficiency of notice—*Principal and agent—Custom—Delay in giving notice* —The drawers of a hundi in favour of the plaintiff at Dacca (where all the parties to the hundi lived) were held not liable on proof that they were the gomastahs of the accept ... they had no interest in the hundi, and t where the h under such circu... agency does not appear on the hundi They were also held discharged from liability, notice of dishonour not having been served on them till ten months after the due date of the hundi HARI MOHAN BYSAK v KRISHNA MOHAN BYSAK

[9 B. L. R., Ap, 1: 17 W. R., 442

HUNDI—*continued*

5 NOTICE OF DISHONOUR—*concluded*

21. ——— *Promise to pay endorsed on hundi—Waiver of notice* —A promise to pay endorsed upon a hundi after it had been dishonoured, though not amounting to a waiver of notice, was held to be good and sufficient evidence that the endorser had received notice that the bill had been dishonoured ALI v. GOPAL DASS

[13 W. R., 420

S C before remand, GOPAL DAS v ALI

[3 B L. R., A. C, 198

[I. L R., 3 Calc., 339: 1 C. L R., 429

... of 1881) should be applied Instruments Act (XXVI of 1881) should be applied to a hundi in the vernacular, the "reasonable time" within which such notice is to be given being determined according to the circumstances of the case ... that where the holder of such a

for want of such notice, the suit must fail LAL v MOTI LAL . I. L. R., 6 All., 78

6 LIABILITY ON

received a hundi for collection, and on its acceptance by the drawee, credited the Ajmir constituent with the amount as of the date when the hundi would become payable *Held* that, as between the plaintiff and the Ajmir constituent, the plaintiff, upon such credit in account being given, became a holder for value *Held* also that, the hundi being dishonoured at due date by the drawee, the plaintiff was justified, by the usage of shroffs, in treating the Ajmir constituent as still entitled to credit for the amount, and himself as a holder for value *Held* also that, as between the Ajmir constituent and the first indorser (the defendant and appellant), the giving by the Ajmir constituent to the defendant of another hundi which was never presented in Bombay for acceptance or payment was a consideration for the endorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him MULCHAND JOHARIMAL v SUGANCHAND SHIVDAS . I. L. R., 1 Bom., 23

Affirming the decision in SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL . . 12 Bom., 113

HUNDI—*continued.*

3. ENDORSEMENT—*concluded.*

to him. The Court would assume from his possession that he had a right to it, unless the contrary were shown. BYJNATH SAHOO *v.* BACHARAM

[1 Ind. Jur., N. S., 76: 5 W. R., 86

6. ———— Cancelment of endorsement —*Endorsee for purposes of collection, Liability of.* —An endorsee for purposes of collection of certain hundis, under the circumstances, ordered to cancel such endorsement and to re-deliver the hundis to the endorser. Such an endorsee, not having received the amount of the hundis, was held, under the circumstances, not liable to be sued for the value thereof. GYANEE RAM *v.* PALEE RAM . 2 N. W., 73

7. ———— Suit after endorsement— *Bill payable to depositors—Member of joint family.* —A hundi payable to the depositor is only payable to the drawer or his endorsee. When the drawer and his brother are members of an undivided Hindu family, it may be presumed that the latter is entitled to act for the former. VELIET DOSS *v.* BUNARUSSEE ROY . . W. R., 1864, 262

8. ———— *Suit by endorsee against acceptor—Notice not to discount, Effect of —Boná fide holder for valuable consideration.*—To an action by the endorsee against the acceptor of a hundi, the defence was a certain verbal contract between acceptor and payee of which the plaintiff had notice; and that by the custom of shroffs the defendant was exonerated by such notice. *Held* that it is the custom of shroffs to make enquiries of the acceptors of hundis before discounting them. That a mere notice by the acceptor not to discount does not affect his liability to a person who takes a hundi *boná fide* and for valuable consideration after such notice. KHOSAL CHUND *v.* LUCHMEE CHUND

[Bourke, O. C., 151

4. PRESENTATION.

9. ———— Time for presentation— *Hundi payable on arrival—Liability of drawee—Time of presentation—The custom of akhoiteej at Jeypore—S. 61 of the Negotiable Instruments Act (XXVI of 1881).*—A hundi was drawn in Calcutta upon a firm at Jeypore, and made payable on arrival at the place. The hundi reached Jeypore on the 5th April, but was not presented for payment until the 29th of that month, when it was dishonoured, and soon after the drawee's firm became insolvent. *Held* that the hundi was presented within reasonable time, and the delay which occurred in its presentation did not absolve the drawers from liability. In considering the question whether a hundi has been presented within reasonable time, regard should be had to the situation and interests of both drawer and payee and to the distance of the place where the hundi is drawn from that where it is to be accepted. MUTTY LALL *v.* CHOGEMULL

[I. L. R., 11 Calc., 344

10. ———— *Reasonable time— Question of time of presentation—Drawer without assets in hands of drawee.*—Presentation for acceptance within reasonable time is a condition precedent

HUNDI—*continued.*

4. PRESENTATION—*concluded.*

to a right of action on a bill or hundi payable after sight. Where the drawer had not assets in the hands of the drawee at or subsequent to the date of the hundi,—*Held* that the question of presentation within reasonable time was immaterial. NINKUND ANANTAPA *v.* MENSHI APURAYA

[I. L. R., 10 Bom., 346

11. ———— *Presentation by purchaser.*—A purchaser is bound to present a hundi for payment within a reasonable time. GOPAL DASS *v.* SEETA RAM . . . . 3 Agra, 268

12. ———— *Suit by holder and indorsee against payee and indorser—Local usage as to presentment—Usage of presentment at Bushire—Negotiable Instruments Act (XXVI of 1881), ss. 70, 71, 75, and 137.*—The plaintiff as holder and indorsee of a hundi drawn on one *H* of Bushire sued defendant as payee and indorser to recover R1,193-4 on a hundi which had been dishonoured by the acceptor. It was found by the Court (1) that the local usage at Bushire was to present the hundi for payment at the bank, and for the acceptor to call at the bank at due date and effect settlement; (2) that the hundi in question was presented for payment to the authorized agent of the acceptor at the bank on the due date; (3) that the said agent refused payment and informed the bank that the acceptor would not pay the hundi. It was argued that presentment at the bank was not good presentment having regard to ss. 70, 71, and 137 of the Negotiable Instruments Act (XXVI of 1881). *Held* that the local usage made the presentment a good presentment. IMPERIAL BANK OF PERSIA *v.* FATTECHAND KHUBCHAND

[I. L. R., 21 Bom., 294

5. NOTICE OF DISHONOUR.

13. ———— Reasonable notice—*Custom —English law.*—A purchaser is bound to give reasonable notice of dishonour, that is, within the time within which it is ordinarily given according to the custom of the merchants and bankers of the district, not the immediate notice required by English law in cases of bills of exchange. GOPAL DASS *v.* SEETARAM

[3 Agra, 268

14. ———— *Custom—English law.*—Although the English law of prompt notice by return of post does not apply to cases of native hundis drawn by natives upon natives and endorsed by natives, yet reasonable notice of dishonour is essential. RADHA GOBIND SHAHA *v.* CHUNDER NATH DASS SHAHA . . . . . 6 W. R., 301

See SUMBHOONAUTH GHOSE *v.* JUDDUNAUTH CHATTERJEE . . . . . Cor., 88

15. ———— *Hundi drawn by a manager of Hindu family—Liability of member of family—Notice of dishonour to the drawer—Negotiable Instruments Act (XXVI of 1881), s. 30.*—The Negotiable Instruments Act (XXVI of 1881), in the absence of local usage to the contrary,

HUNDI—*continued.*

6. LIABILITY ON—*concluded.*

(2) that under the Negotiable Instruments Act (XXVI of 1881) the dishonour of a hundi by non acceptance constitutes now, as it has always done, part of the cause of action in a suit against the drawer RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN . . . **I. L. R., 20 Bom., 133**

7. INTEREST ON.

PUT SINGH DOOGAR *v* JUGUT INDUR BUNWAREE GOBIND DEB . . . **4 W R., 85**

8. PROPERTY IN HUNDI AND FORGED HUNDIS.

34. ———— **Property in hundi sent to agent for realization.**—*S R*, the plaintiffs' agents in Calcutta, accepted hundis for R12 000 drawn upon them by a branch house of the plaintiffs' firm, and the plaintiffs at different times sent to

defendant to recover the two hundis,—*Held* that the hundis, having been sent to *S R* for the special purpose of enabling them to meet their acceptances for R12 000, remained the property of the plaintiffs, subject to a lien of *S R* of R600 HAZARI MULL NAHATTA *v.* SOBAGH MULL DUDDHA

[**9 B. L. R., 1**

hundi, and such hundi afterwards turns out to be forged, the shah, though a *bonâ fide* holder for value, is bound to repay to the drawee the amount of such hundi with interest from the date of payment, pro-

HUNDI—*continued*

8. PROPERTY IN HUNDI AND FORGED HUNDIS—*continued*

actual forger DAVALTRAM SHIRAM *v* BALAKIDAS KHEMCHAND . **6 Bom, O. C., 24**

endorsement The hundi was lost or stolen on the way and came into the defendants' hands as endorsees, the endorsement of the plaintiffs having been forged The defendants, without notice of the forgery, paid full consideration for the hundi. *Held* on appeal, reversing the decision of the Court below, that the plaintiffs were not entitled to recover the hundi from the defendants *Per* PEACOCK, *C J.*—It appeared from the evidence that the hundi in this case would pass, at any rate prior to acceptance, by delivery GOURSIMULL *v* DHANSUK DAS

[**7 B. L. R, 289 note: 16 W. R., 10 note**

37. ———————— *Suit to recover hundi—Bonâ fide holder for valuable consideration* —A hundi which had been purchased by the plaintiff at Delhi for value was, he alleged endorsed by him to the firm of *R B D* of Calcutta, "*for realization,*" and sent to that firm by post Between Delhi and Calcutta the hundi was lost or stolen and never reached the firm of *R B D* It eventually came into the hands of the defendant, bearing no endorsement

firm of *U D H* of Calcutta by whom it purported to be endorsed to the defendant's firm When presented to the acceptors for payment, it was dishonoured, the acceptors stating that they had received notice not to pay the note, as it had been

acceptance was genuine In a suit for the recovery of the hundi, or its value,—*Held* by the Court below that the endorsement of *U D H* was genuine, and that the plaintiff was not entitled to recover the hundi The defendant, having taken the hundi in the ordinary course of business and after sufficient enquiry, was entitled to retain it this was so notwith

was specially accepted, and there was nothing to show that by Hindu law such a hundi would pass as one

HUNDI—*continued.*

6. LIABILITY ON—*continued.*

25. ——— **Notice of dishonour**—*Negotiable Instruments Act (XXVI of 1881), s. 61—Presentment of hundi—Indemnity-bond.*—In a suit on an indemnity-bond executed by way of collateral security by the maker of six hundis, it appeared that three of the hundis were paid, and when three which were unpaid were presented to the maker, he did not at once insist upon want of notice of dishonour or on non-presentment as a ground of discharge. *Held* that, since the defendant did not prove that the drawee had effects of his to meet the hundis on presentment or that he had sustained damage by reason of the want of notice of dishonour, the plaintiff was entitled to a decree. SHANMUGAN *v.* CHINNASAMI

[I. L. R., 14 Mad., 470

26. ——— **Liability of drawer, acceptor, and indorsee**—*Separate contract—Decree against one without satisfaction.*—The drawer, acceptor, and intermediate endorsers of a hundi which is dishonoured are all liable to the holder, but their liability is not joint as it arises out of different contracts, and a decree obtained against any one of them without satisfaction cannot be pleaded as a bar to a suit against any other of them. ABDOOR RUHMAN *v.* GUNNESH LALL . **23 W. R., 444**

27. ——— **Defendants not all resident in jurisdiction**—*Parties—Act XXIII of 1861, s. 4—Bankruptcy of acceptor.*—In a suit on a hundi payable at Calcutta, the acceptor there having become bankrupt before the hundi reached maturity, brought by the holder in the place where the hundi was drawn against the two partners of the firm that drew the hundi, and also the acceptor, who resided at the time of suit beyond the local jurisdiction of the Court passing the decree, the lower Appellate Court having dismissed the suit on the ground that the Court of first instance could not, without the sanction provided by s. 4 of Act XXIII of 1861, pass a decree against the defendant who resided beyond its jurisdiction,—*Held,* following the English law, that it was not necessary to sue the bankrupt defendant, and that the holder of a hundi is not bound, in the event of its dishonour, to sue all the parties liable under it, but may select any one or more of them. BASANT RAM *v.* KOLAHAL

[I. L. R., 1 All., 392

28. ——— **Cause of action**—*Suit on hundi—Inability to discover drawer.*—Where, on account of a loan of R800, the lender gave the borrower two hundis for R1,500 and took away R693-7 as discount for R700, and the borrower, being unable to discover the drawer of the hundis, sued the lender, not on the hundis, but on two alleged loans of R800 and R693-7, respectively,—*Held* that the only right of action left to the borrower was on the hundi themselves. RAM LAL SIRCAR *v.* GOPAL DOSS . . . . . **7 W. R., 154**

29. ——— *Duplicate of lost hundi—Suit for money had and received.*—The plaintiff obtained a hundi from a banker, *B*, at Baluchar for a certain amount drawn upon the firm of the latter at Calcutta. Afterwards on her representing to *B* that she had lost the hundi, *B* granted the plaintiff a duplicate, in the body of which it was stated that if the original had been accepted before presentation of the duplicate, the latter was to become null and void. The duplicate was presented to the agent of *B* at Calcutta, and payment was refused on the ground that the original had been presented and accepted and paid in due time. *Held* that the plaintiff had no cause of action against *B* for non-payment of the duplicate hundi, nor for money had and received on account of the original consideration having failed. INDUR CHANDRA DUGAR *v.* LACHMI BIBI . . **7 B. L. R., 682: 15 W. R., 501**

30. ——— **Accommodation bill**—*Transferees for value—Liability of party accommodated.*—*P* drew a hundi on *S* (which *S* accepted for *P's* accommodation), which he transferred for value to *B*, who transferred it for value to *C*, who transferred it for value to *R N* at *R's* request, and on his behalf presented the hundi to *S* for payment, and *S* paid it. *Held* that *S* was entitled to recover the amount of the hundi from *P*, but not from *N*. *Reynolds* v. *Doyle, 2 Scott's N. R., 45,* referred to. NAND RAM *v.* SITLA PRASAD. RAM PRASAD *v.* SITLA PRASAD

[I. L. R., 5 All., 484

31. ——— **Stolen hundi**—*Shah jog hundi endorsed to a particular person—Payment by drawee without inquiry to wrong person—Liability of drawee to lawful owner of hundi—Conversion—Trover.*—On the 8th December 1893, the plaintiff at Sholapur having brought a shah jog hundi, there drawn upon the defendants in Bombay, endorsed to *R* and sent it by post to him for collection. In course of its transmission it was stolen, and the name of *R* was expunged, and another name, *viz.*, that of *D*, was substituted. On the 9th December 1893, the hundi was presented for payment to the defendants in Bombay by a person giving his name as *D*, and the defendants paid it without inquiry as to the responsibility or position of the person to whom they paid it. The plaintiff sued the defendants for the value of the hundi. *Held* (1) that the defendants were guilty of conversion of the hundi, and were liable to the plaintiff, the lawful ownner thereof, in trover; (2) that the hundi continued to be shah jog after being indorsed to a particular person. GANESDAS RAMNARAYAN *v.* LACHMINARAYAN . . **I. L. R., 18 Bom., 570**

32. ——— **Hundi payable at fixed date**—*Dishonour by non-acceptance—Cause of action—Right of suit—Negotiable Instruments Act (XXVI of 1881).*—On 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 on his firm at Bombay in favour of *D* payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1889, but on the 23rd April 1889 the bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment,

HURT—*continued*

2 GRIEVOUS HURT—*continued*

attained puberty The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl For the defence it was alleged that he had had

evidence was to the effect that if such intercourse had previously taken place the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused The medical evidence was further to the effect that the girl had not attained puberty and was immature and wholly unfit for sexual intercourse that under such circumstances sexual intercourse between the prisoner and the girl was likely to be dangerous to her and to cause injuries more or less serious according to the degree of penetration effected The prisoner was charged with (*a*) culpable homicide not amounting to murder under s 304 of the Penal Code (*b*) causing death by doing a rash and negligent act under s 304A (*c*) voluntarily causing grievous hurt under s 325, and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s 338 *Held* that in such a case when the girl is a wife and above the age of 10 years and when therefore the law of rape does not apply it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband or as a person outside the protection of the criminal law that no hard and fast rule can be laid down that sexual intercourse with a girl under a certain age must

which the accused is shown to have acted on the occasion in question he has brought himself within any of the provisions of the criminal law *Held* further that if the jury were of opinion (*a*) that the

an immature girl like his wife was itself a thing likely to lead to dangerous consequences (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing one which the husband of the girl if he had had a reasonable regard to her welfare and had exercised reasonable thought as to the act he contemplated doing would have abstained from doing they would be justified in finding that the prisoner caused the death of the girl by a rash and

HURT—*concluded*

2 GRIEVOUS HURT—*concluded*

negligent act Under no system of law with which Courts have to do in this country whether Hindu or Mahomedan or that framed under British rule has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her QUEEN EMPRESS *v* HURREE MOHUN MYTHEE

[I L R, 18 Calc, 49

ous hurt. The Joint Sessions Judge relying apparently on evidence that the injured person remained in a hospital for the space of twenty days drew from that circumstance alone the inference that he was during that period unable to follow his ordinary pursuits and convicted the accused under s 326 of the Penal Code (XLV of 1860) *Held* reversing the convictions that in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days such an inference could not legally be drawn Before a conviction can be passed for the offence of grievous hurt one of the injuries defined in s 320 of the Penal Code must be strictly proved and the eighth clause is no exception to the general rule that a penal statute must be construed strictly Proof of being in a hospital for the space of twenty days cannot be taken as equivalent to proof of grievous hurt QUEEN EMPRESS *v* VASTA CHELA

[I L R., 19 Bom, 247

HUSBAND

See COMPLAINANT

[I L R, 26 Calc, 336
I L R., 14 Mad., 379

———— Death of—

See ABATEMENT OF PROSECUTION

[4 Mad., Ap, 55

HUSBAND AND WIFE

See BURMESE LAW—DIVORCE

[I. L R., 19 Calc, 469

See CONTRACT ACT s 178

[I L R., 24 Bom, 458

See CASES UNDER DIVORCE ACT

See EVIDENCE—CRIMINAL CASES—HUSBAND AND WIFE

[B. L. R., Sup Vol, Ap, 11
7 Bom. Cr, 50
I L R., 22 Mad., 1

See CASES UNDER HINDU LAW—CONTRACT—HUSBAND AND WIFE

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE

See CASES UNDER HINDU LAW—MARRIAGE

HURT—*continued.*

2. GRIEVOUS HURT—*continued.*

When the result of a joint attack by several persons on one man is the fracture of his arm, the offence committed is grievous hurt, and not assault. QUEEN *v.* RAMTOHUL SINGH . . 5 W. R., Cr., 12

19. ——— Want of intention, likelihood, or knowledge that injury is likely to cause death.—When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt. QUEEN *v.* MEGHA MEEAH . . . 2 W. R., Cr., 39

20. ——— Want of intention to cause death—*Robbery.*—Where, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery. QUEEN *v.* CHAKOR HUREE . . . 6 W. R., Cr., 16

21. ——— Grievous hurt in commission of lurking house-trespass—*Penal Code, ss. 324, 457, 460.*—A person who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code. QUEEN *v.* LUKHUN DOSS

[2 W. R., Cr., 52

22. ——— Conviction of grievous hurt —*Constructive guilt—Abetment—Penal Code (Act XLV of 1860), ss. 114, 325, with 149.*—Where the accused persons have been acquitted of rioting, they cannot be properly convicted of grievous hurt under s. 325 by the application of s. 149 of the Penal Code, where it has not been found that these persons or any of them were members of an unlawful assembly in prosecution of the common object, of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of the assembly knew to be likely to be committed in prosecution of that object. The mere presence as an abettor of any person would not, under the terms of s. 114 of the Penal Code, render him liable for the offence committed. *Empress* v. *Chatradhari Goala, 2 Calc. W. N., 49*, explained. In order to bring a person within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, if absent, he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. *Queen* v. *Niruni, 7 W. R., Cr., 49,* relied on. ABHI MISSER *v.* LACHMI NARAIN . . I. L. R., 27 Calc., 566

[4 C. W. N., 546

23. ——— Beating a man found committing theft—*Presumption.*—The prisoners found a man in the act of theft, and were beating and cuffing him, when one of the witnesses for the prosecution threatened to call a chowkidar, and they released him. Two days afterwards he was found drowned. *Held* that there was no evidence to convict the prisoners of causing grievous hurt. All presumptions consequent on the man's body being found drowned should have been put aside, and the original assault alone considered. QUEEN *v.* NUNKOO DOSS

[2 W. R., Cr., 4

24. ——— Driving over deaf man—*Penal Code, s. 338—Negligence.*—Defendant was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town, between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace, and in the middle of the road; that the night was dark, and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed. ANONYMOUS . . . . . 6 Mad., Ap., 32

25. ——— Grievous hurt on grave and sudden provocation—*Penal Code, s. 335.*—Causing grievous hurt on grave and sudden provocation is punishable under s. 335 of the Penal Code, without any intention or knowledge of likelihood of causing such hurt. QUEEN *v.* UMBICA TANTINEE

[4 W. R., Cr., 21

QUEEN *v.* BHADOO PORAMANICK

[4 W. R., Cr., 23

26. ——— Hurt caused in house-breaking—*Penal Code, ss. 459, 460.*—Ss. 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house-breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. The sections must be construed strictly, and they are not applicable where the principal act done by the accused person amounts to no more then a mere attempt to commit lurking house-trespass or house-breaking. QUEEN-EMPRESS *v.* ISMAIL KHAN . . I. L. R., 8 All., 649

27. ——— Charge of grievous hurt—*Committal for trial.*—A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court. REG. *v.* ANTABIN DADOBA . . . . 1 Bom., 101

28. ——— Child-wife—*Culpable homicide not amounting to murder—Causing death by a rash and negligent act—Rashness and negligence—Penal Code, ss. 304, 304A, 325, 338—Husband and wife.*—The prisoner, a fully developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not

HUSBAND AND WIFE—*continued*

debtor and her husband the amount of money lent by the plaintiff to the former on her notes of hand, it appeared that the defendants had always lived together, that the wife had an allowance wherewith to meet the household expenditure and all her personal expenses, and that the money had been borrowed without the husband's knowledge, and not to meet any emergent need, but to pay off previous debts, and had been raised by successive borrowings over a considerable period, the debts having increased by high rates of interest It was also found that it had not been shown that the plaintiff looked to the husband's credit, or that the husband had ever previously paid his wife's debts for her *Held* that, under these circumstances, no agency on the wife's part for her husband had been established, and that the husband was therefore not liable to the claim GIRDHARI LAL *v.* CRAWFORD I. L. R., 9 All., 147

6. ——— **Plea of coverture**—*Separate property of wife—Suit on promissory note—Personal decree.*—The defendant, a married woman living with her husband, both domiciled in British India and resident in Calcutta, where they had been

plaintiff, at the same ...

pay the amount out of her own property In a suit

Court would, if necessary, make a personal decree against her. ARCHER *v* WATKINS

[8 B. L. R., 372

which makes the husband in divorce proceedings liable *primâ facie* to the wife's costs, except when she is possessed of sufficient separate property, does not apply to divorce proceedings between Mahomedans. A wife sued her husband for dissolution of marriage (both parties being Mahomedans) on the ground of his impotency and malformation An interlocutory order was made by the Court adjourning the further hearing of the suit for one year, in order that the parties might resume cohabitation for that period The husband

Court and wa

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quently dismissed with costs

subsequently applied for alimony until the disposal

... having regard to the

HUSBAND AND WIFE—*continued*

subject examined ...

[2 Mad., 383

of real estate conveyed to the wife does not cause a change in the nature of such property. COHEN *v* AUCTION & Co 1 Hyde, 130

10. ——— *Custom prevailing amo*

made to

torship

presents

betrothal, and between betrothal and ...

marriage and the increment thereof belong to the husband and wife jointly during their lives, and on the death of either pass absolutely to the survivor. *Semble*—The same custom prevails with regard to special and costly clothes (*i e*, clothes intended to be worn only on special occasions and ceremonies) presented during the same period. BYRAMJI BHIMJIBHAI *v* JAMSETJI NOWROJI KAPADIA

[I. L. R., 16 Bom., 630

11. ——— *Parsis—Ornaments given to wife by her father*—The rule laid down in *Graham* v *Londonderry*, *3 Atk*, *393*, with regard to a husband's rights over ornaments given to his wife by her father applied to Parsis. DHANJIBHAI BOMANJI GUGRAT *v* NAVAZBAI

[I. L. R., 2 Bom., 75

12. ——— *Husband managing separat*

and wife are

perty of her

of and manages, his possession ...

be his wife's. He has no right to part with such property without her consent SOODA RAM DOSS *v.* JOOGUL KISHORE GOOPTO 24 W. R., 274

Held that ...

HUSBAND AND WIFE—*continued.*

See HURT—GRIEVOUS HURT.
[I. L. R., 18 Calc., 49

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
[I. L. R., 18 Bom., 316

See KIDNAPPING.
[I. L. R., 17 Calc., 298

See LIMITATION ACT, s. 23.
[I. L. R., 16 Bom., 714, 715 note
I. L. R., 13 All., 126

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

See CASES UNDER MAHOMEDAN LAW—MARRIAGE.

See MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

See CASES UNDER MARRIAGE.

See MARRIED WOMAN'S PROPERTY ACT, s. 8 . I. L. R., 11 Bom., 348

See PARSI MARRIAGE AND DIVORCE ACT, s. 30 . I. L. R., 18 Bom., 366

See PARSIS . . 3 Bom., A. C., 113
[I. L. R., 13 Bom., 302
I. L. R., 17 Bom., 146
I. L. R., 22 Bom., 430
I. L. R., 23 Bom., 279
I. L. R., 24 Bom., 465

See CASES UNDER PARTIES—PARTIES TO SUITS—HUSBAND AND WIFE.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . . Cor., 82
[W. R., 1864, 318
I. L. R., 15 Bom., 177

See RES JUDICATA—CAUSES OF ACTION.
[I. L. R., 18 Bom., 327

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS.

See SUCCESSION ACT, s. 4.
[13 B. L. R., 383
I. L. R., 1 Calc., 412
I. L. R., 23 Calc., 506

See THEFT . . . 6 Bom., Cr., 9
[8 Bom., Cr., 11
I. L. R., 17 Mad., 401

See WILL—CONSTRUCTION.
[4 B. L. R., O. C., 53

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.
[I. L. R., 18 Bom., 468

1. ———— **Partnership as traders**—*Authority from husband.*—When a husband and wife are trading in partnership, it is only reasonable to presume that an authority from the husband on matters connected with the partnership is binding on the wife. KOTOO *v.* KO PAY YAH . 6 W. R., 254

2. ———— **Ante-nuptial settlement**—*Wife a minor—Settlement made by guardian—Fraud of guardian.*—Where a wife (a minor) sought to enforce an ante-nuptial settlement as against the creditors of her husband, the settlement having been made and negotiated on her behalf by her father as her guardian; and the father, under such circumstances, had made a contract for her which was void as against third persons, on the ground of public policy,—*Held* that such a contract could no more be enforced by the minor against those third persons than it could be enforced by her, had she been an adult and made the contract herself. It is unnecessary, in order to avoid an ante-nuptial settlement as against a minor wife and her children, where the conduct of the father who brought about the marriage has been shown to be fraudulent, to show that the minor was a party to the fraud. POGOSE *v.* DELHI AND LONDON BANKING CO.
[I. L. R., 10 Calc., 951

3. ———— **Wife's equity to a settlement**—*Illegitimacy—Right to bastard's estate—Execution of decree.*—*M*, the widow and administratrix of a bastard who had died intestate and without issue, received a letter in 1841 from the Lords Commissioners of the Treasury, stating that they did not deem it expedient to take any steps for the assertion of the rights of the claim with regard to her late husband's estate. Previous to this, *M* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon the marriage, and since the marriage her second husband had had the management of the property. In execution of a decree against the husband, his right, title, and interest in and to a portion of the property were put up for sale, and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M*, who contended that her husband took no interest in the two-thirds of the property which went to the Crown which could be attached and sold in execution. In a suit by the plaintiff to establish her rights over the property,—*Held* that the rights of her husband extended over the whole estate and were rights which could be seized in execution and sold. *M*'s husband being without property and in great difficulties, and subsisting only on a life-pension of R118 a month, *M* was entitled to a settlement. TOOLSEEMONEY DOSSEE *v.* CORNELIUS . 11 B. L. R., 144

4. ———— **Deed of separation**—*Agreement not to molest husband—Right of suit.*—A suit is not maintainable by a wife for an allowance from her husband on an agreement, for which the sole consideration is a stipulation that the wife is not to communicate with or molest her husband, such stipulation falling within the general rule that a deed of separation entered into by husband and wife without the intervention of trustees is void. HUGHES *v.* HUGHES . . . . . 16 W. R., 250

5. ———— **Principal and agent**—*Agency—Authority of wife to pledge husband's credit.*—*Held* that the liability of a husband for his wife's debts depends on the principles of agency, and the husband can only be liable when it is shown that he has expressly or impliedly sanctioned what the wife has done. In a suit by a creditor to recover from his

IDOL—*concluded.*

See HINDU LAW—PARTITION—AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION 8 B. L. R, 60

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—*BEQUEST TO IDOL.*
[2 B. L R, A. C, 137 note

——— **Grant of letters of administration for debutter property of—**

See PROBATE ACT, ss 18 23
[I. L R., 12 Calc., 375

——— **Joint ownership in right of worship of—**

See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.
[I. L. R., 17 Bom, 271

——— **Position of—**

See LIMITATION ACT, ART 144—ADVERSE POSSESSION I. L. R, 23 Calc, 536

See PARTITION—RIGHT TO PARTITION—GENERAL CASES 14 B. L R., 166
[I. L R., 6 Bom., 298

——— **Suit brought in name of—**

See PLAINT—AMENDMENT OF PLAINT
[I. L. R., 19 All., 330

——— **Suit for turn of worship of—**

See LIMITATION ACT, 1877, ART 131 (1859 s 1, cl 16) . 6 B. L. R, 352
[I. L R., 4 Calc, 683
I. L R, 8 Calc, 807

ILLEGAL CESS.

See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—ILLEGAL CASES

THAKOOR 23 W R., 447

2. ——— **Payments in nature of rent in kind**—*Local custom*—Certain payments which

joon Sahoo v *Anund Singh, 10 W R, 257,* distinguished BUDHUA ORAWAN MAHTOON v JUGGESSUR DOYAL SINGH 24 W. R., 4

[24 W. R., 90

ILLEGAL GRATIFICATION.

See PUBLIC SERVANT 7 B. L R, 446
[21 W. R, Cr, 9
I. L. R, 1 All., 530
I. L. R., 4 Calc, 376

ILLEGAL GRATIFICATION—*continued*

1. ——— **Public servant receiving money for services rendered**—*Penal Code (Act XLV of 1860), s 161*—A person who receives money from others for the purpose or with the object of rendering any service to them is guilty of an offence under s 161, Penal Code IN THE MATTER OF NAJEEMUDDIN 4 C. W. N., 798

2 ——— **Attempt to obtain bribe**—*Penal Code, s. 161—Asking for bribe*—To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit

ring to his own influence in that department and instancing two cases in which by that influence in-

tion of it,—*Held* that the offence of attempting to obtain a bribe was consummated EMPRESS v BALDEO SAHAI I. L. R, 2 All, 253

3 ——— **Non-commission of act for**

for a legal conviction, whether the serishtadar did or did not influence or try to influence the Principal Sudder Ameen, since s 161 of the Penal Code expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for what he has not done," is punishable QUEEN v KALEECHURN
[3 W. R., Cr., 10

4 ——— **Money paid to obtain release**

fication, but as money extorted AKHOY KUMAR CHAKRABUTTY v JAGAT CHANDRA CHAKRABUTTY
[4 C. W N, 755

5. ——— **Taking bribe for inducing public servant to forbear to do certain offi-**

punishable, not under s. 161 but under s 162 of the Penal Code QUEEN v OBHOYCHURN CHUCKERBUTTY 3 W. R., Cr., 19

6 ——— **Patwari taking grain in consideration of showing favour to giver**—*Penal Code, ss 161, 165*—A patwari taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari should be convicted under s 161, and not s 165, of the Penal Code QUEEN v MUDSOODDEEN
[2 N. W, 148

7. ——— **Agreement to restore village mahars to office on payment of Rs300 towards repair of a village temple**—*Penal Code (Act XLV of 1860), s 161—Public servant—*

HUSBAND AND WIFE—*continued.*

alter its character and conditions, and that the property purchased was her own separate property and was not subject to the debts or liabilities of her husband. HURST *v.* MUSSOORIE BANK

[I. L. R., 1 All., 762

14. ——— *Legacy—Property purchased with legacy—Sale in execution of decree—Right of purchaser.*—*C*, a married woman, was entitled, under her father's will, to certain money "absolutely for her sole use and benefit, free from the control, debts, and liabilities of her husband," and under such will such money was payable to her "on her sole and personal receipt." While so entitled, *C* borrowed from her husband the purchase-money of certain real property, on the understanding that she would pay him back such money when she obtained her legacy. The conveyance of such property was made to *C*, but not to her separate use. *C* subsequently assigned her legacy by sale, and out of the money obtained by such assignment repaid her husband the purchase-money of the property purchased. *C* and her husband were married before Act X of 1865 came into force, and had acquired an Indian domicile. *Held* that, even if English law were applicable in the case, and any interest in the property purchased passed to *C*'s husband, it passed, in view of the agreement between her and her husband, on an implied contract that he would hold the property in trust for her, and that, where such property was purchased at a sale in the execution of a decree against *J* as his property, with notice that such property was claimed by *C* as her separate property, such purchase did not defeat the title of *C*. BERESFORD *v.* HURST . . . **I. L. R., 1 All., 772**

15. ——— **Married Woman's Property Act (III of 1874), ss. 7 and 8**—*Succession Act (X of 1865), s. 4—Action for trover—Wife against husband.*—The plaintiff was, at the time of her marriage in 1870, possessed in her own right of certain articles of household furniture, given to her by her mother. Since January 1875 she had lived separate from her husband, but the furniture remained in his house. In February 1875 her husband mortgaged the property to *B*, without the plaintiff's knowledge or consent. In June 1875 one *K C B*, a creditor, obtained a decree against the husband and *B*, in execution of which he seized the furniture as the property of the husband, and it remained in Court subject to the seizure. In July 1875 the plaintiff instituted a suit in her own name in trover to recover the articles of furniture or their value from her husband, on the ground that they were her separate property, and in August 1875 she preferred a claim in her own name to the property under s. 88 of Act IX of 1850. It was found on the facts that the furniture was the property of the plaintiff. The husband and wife were persons subject to the provisions of the Succession Act, s. 4, and the Married Woman's Property Act, 1874. *Held* that, under s. 7 of the latter Act, the suit was maintainable against the husband. *Held* also that the judgment for the plaintiff in the suit, to recover the furniture or its value from the husband, could not, without satisfaction, have the effect of vesting the

HUSBAND AND WIFE—*concluded.*

property in the husband from the time of the conversion, and therefore the claim under Act IX of 1850 was also maintainable. *Brinsmead* v. *Harrison, L. R., 6 C. P., 584*, followed. HARRIS *v.* HARRIS. HARRIS *v.* KOYLAS CHUNDER BANDOPADIA

[I. L. R., 1 Calc., 285

16. ——— **ss. 4, 7, 8**—*Execution of decree against separate property of wife—Domicile—Agency.*—Act III of 1874 (The Married Woman's Property Act) applies to persons having an English domicile. Accordingly, the separate property of a married woman (whose husband's domicile is English) is alone bound by all debts, obligations, and engagements incurred by her in the management of a business carried on by her alone, and execution of any decree obtained against her in respect of such business should be limited to her separate property. The principle that the wife is impliedly carrying on business as the agent of the husband is excluded by the provisions of Act III of 1874. ALLUMUDDY *v.* BRAHAM

[I. L. R., 4 Calc., 140 : 2 C. L. R., 431

HUTS.

——— **Right of tenant to remove—**

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.

[14 B. L. R., 201

——— **Seizure of, in execution.**

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[8 B. L. R., 508, 510 note : 512 note : 514 note
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See SALE IN EXECUTION OF DECREE—IMMOVEABLE PROPERTY [I L R, 1 All., 348
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See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY [I. L R., 21 Bom, 387

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ILLEGAL GRATIFICATION—*concluded.*

Revenue and police patel—Official Act.—The mahars of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the patel, at which the patel was present to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying a sum of R300 towards the repair of the village temple. *Held* that the patel, being a public servant, had committed an offence under s. 161 of the Penal Code. QUEEN-EMPRESS *v.* APPAJI BIN YADAVRAO

[I. L. R., 21 Bom., 517

8. ———— Proper order on conviction—*Sentence—Order to refund money.*—On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. IN THE MATTER OF MUTTY LALL CHATTOPADHYA . . . . 10 W. R., Cr., 74

ILLEGITIMACY.

See CASES UNDER HINDU LAW—MARRIAGE.

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[11 B. L. R., 144

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

See CASES UNDER MARRIAGE.

———— Proof of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PETITIONS.

[I. L. R., 10 Mad., 334

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.

[I. L. R., 18 Bom., 468

———— Question of—

See EXECUTION OF DECREE—EXECUTION BY OR AGAINST REPRESENTATIVES.

[I. L. R., 2 Calc., 327
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See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

[I. L. R., 2 Calc., 327
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I. L. R., 4 All., 92

1. ———— Right to bastard's estate—*Escheat—Non-assertion of claim by Crown—Estoppel.*—*M*, the widow and administratrix of a bastard who had died intestate and without issue, received a letter in 1841 from the Lords Commissioners of the Treasury stating that they did not deem it expedient to take any steps for the assertion of the rights of the Crown with regard to her late husband's estate. Previous to this, *M* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon this marriage, and since the time of the marriage, *M*'s second husband had had the exclusive management of the property. In execution of a decree against the husband, his right, title, and

ILLEGITIMACY—*concluded.*

interest in and to a portion of the property were put up for sale and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M*, who contended that her husband took no interest in the two-thirds of the property which went to the Crown which could be attached and sold in execution. In a suit by the plaintiff to establish her rights over the property,—*Held* that the Crown would be estopped by the line adopted by the Commissioners of the Treasury in 1841 from asserting its claim to the two-thirds; and that *M* had a good title to the whole estate even as against the Crown. TOOLSEEMONEY DOSSEE *v.* CORNELIUS . . 11 B. L. R., 144

2. ———— Letters of administration—*Parties—Administrator General's Act, XXIV of 1867, s. 15—Succession Act (X of 1865), s. 224.*—The plaintiffs applied for probate of the will of one *R D*, to be granted to them as executor and executrix thereof. The Administrator General had entered a caveat and appeared to oppose the application. The petition for probate was therefore ordered to be treated as a plaint, both parties to file a written statement, and the case was set down to be heard. At the hearing it appeared *R D* was illegitimate, and the issue for trial was whether the document was or was not her will. *Held* that the Administrator General would be entitled to letters of administration under s. 15, Act XXIV of 1867, and that it was not necessary to make the Government a party to the suit. *Semble*—The Administrator General would have been entitled to apply for letters of administration under s. 224 of Act X of 1865. DEMELLO *v.* BROUGHTON . . . 11 B. L. R., Ap., 6

ILLEGITIMATE CHILDREN.

See CUSTODY OF CHILDREN.

[I. L. R., 4 Calc., 374

See CASES UNDER HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.

See CASES UNDER HINDU LAW—MAINTENANCE—ILLEGITIMATE CHILDREN.

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.

[3 B. L. R., P. C., 1

See HINDU LAW—PARTITION—RIGHT TO PARTITION—ILLEGITIMATE CHILDREN.

[I. L. R., 12 Mad., 401

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO. I. L. R., 18 Bom., 468
[I. L. R., 19 Mad., 461
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[22 W. R., 367

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[I. L. R., 7 Calc., 13

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the duration of the exemption of the inam village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee VASUDEV ANANT v RAMKRISHNA
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See BOMBAY LAND REVENUE ACT, ss 85, 86 I. L. R., 16 Bom., 586

See BOMBAY LAND REVENUE ACT, s 216
[I. L. R., 18 Bom., 525

See BOMBAY LOCAL FUNDS ACT 1869, s. 8
[I. L. R., 17 Bom., 422

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE 6 Bom., A. C., 23
[I. L. R., 3 Bom., 141, 348
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[I. L. R., 16 Bom., 649

See LANDLORD AND TENANT—EJECTMENT—GENERALLY.
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[I. L. R., 7 Mad., 262
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See RESUMPTION—EFFECT OF RESUMPTION
[1 Bom., 22
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———— **Rights of common.**—Unless the terms o enclose ground cannot inamdar
[I. L. R., 3 Bom., 14

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See CASES UNDER ACCUMULATIONS.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION OF INCOME AND ACCUMULATIONS

INCOME-TAX.

See BENGAL CESS ACT, 1871
[I. L. R., 4 Calc., 576

INCOME TAX ACT (XXXII OF 1860).

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[24 W. R., 173

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[11 W. R., 425

Collector, and the mere sending on the tehsildar's report with an expression of the Collector's general desire to prosecute defaulters cannot be held tantamount to the institution of a prosecution at the instance of the Collector The provisions of s. 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. QUEEN v. CHEIT RAM
[2 N. W., 113

INCOME TAX ACTS (IX OF 1869 AND XXIII OF 1869).

See APPEAL IN CRIMINAL CASES—ACTS—INCOME TAX ACT 14 W. R., Cr., 71

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[7 Bom., Cr., 76
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INCOME TAX ACT (II OF 1886).

———— ss. 3, 4, 5—*Religious endowment—Sajjadanashin—Khankah—Liability of the Sasseram Sajjadanashin to pay Income tax—*

not liable to be assessed with income-tax under the provisions of Act II of 1886 in respect of such moneys as he draws from the Khankah properties for the purpose of his own maintenance and that of his family SECRETARY OF STATE FOR INDIA v. MOHIUDDIN AHMAD I. L. R., 27 Calc., 674

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See RIGHT OF SUIT—TORTS. [3 Agra, 390

See CASES UNDER SENTENCE—IMPRISONMENT.

See WHIPPING . I. L. R., 16 Bom., 357

——— **Period of imprisonment of judgment-debtor**—*Civil Procedure Code, 1882, s. 342.*—The Court cannot fix any period for the imprisonment of a judgment-debtor under Civil Procedure Code, s. 342. SUBUDHI *v.* SINGI [I. L. R., 13 Mad., 141

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See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

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[I. L. R., 3 Calc., 293
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See TRUST . I. L. R., 11 Mad., 360

——— **Occupier of land without title**—*Right to compensation for improvements.*—Where a person had held a property on a false title, and the rightful owner had recovered possession after much trouble,—*Held* that the former was not entitled to compensation for improvements which he had made for his own convenience, and which were not made as the latter would have required. WAHEDOOLLAH *v.* GOLAM AKBUR . . . 25 W. R., 205

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[11 Bom., 39
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See PARTITION—RIGHT TO PARTITION—GENERALLY . I. L. R., 21 Bom., 458

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See RESUMPTION—EFFECT OF RESUMPTION.
[1 Bom., 22
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[I. L. R., 17 Bom., 431
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——— **Enfranchisement of**—

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[I. L. R., 15 Mad., 284
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——— **Rent fixed by**—

See MADRAS REGULATION XXV OF 1802, S. 4 . . I. L. R., 16 Mad., 34

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1. ——— **Certificate of, Effect of**—*Mad. Reg. IV of 1831.*—The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person to whom it was granted, nor is his decision one over which the Civil Courts have no jurisdiction. His duties were not of a judicial character, but he was authorized to deal with those in possession of inams on certain terms varying with the nature of the holding which incidentally he was to determine, but for the prescribed purpose only, the nature of the title by which the person whom he found in possession actually held it. *Sundaramurti Nudali* v. *Vallinayaki Ammal, 1 Mad., 465,* distinguished. VISSAPPA *v.* RAMAJOGI [2 Mad., 341

2. ——— **Effect of decision of**—*Right of suit by inamdar against Government officer infringing decision.*—The Inam Commissioner's decisions, under Act XI of 1852, on matters falling within his jurisdiction, are final, except when and as modified by an appeal to Government in its judicial capacity under the Act, and binding not only upon the inamdar, but upon the Government itself in its executive capacity, and where a Government officer infringes the rights of an inamdar thus determined, an action lies against him in the Civil Court. VASUDEV PANDIT *v.* COLLECTOR OF PUNA [10 Bom., A. C., 471

3. ——— In an enquiry under Act XI of 1852 the Inam Commissioner, on the 30th January 1865, decided that a certain inam

INAM COMMISSIONER—*concluded*

village should be continued to the male descendants of the original grantee *Held* that the decision of the Inam Commissioner was only intended to regulate the duration of the exemption of the inam village *from assessment, and not to regulate the enjoyment of* it as between the heirs of the original grantee VASUDEV ANANT v RAMKRISHNA
[I. L. R., 2 Bom, 529

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See BOMBAY LOCAL FUNDS ACT 1869 s 8
[I L R., 17 Bom., 422

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE 6 Bom, A C, 23
[I L R, 3 Bom, 141, 348
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I L R, 8 Mad, 351
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See RESUMPTION—EFFECT OF RESUMPTION
[1 Bom 22
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———— **Rights of common**—Unless the terms o mdar to enclose pasture ground lage he cannot do being an inamdar VISHVANATH v MAHADAJI
[I L. R., 3 Bom., 147

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See BENGAL CESS ACT, 1871
[I. L R, 4 Calc., 576

INCOME TAX ACT (XXXII OF 1860)

See ESTOPPEL—STATEMENTS AND PLEADINGS 6 W R, 252
[24 W R, 173

See RIGHT OF SUIT—INCOME TAX
[11 W R, 425

———— **(IX of 1869), ss 24, 25, 27**—*Appeal in criminal case—Failure to make payment—*

the prosecution was instituted at the instance of the Collector and the mere sending on the tehsildar's report with an expression of the Collector's general desire to prosecute defaulters cannot be held tantamount to the institution of a prosecution at the instance of the Collector The provisions of s 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted QUEEN v CHEIT RAM
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———— **ss 21, 22**—*Liability of agent of company not resident in India*—The liability for income tax of the agent of a company not resident

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———— **Occupier of land without title**—*Right to compensation for improvements.*—Where a person had held a property on a false title, and the rightful owner had recovered possession after much trouble,—*Held* that the former was not entitled to compensation for improvements which he had made for his own convenience, and which were not made as the latter would have required. WAHEDOOLLAH *v.* GOLAM AKBUR . . . 25 W. R., 205

See FURZUND ALI KHAN *v.* AKA ALI MAHOMED
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See GRANT—RESUMPTION OR REVOCATION OF GRANT.
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[11 Bom., 39
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See PARTITION—RIGHT TO PARTITION—GENERALLY . I. L. R., 21 Bom., 458

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[1 Bom., 22
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———— **Enfranchisement of**—

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[I. L. R., 13 Bom., 442

———— **Rent fixed by**—

See MADRAS REGULATION XXV OF 1802, s. 4 . . I. L. R., 16 Mad., 34

See MADRAS RENT RECOVERY ACT, s. 1.
[I. L. R., 16 Mad., 40

1. ———— **Certificate of, Effect of**—*Mad. Reg. IV of 1831.*—The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person to whom it was granted, nor is his decision one over which the Civil Courts have no jurisdiction. His duties were not of a judicial character, but he was authorized to deal with those in possession of inams on certain terms varying with the nature of the holding which incidentally he was to determine, but for the prescribed purpose only, the nature of the title by which the person whom he found in possession actually held it. *Sundaramurti Nudali* v. *Vallinayaki Ammal, 1 Mad., 465,* distinguished. VISSAPPA *v.* RAMAJOGI
[2 Mad., 341

2. ———— **Effect of decision of**—*Right of suit by inamdar against Government officer infringing decision.*—The Inam Commissioner's decisions, under Act XI of 1852, on matters falling within his jurisdiction, are final, except when and as modified by an appeal to Government in its judicial capacity under the Act, and binding not only upon the inamdar, but upon the Government itself in its executive capacity, and where a Government officer infringes the rights of an inamdar thus determined, an action lies against him in the Civil Court. VASUDEV PANDIT *v.* COLLECTOR OF PUNA
[10 Bom., A. C., 471

3. ———— In an enquiry under Act XI of 1852 the Inam Commissioner, on the 30th January 1865, decided that a certain inam

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due at the end of Jeyt 1282 *Held* that the mortgagee in possession was liable for them. MACNAGHTEN v. BHEEKAREE SINGH . . 2 C. L. R., 323

INDIGO FACTORY.

——— Assignment of—

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[B. L. R., Sup. Vol., 54
10 W. R., 311

——— Lien by custom for price of seed—*Liability of mortgagee of factory in possession.*—*A* sold to *B*, the proprietor of an indigo concern, of which *C* was a mortgagee, certain bags

ssession of *B*'s and *C* for the in the absence of any agreement by *C* to pay the debts of *B*, *C* could not be held liable. There is no lien by custom upon an indigo factory, or upon the produce of an indigo factory, in respect of any debt of the factory MONOHUR DASS v MCNAGHTEN
[I. L. R., 3 Calc., 231

INDIGO PLANTER.

See INSOLVENT ACT, s 60
[I. L. R., 21 Calc, 1018

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See CASES UNDER MINOR.

INFANT MARRIAGES.

See HINDU LAW—MARRIAGE—INFANT MARRIAGE, THEORY OF
[I. L. R, 1 Calc, 289

INFANTICIDE.

———Infanticide Act, VIII of 1870, s. 2—*Rules made by Local Government, North-Western Provinces, Rule VI—Act XVI of 1873, s 8, cl (3)—Departures of women of proclaimed families from their homes—Omission to report such de-*

police station, not only the occurrence, among proclaimed families in the village, of births, of the deaths of infants, and of the removal of pregnant women to other villages, but also "other deaths, removals, and arrivals," this last duty is not cast upon him by the provisions of the Infanticide Act itself,

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for Rule VI is not on this point consistent with the Act *Held*, therefore, that a chowkidar who had

v BHUPAL . . . I. L. R., 6 All., 380

INFORMATION OF COMMISSION OF OFFENCE.

See ABETMENT 4 B. L R, A Cr., 7
[24 W. R, Cr, 26

See ACCOMPLICE 24 W. R., Cr, 55
[I. L R, 21 Calc, 328

See CASES UNDER CRIMINAL PROCEDURE CODES, s 45 (1872, s 90)

See PENAL CODE, s 217
[I. L. R., 1 Mad., 266

See REMAND—CRIMINAL CASES
[9 B. L. R., Ap., 31

and in such manner as may be most likely to be effectual for the apprehension of the offenders ANONYMOUS . . 3 Mad., Ap, 31

[3 Mad, Ap, 31

lic servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation IN THE MATTER OF PHOOL CHUND BROJOBASSEE 16 W.R., Cr, 35

IN THE MATTER OF THE PETITION OF LUCHMUN PERSHAD GORGO 18 W. R, Cr, 22

4. ——— Presumption of knowledge of offence—*Penal Code, s 176—Refusal to join in offence* —The refusal of a person to join in a dacoity

v. *LAHAI MUNDUL* . . 7 W. R., Cr., 29

5. ——— Omission to report offence—*Penal Code, ss. 118, 176—Criminal Procedure Code, 1861, s. 138*—*Held* that the prisoner could not be punished under s 118 of the Penal Code, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence, but that he should be convicted under s. 176

INSOLVENT ACT (11 & 12 Vict., c. 21) *—continued.*

of R12,000 advanced, died on the 7th September 1874, leaving a will whereby he appointed his wife *C* sole executrix and devised to her factory X. On the 16th September 1876, another mortgage was executed whereby *C* further charged factory X with the repayment of further advances, and *B* mortgaged factory Y as a further security, the mortgage containing a stipulation for repayment, within one month after notice of the balance due in excess of R12,000. *B* became insolvent in July 1882. No demand was made. On the 5th January 1877 a balance of R27,552 remained due, which, with interest up to July 1882, was increased to R42,564. The liquidators of *S & Co.*, who had in the meantime dissolved partnership, sought to prove against *B*'s estate for R30,564 after deducting the R12,000 advanced to *A*. *Held* that the liquidators (if entitled to prove at all) could only prove for the difference between the sum of R30,564 and the value of the mortgage security after realizing or giving credit for the value of the first security. IN THE MATTER OF AGABEG

[12 C. L. R., 165

8. ———— *Sale of mortgaged property—32 & 33 Vict., c. 71 (Bankruptcy Act, 1869)—Rules 78 to 81.*—The insolvents filed their petition on 17th March 1873, and obtained their final discharge on 2nd September 1873. After their discharge, a creditor, to whom they had mortgaged certain, property, made an application for the sale of the mortgaged properties, and the petitioner prayed for an order for an account of what was due on the mortgage, and for a sale under the conduct of the Official Assignee; that he should be at liberty to bid and set off the amount of the purchase against the sum due to him; that if any other person became the purchaser, the proceeds should be paid to him in liquidation of his debt, and that, after crediting that amount, the applicant might rank as a creditor to the estate for any remaining balance. The Court ordered the sale to be made as prayed in the petition, the Official Assignee to reserve a price on the property, and duly advertise it for sale; if not sold by public auction, *application should be made to the Court* by the Official Assignee for leave to sell by private contract. IN THE MATTER OF HOWARD BROTHERS

[13 B. L. R., Ap., 9

9. ———— *Distribution of assets—Creditor taking benefit of property which does not pass to Assignee.*—The principle that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all the creditors, and at the same time be allowed to come in *pari passu* with the other creditors for satisfaction out of the remainder of that fund, does not apply where that creditor obtains by his diligence something which did not, and could not, form a part of the fund. COCKERELL *v.* DICKENS

[2 Moore's I. A., 353

10. ———— *Surplus after paying creditors in full—Interest on debts—Nature of debts on which interest is payable.*—If the estate is more than sufficient to pay the creditors twenty shillings in the pound, the surplus is to be applied to the payment of interest on debts bearing interest by contract. The debts on which interest ought to be allowed to creditors out of a surplus remaining in the Official Assignee's hands, after payment of the scheduled amount of debts, are such only as bear interest by the contract of the parties, either express or implied; not upon judgments or any other debts with respect to which interest could only be recovered *quâ* damages. IN THE MATTER OF MACCLEAN

[1 Mad., 220 note

———— s. 42—*Preferential claims—Costs—European assistants and native workmen of insolvent firm.*—The application for payment under s. 42 of the Insolvent Act must be taken to imply consent to a dissolution of the contract of service by the filing of the petition. Claims, therefore, by servants of an insolvent firm only allowed up to date of insolvency, not to the end of the month. Claim of servant who had left insolvent's service before date of insolvency allowed, but only for so much as accrued due to him within the six months previous to insolvency. Sum agreed to be paid to an assistant as extra salary or remuneration for making up insolvent's statement to be laid before the creditors, disallowed. Costs of the applications allowed out of the estate. One claimant was manager of the insolvent's business at Simla on a salary of R350 per month, up to 11th April 1867, when one of the partners wrote to him, promising him commission to make his salary up to R500. During the six months previous to the insolvency he had received R3,100, being more than the salary claimed for six months. Claim disallowed. IN THE MATTER OF PARKE PITTAR & CO.

[6 B. L. R., Ap., 144

———— s. 44—*Omission to claim dividend—Expunging names of creditors from schedule—Official Assignee a trustee for creditors admitted in schedule.*—The applicant was a creditor of the insolvents, who filed their schedule in Bombay in July 1868. The schedule contained the names of twenty-six creditors, twenty of whom were residents in Karachi and six in Multan. The debts amounted, in the aggregate, to R51,819-13, and were all admitted, some of them being for trifling sums. The applicant was the largest creditor on the schedule, his debt amounting to R27,500. The insolvents obtained their personal discharge in March 1869. Since the date of the insolvency, one dividend had been declared, *viz.*, a dividend of one per cent. in 1870. Only one creditor had applied for and received that dividend. On the 5th July 1886, the applicant for the first time applied for a dividend on his claim. He was then, after so long a time, unable to adduce any proof in his own possession in support of his claim, but was ultimately allowed by the Official Assignee to prove his claim from the insolvent's books. Having thus proved his claim against the estate, the applicant obtained a rule on the 5th October 1887, calling on the other creditors of the insolvents to show cause why they should not come in and prove their claims, or, in default, why their names should not be expunged from their insolvent's schedule. *Held*, discharging the rule, that the Court had *no power* to expunge the name of a

INSOLVENT ACT (11 & 12 Vict, c. 21) —*continued*

CURN JEWRAJ I. L. R, 12 Bom., 342

——— s. 46—*Winding up of company—Payment of servants' salaries—Companies Act, 1866, s. 173*—Under s 46 of the Insolvent Act, the Court, on the failure of a Bank, ordered the salaries of the employes of the Bank to be paid, the payment to be confined to the salary already earned at the date of failure of the Bank. The Court refused a more extended application for six months' salary in lieu of notice and the amount payable to them under their agreements as passage money and expenses of passage, which it was contended could be granted under s. 173 of the Companies Act IN THE MATTER OF THE COMPANIES ACT, 1866, AND OF THE AGRA AND MASTERMAN'S BANK

[1 Ind Jur, N. S, 350, 352

But *see* IN THE MATTER OF THE CALCUTTA STEAM TUG ASSOCIATION 2 Ind Jur, N S, 17

1 ——— s 47—*Personal discharge—Liability of insolvent to pay subsequent calls—Winding up of company—Companies Act, 1866, ss 98, 100*—An insolvent, a holder of shares in a joint-stock company, on the 21st of May 1866,

pay calls on the shares still continued, notwithstanding his personal discharge. IN RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION DAMASKAR S CASE . 8 Bom, O C., 117

2. ——— and ss 56 and 73—*Order of personal discharge—Finality of order—Proce-*

set aside except upon the grounds specified in s 56 of that Act The only course open to an opposing creditor is to appeal against the order under s. 73 IN RE DAYABHAI SARUPCHAND EX PARTE SORABJI BYRAMJI COTAH . I. L. R., 23 Bom., 474

——— s. 49.

See CIVIL PROCEDURE CODE, 1882, s 244 —PARTIES TO SUIT.

[I. L. R., 7 All, 752

INSOLVENT ACT (11 & 12 Vict., c. 21) —*continued*

to such suit with a view of setting aside the judgment

framed under it) is not affected by the amalgamation of the Courts, and under s 49 of the Insolvent Act,

execution, but where no schedule has been filed, the Official Assignee cannot adopt that course IN RE HUNT, MONNET & Co EX PARTE GAMBLE v. BHOLAGIR MANGIR . . 1 Bom, 251

——— s 50

See BAIL I. L. R, 17 Bom, 334

1. ——— *Fraudulent practice in trade—Power of Court to punish criminally*—Certificate refused where insolvent had been guilty of fraudulent practices in trade Certificate suspended in the case of a partner at home who, though innocent of the fraudulent practices, omitted to give notice to the parties intended to be defrauded The Insolvency Court has no power to punish criminally

2. ——— *Imprisonment of insolvent on criminal side—False entries in books—Fraudulent preference—Fraudulent transfers—Warrant, Illegality of—Concealment of property*—S 50 of the Insolvent Act provides a punishment by way of penalty, and before an insolvent can be punished under that section, he must be shown by legal evidence to have committed, on some specific occasion, one or other of the offences enumerated in that section A law of this kind, the intention of which is to punish, should be administered as the criminal law is administered, that is to say, specific offences should be charged, not technically specific in the sense of a specific form of indictment, but the Court and the insolvent and all concerned should know what offence the insolvent is being tried for, and the evidence should be directed to the proof of that offence, so that the accused may be in a position to produce evidence to rebut the charge of that offence, and the Judge should specifically find what offence the insolvent has been guilty of, and in his judgment and order and in the warrant it should appear what the insolvent has done A warrant committing an insolvent to jail for offences under s 50 of the Insolvent Act, including, amongst the offences for which he is committed, an offence not contained in that section, is invalid IN THE MATTER OF RASH BEHARY ROY v. BHUGWAN CHUNDER ROY

[I. L. R., 17 Calc, 209

3. *Lower Burma Courts Act (XI of 1889), ss 50 and 69, cls (1) and (c)—Criminal case.*—A petition presented to the Special Court under s. 50, cl. (5), of the Lower Burma Courts

Act, by a person considering himself aggrieved by an order of the Recorder, sitting as Insolvency Commissioner, made under s. 50 of the Insolvent Act, comes before the Special Court as a criminal case, and is therefore to be dealt with, in case of difference of opinion between the members of the Special Court, under s. 69, cl. (*c*), of the Lower Burma Courts Act. The punishment which can be awarded under s. 50 of the Insolvent Act is a punishment for something which the person to be punished has done, and is not inflicted in order to compel him to do something in the future, and the case in which it is inflicted is therefore a criminal case. *Rash Behary Roy v. Bhugwan Chunder Roy, I. L. R., 17 Calc., 209,* followed. YEO SWEE CHOON *v.* CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA

[I. L. R., 19 Calc., 605

4. ——————— and s. 47—*Power of Commission—Adjournment of petition till expiration of imprisonment.*—A Commissioner sitting in Insolvency, while sentencing an insolvent to imprisonment on the criminal side, under s. 50 of the Insolvent Debtors Act, has power in addition to order that the further hearing of the insolvent's petition be adjourned, with or without protection, under s. 47, beyond the expiration of such term of imprisonment. IN RE MANIKJI SHAPURJI KAKA

[5 Bom., O. C., 61

5. ——————— and s. 51—*Conduct of insolvent amounting to offences within ss. 50, 51—Conduct of insolvent considered with reference to the following charges filed against him by opposing creditors, viz., reckless speculation; contracting debts without reasonable expectation of paying them; misconduct in contracting debts; concealment of property; obtaining forbearance by false representations; contracting debts by false pretences; undue preference.*—The insolvent had for many years carried on business in Bombay as a merchant. His firm (Messrs. B. and A. Hormarji) had been established in 1830 by his uncle and father. On the death of the latter in 1882, the insolvent was left the sole surviving partner, and from that time until his failure he carried on the business alone. The failure took place in April 1891, and on the 1st May 1891 he was adjudicated an insolvent. His liabilities were stated to be R47,98,591; his good assets R5,13,903, and his doubtful assets R60,014. His discharge was opposed by six Banks in Bombay with which he had had dealings. The grounds of opposition were as follows:—(1) Reckless speculation; (2) contracting debts without any reasonable expectation, at the time when the same were contracted, of paying the same; (3) gross misconduct in contracting debts; (4) concealment of property; (5) obtaining forbearance from the opposing creditors by making false representations to them; (6) contracting debts by means of false pretences; (7) fraudulently and with intent of diminishing the sum to be divided among his creditors or of giving an undue preference to creditors, having discharged a debt due by the insolvent. It appeared that down to the end of 1889 there was nothing in the dealings of the firm to which objection could be taken. In the first half of the year 1890 the insolvent must have sustained heavy loss, as his mercantile assets over liabilities, which on the 31st December 1889 were R5,50,794, were on the 30th June 1890 reduced to R2,29,612. The charges, however, against the insolvent were based upon his conduct subsequently to the latter date. On that day (30th June 1890) the insolvent nominally possessed four lakhs of rupees, the saleable value of which was about $2\frac{1}{2}$ lakhs. With his finances in this state the insolvent speculated in exchange, and in six months (*viz.*, before the 31st December 1890) he had lost his four lakhs of nominal capital, and 19 or 23 lakhs of rupees besides. The Court *held* (1) as to the first ground of opposition that the insolvent was guilty of rash and reckless speculation. This, however, was not an offence within the meaning of s. 51 of the Indian Insolvent Act (11 & 12 Vict., c. 21). When the insolvent entered into the contracts which had resulted in the loss, he had a fair capital, and though his speculations were excessive in amount, he had a fairly reasonable expectation that there would not be such a fall in exchange as would more than absorb his assets. (2) As to the second and third grounds of opposition, that they were proved in respect of the insolvent's transactions subsequently to December 1890, and that the insolvent was guilty of gross misconduct in contracting debts, having no reasonable or probable expectation, at the time when they were contracted, of paying them, and that his conduct fell within the purview of s. 51 of the Insolvent Act. In December 1890 the insolvent was bankrupt to the extent (at all events) of over 16 lakhs, and had on hand large forward contracts which then showed a further probable loss. In that position he entered into further large speculative sales of exchange. He had then no assets with which to meet any loss. (3) As to the fourth ground of opposition, that it was proved. (4) As to the fifth ground of opposition, that it was not established. On the 18th April 1891 the insolvent called a meeting of creditors and laid a not very candid or truthful statement of his affairs before them. Nothing was then arranged, and the meeting was adjourned for a week, in order that a committee should examine the insolvent's position, etc. It was understood and arranged that in the meantime no steps should be taken against the insolvent, and that he should keep his affairs in *statu quo.* The insolvent, however, swore that he understood he was to make no large payments, but that he was to keep the firm going. During that week the insolvent paid R3,193 due on a bill to one of the Banks and R472 on re-draft account, a few insignificant current expenses and R1,000 to his solicitors, who were preparing a trust-deed to be carried before the creditors. The Court was of opinion that the conduct of the insolvent in making these payments did not amount to the offence charged in the fifth ground of opposition, *viz.*, obtaining forbearance from the opposing creditors by making false representations to them. (5) As to the sixth ground, that it was not established. On the 14th March the insolvent, in answer to enquiries, had assured the manager of the Chartered Bank that his

INSOLVENT ACT (11 & 12 Vict, c. 21) *—continued*

firm was quite sound and solvent, it being then to his knowledge hopelessly insolvent On that day the manager accepted the insolvent's bills for £20,000 for which security was given, and subsequently the insolvent sold one of his own bills for £10 000 to the Bank This however, was in pursuance of a previous contract The evidence of the manager showed that it was because of this contract, and not because of the false representation of the insolvent, that he purchased the draft for £10 000 The Court was of opinion that the transaction did not come within s 50 (6) As to the seventh ground (undue preference), that it was not proved On the 16th April 1891, the day but
his credi
Sons in E
insolvent which he was bound to take up, but the earliest did not fall due until the 20th May 1891 His practice had been to remit money a day or two before bills became due The Court was of opinion that the transaction was not an undue preference within s 50 It was no doubt, a voluntary payment but it was not shown to be a fraudulent discharge of a debt within the section A mere voluntary payment of a debt is not within the purview of the section Such a payment, must be fraudulent and must be made with the intent of diminishing the sum to be divided amongst creditors or of giving an undue preference to any of the creditors From the mere fact of a voluntary payment, fraud of a penal nature cannot be inferred Here nothing more was proved than a voluntary payment by a man in insolvent circumstances The insolvent knew he was in difficulties, but was of so sanguine a nature that he believed he could surmount them, and so R5 000 were sent rather with a view to keep up his English connection than with the fraudulent intent of giving an undue preference Where an undue preference is made penal, the Court must be satisfied that the guilty intention necessary to constitute the offence existed in the mind of the insolvent, and ought not to assume it unless the circumstances point to no other probable conclusion The release by an insolvent of a debt due to him without receiving payment would undoubtedly fall within the scope of s 50 of the Insolvent Act IN THE MATTER OF HORMARJI ARDESIR HORMARJI . . . I. L R, 17 Bom, 313

———— s. 51

See ARREST—CIVIL ARREST

[I. L. R, 13 Mad, 150

1. ———— *Expectation of paying debts —Ground for deferring personal discharge* —The words in s 51 of the Insolvent Act relating to debts contracted—"without having any reasonable or probable expectation at the time when contracted of paying them"—are pointed, not at the case of a man who incurs a debt knowing that he cannot pay

the insolvent's whole debts so greatly exceeded his means of providing for the payment thereof during the time when the same were in course of being contracted, reference being had to his actual

tracted for some years past, and under the circumstances of the case afford ground not for excepting any specified debt under s 51, but for deferring the discharge under s 47 IN THE MATTER OF THE PETITION OF COWIE

[I L. R., 6 Calc., 70 : 7 C. L. R, 19

2. ———— *Trading in reckless manner.*—Reckless trading, although unaccompanied by any legal or moral fraud, is a ground for suspending protection IN RE BAGGOT . Bourke, Ins, 5

3 ———— *Discharge of insolvent after imprisonment—Execution of decree by arrest of insolvent* —Where, under s. 51 of the Insolvent Debtors Act (11 & 12 Vict, c 21), it has been

ment of the insolvent but the detaining creditor, if he wishes to arrest or detain the insolvent for such period must (if he have not already done so, place himself in a position to issue execution against the insolvent IN RE MANCHARJI HIRJI READYMONEY

[5 Bom., O. C, 55

4 ———— and s. 47—*Discharge except as to one debt—Committal on one debt to prison* —By an order made under the provisions of 11 & 12 Vict, c 21, it was directed that an insolvent debtor was entitled to his discharge as to all the debts mentioned in his schedule, save and except the debt due to a certain creditor, and as to such debt that

solvent be committed to custody in respect of this debt for six months. *Held* that the order of committal was within the power given to the Court by ss 47 and 51 of 11 & 12 Vict, c 21. NIXON v CHARTERED MERCANTILE BANK

[I. L. R., 8 Mad., 97

INSOLVENT ACT (11 & 12 Vict., c. 21) —*continued.*

Held the insolvent was entitled to his personal discharge as regards all creditors except the opposing creditor; that the Court had no power under s. 51 to order immediate commitment of the insolvent, inasmuch as the opposing creditor had not placed himself in a position to issue execution against the insolvent, but that the Court could make a prospective order that, with regard to the debt due to the opposing creditor, the insolvent should be entitled to his personal discharge as soon as he should have been in custody at the suit of that creditor for the period of six months. *Quære*—If the debt be satisfied out of the proceeds of sale of the mortgaged properties or otherwise, whether the effect of such payment would be to relieve the insolvent from the penalty prescribed by s. 51. IN THE MATTER OF SARAT KUMAR SEN

[I. L. R., 26 Calc., 973
4 C. W. N., 32

6. ———— *Commissioner in Insolvency, Power of—Committal to jail.*—The Commissioner in Insolvency committed an insolvent to jail by an order under s. 51 of the Insolvent Act. *Held* by the Full Bench that an order made under s. 51 of the Insolvent Act is a final order, and a Commissioner in insolvency has no power under that section to commit an insolvent to jail, but must leave the excepted judgment-creditors (if any) to their ordinary remedies for the time mentioned in the order. *Nixon* v. *Chartered Mercantile Bank, I. L. R., 8 Mad., 97,* overruled. SAMARAPURI *v.* PARRY & CO.

[I. L. R., 13 Mad., 150

———— s. 58—*Jurisdiction—Practice—Order to person to attend for examination.*—The insolvent filed his petition in December 1865, and in January 1866, on his application for his personal discharge under s. 47, he was ordered to be imprisoned. He never applied for his discharge under s. 59 or 60 of the Indian Insolvent Act (Stat. 21 & 22 Vict., c. 21). When he had completed the term of his imprisonment, he left Bombay, and went to Morar and ultimately settled at Aligarh in the North-West Provinces. In August 1886, the Official Assignee was informed that the insolvent was possessed of landed property at Aligarh, and also considerable moveable property. On the 25th August 1886, the Official Assignee obtained a rule *nisi* calling on the insolvent to show cause why he should not hand over all this property to the Official Assignee for the payment of creditors. On the 10th August 1887, an order was made by the Insolvent Court under s. 58 of the Insolvent Act (Stat. 11 & 12 Vict., c. 21) directing the insolvent to appear before the Court on the 21st September 1887, to be examined touching his estate and effects and dealings and transactions. The insolvent appealed against this order, and contended that the Court had no greater powers than those possessed by the High Court, and consequently could not order the attendance of any person resident more than two hundred miles from Bombay. *Held* that the Insolvent Court had jurisdiction to make the order. IN RE COWASJI OOKERJI . . . **I. L. R., 13 Bom., 114**

———— s. 59 and s. 7—*Order of discharge, Effect of—Interest received after order of discharge by Official Assignee.*—Under a vesting order, an insolvent's estate became vested in the Official Assignee, who paid the scheduled creditors the principal of their debts. A discharging order was then made under s. 59 of the Insolvent Debtors Act (11 Vict., c. 21). At the date of such order the Official Assignee had R143-1-8 to the credit of the insolvent's estate. He subsequently received the interest on certain securities which had been bequeathed to the insolvent for his life before the date of the vesting order. *Held* that the discharging order did not make the vesting order void, nor as regarded the estate vested in the Official Assignee did it revest immediately the right of property in the insolvent; that creditors are entitled to interest carrying debts out of a surplus remaining in the Official Assignee's hands after payment of the scheduled amount of debts; that, notwithstanding the discharging order, the Court might direct the R143-1-8, and the interest subsequently received, to be paid to the insolvent's creditors rateably in respect of interest on their debts calculated down to the date of the discharging order, and that the balance should be paid to the insolvent or his representative; that the interest subsequently received by the Official Assignee was "neither after-acquired property" within the meaning of s. 59 nor "a debt growing due to the insolvent before the Court shall have made its order" within the meaning of s. 7 of 11 Vict., c. 21. IN THE MATTER OF PEREIRA . **1 Mad., 217**

IN THE MATTER OF MACCLEAN

[1 Mad., 220 note

1. ———— s. 60—*Trader—Discharge—Subsequent suit for debt not entered in schedule.*—Defendant, who had taken the benefit of the Insolvent Act, was sued by plaintiff for a debt contracted previously to his insolvency, the debt not having been entered in the insolvent's schedule at the time of his final discharge. *Held*, insolvent being a trader, that under the provisions of s. 60 of the Insolvency Act, taken in connection with 5 & 6 Vict., c. 122, the discharge was good and valid, and that subsequently-acquired property could not be attached for any debt discharged under the insolvency. BRETT *v.* SCHONERSTEDT . **2 Hyde, 1**

2. ———— *Trader—Mukadam.*—A mukadam is not a trader within the meaning of the Insolvent Act, 11 & 12 Vict., c. 21, and is not therefore entitled to obtain a discharge, in the nature of a certificate, under s. 60 of that Act. IN THE MATTER OF COWASJI EDALJI . **I. L. R., 5 Bom., 1**

3. ———— *Agent of company paid by commission—Trader—Broker.*—The agent of a company or private individual who procures and receives parcels for transmission by his employers, or who by his personal exertions obtains passengers for their dâk, although he may be entrusted with the receipt or price of carriage, and is paid by commission, is not a broker or trader within the meaning of the Insolvent Act. IN RE CAMPBELL

[2 Hyde, 177

INSOLVENT ACT (11 & 12 Vict., c. 21) —*continued.*

4. ——— *Trader—Indigo planter—Stat. 12 & 13 Vict, c 106, s 65—Workmanship of goods or commodities*—An indigo planter is a "trader" within the meaning of s 60 of the Insolvent Act IN THE MATTER OF DE MOMET

[I L. R., 21 Calc, 1018

whether they are specified in his schedule or not DADABHAI NASARVANJI *v* MANIKJI SHAPURJI KAKA 7 Bom, O C, 22

6 ——— *Effect of final discharge—Bankruptcy Act, 1861—Premia on policy of insurance*—An insolvent obtained his final discharge in April 1863 *Held* that he was not still liable, under the provisions of the English Bankrupt Act, 1861, s 154, for the ascertained value of certain premia on a policy of insurance which he had undertaken GRAY *v* CHICK Cor., 136

7. ——— *Company—Winding up*—

who were an English joint stock company registered under the English Companies Act of 1862, sued the defendant as a past member of the Bank, upon a balance order of the High Court of Justice in England dated ... the sum of £678 upon Bank, half that

that he had filed his petition in insolvency on 19th November 1866, and had obtained his discharge under 12 V and he from upon ciently moved *Held* also that, although the deten-

he had an opportunity

INSOLVENT ACT (11 & 12 Vict., c. 21) —*continued*

LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BURJORJI SORABJI LYWATTA

[I L. R, 9 Bom, 348

See LONDON, BOMBAY, AND MEDITERRANEAN BANK *v* HORMASJI PESTANJI

[8 Bom., O. C., 200

8 ——— and s. 47—*Final discharge—Rights of opposing creditor—Grounds of opposition where personal discharge has been granted without opposition*—An opposing creditor who has not filed grounds of opposition to or opposed the personal discharge (under s 47 of the Insolvent Debtors Act) of an insolvent trader can never-

of the Act and need not

solvent trader, and will not confine itself to his conduct with reference to the opposing creditor merely IN RE PESTANJI SHAPURJI KAKA

[8 Bom., O C, 37

9 —

sonal

discharge—

has been opposed under s 47 of the Insolvent Act, can be again opposed by the same creditor, and on the same grounds, when he applies for an absolute discharge under s 60 The order made

under s. 50 of the Act, does not thereby cease to be liable in respect of such offences when he applies for his discharge under the 60th section. The discharge under s 60 of an insolvent who has already obtained his discharge under s 47 is not as of course, but will depend upon the general conduct of the insolvent both before and subsequent to his obtaining his discharge under s 47 IN RE COORLAWALLA 9 Bom, 1

——— ss 60 and 61.

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R., 10 Bom., 582

lady the Queen" within the meaning of s. 61 of the Insolvent Act In determining whether or no

INSOLVENT ACT (11 & 12 Vict., c. 21) —*continued.*

a debt falls under the denomination of a Crown debt, the question is not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State. Principle in *Secretary of State for India in Council* v. *Bombay Landing and Shipping Company, 5 Bom., O. C., 23,* followed. JUDAH *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . . **I. L. R., 12 Calc., 445**

———— s. 63.

See MARRIED WOMEN'S PROPERTY ACT, s. 8 . . **I. L. R., 18 Mad., 19**

1. ———— ss. 72, 73—*Evidence not in writing—Appeal.*—Where the evidence has not been taken down in writing as provided by s. 72 of the Insolvent Act, the evidence cannot be gone into on appeal under s. 73. IN THE MATTER OF ADJUDHIA PRASAD. JAIRAM GIR *v.* MILLER

[7 B. L. R., 74: 15 W. R., O. C., 16

2. ———— *Appeal—Mode of computation of time for appeal—Vacation.*—In order to enable an insolvent to appeal from an order passed in the matter of his petition, notes of the evidence must be taken at the hearing by an officer of the Court. In the time allowed for appealing, the vacation is to be computed, unless such time expire during the vacation, in which case the petition of appeal must be presented to the Court or a Judge on the first day after the vacation. IN RE LAKHMIDAS HANSRAJ

[5 Bom., O. C., 63

3. ———— *Appeal—Evidence, Mode of recording.*—In order to enable the High Court to hear the appeal of an opposing creditor from order made upon the hearing of an insolvent's petition which such creditor opposes (and upon which evidence is taken), it is necessary that notes of all the evidence at the hearing should be recorded by an officer of the Insolvent Court. *In re Lakhmidas Hansraj, 5 Bom., O. C., 63,* in substance followed. KALLIANDAS KIRPARAM *v.* TRIKAMLAL GULABHAI

[9 Bom., 307

4. ———— *Appeal—Limitation—Evidence.*—Certain creditors of an insolvent appealed against an order declaring him entitled to his personal discharge. The appeal time expired during the vacation of the Court, and the appeal petition was presented on the day when the Court re-opened. During the insolvency proceedings evidence was not recorded under s. 72, and the appellant sought on appeal to use the commissioner's notes of evidence. *Held* (1) that the appeal was not barred by limitation; (2) that it was not competent to the Court to refer to the commissioner's notes. ABDOOL *v.* MAHAMED . . **I. L. R., 14 Mad., 404**

1. ———— s. 73—*Appeal—Power of commissioner.*—A commissioner has no power, under s. 73 of the Insolvent Act, to extend the time for presenting a petition of appeal from an order of the Insolvent Court. IN RE GHOLAM RASUL KHAN

[1 B. L. R., O. C., 130

2. ———— *Power of Commissioner—Attachment of Property, Application for.*—The gomastah of an insolvent claimed to retain certain property as against the insolvent, and disobeyed an order of Court that he should make over the property to the Official Assignee, whereupon an order of attachment was made absolute against him. Before such order was made absolute, the gomastah and another person had obtained a money-decree against one *R*. *Held* the Commissioner had no powers, except those conferred by the Act, and therefore could not grant an application by the Official Assignee that half the amount of the decree still in the hands of *R* should be attached and brought into Court. IN RE KHETTSEY DAS . . . . **3 B. L. R., Ap., 14**

3. ———— *Civil Procedure Code, s. 342—Appeal from Commissioner of Insolvent Court—Security for costs.*—S. 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. The right of appeal is given by s. 73 of the Insolvent Act, and the Court cannot impose on the appellant a condition that he shall give security for the costs of such an appeal. IN THE MATTER OF RAM SEBAK MISSER . . . . . **5 B. L. R., 179**

4. ———— *Security for costs—Non-appearance of insolvent.*—On an application for deposit of security for costs in an appeal by an insolvent under s. 73 of the Insolvent Act, in a case where the insolvent had been sentenced to imprisonment under s. 50 of the Act, and it was shown that he had absconded, the Court declined to make any order for security for costs, but refused to hear the appeal unless the insolvent was present. IN THE MATTER OF GHASSEERAM . . **15 B. L. R., Ap., 10**

5. ———— *Opposing creditor taken by surprise—Discharge—Power of Commissioner, to set aside discharge.*—Where an opposing creditor, being, without any default on his part, misled as to the time when an insolvent's petition was to come on for hearing, failed to appear when the petition was called on, and the insolvent obtained his discharge *ex-parte*, the Appellate Court, on the ground that the opposing creditor had been taken by surprise, set aside the order of discharge and restored the case to the board. *Semble*—That, under the circumstances, the Commissioner sitting in insolvency had no jurisdiction to set aside the order of discharge. DWARKADAS LALUBHAI *v.* BLACKWELL . . . **9 Bom., 319**

6. ———— *Appeal—Procedure—Form of petition of appeal—Civil Procedure Code, s. 590.*—The procedure as to appeals from orders under the Civil Procedure Code, 1882, is not made applicable by s. 590 to appeals from orders under the Insolvent Act. No particular form is prescribed for petitions of appeal under the latter Act. In this case the so-called memorandum of appeal was held to be a good petition of appeal under the Act. IN THE MATTER OF BROWN . . **I. L. R., 12 Calc., 629**

7. ———— *Appeal by insolvent—Insolvent convicted and sentenced to imprisonment*

INSOLVENT ACT (11 & 12 Vict, c. 21) —*continued*

under s 50 of the Insolvent Act—Power of High Court to admit insolvent to bail pending appeal —An insolvent was convicted by the Insolvent Court of an offence under s 50 of the Insolvent Act (Stat 11 & 12 Vict c 21), and sentenced to imprisonment. Under s 73 of the Act, he appealed against the decision of the Insolvent Court and applied to be admitted to bail pending the hearing of his appeal *Held*, refusing the application, that the High Court had no power to admit him to bail IN THE MATTER OF HORMARJI ARDESIR HORMARJI

[I. L. R., 17 Bom, 334

8. ——————— *Practice—Appeal from an order of adjudication—Respondent on record withdrawing from appeal—Other creditors allowed to appear in appeal as respondents, although not named on the record—Costs of Official Assignee*—An order was made by the Insolvent Court ad

dent The Court granted the application The Official Assignee is entitled to his costs of appearing in an appeal against an order of adjudication IN THE MATTER OF HAROON MAHOMED

[I. L. R., 14 Bom., 189

9 ——————— *Order of personal discharge—Finality of order*—An order under s 47 of the Indian Insolvent Act (Stat 11 & 12 Vict, c 21) for the final discharge of an insolvent once granted cannot be set aside except upon the grounds specified in s 56 of that Act The only course open to an opposing creditor is to appeal against the order under s 73 IN RE DAYABHAI SARUPCHAND EX PARTE SORABJI BYRAMJI PATAH I. L. R., 23 Bom., 474

——— s. 86.

See LIMITATION ACT, 1877, ART 180

[I L R, 11 Bom, 138
I. L R, 13 Bom, 520
L. R, 16 I. A, 156

See TRANSFER OF PROPERTY ACT, s 135

[I. L. R, 21 Bom, 572

Assignee, that the insolvent should attend on a day

under s. 86 of the Insolvent Act. That section was

INSOLVENT ACT (11 & 12 Vict., c. 21) —*concluded*

not repealed by Act XIV of 1870 IN THE MATTER OF COSTELLO . 8 B L R., Ap, 57

2 ——— *Judgment entered up under s 86 of the Insolvent Act (11 & 12 Vict, c 21)—Execution—Practice—Procedure—Civil Procedure Code, 1882, ss. 638, 649*—A judgment entered up under s 86 of the Insolvent Act (11 & 12 Vict, c 21) is a judgment of the High Court, and must be executed under the provisions of the Civil Procedure Code IN RE BHAGWANDAS HURJIVAN

[I. L. R., 8 Bom., 511

3 ——————— *Absent and absconding insolvent, Entering up judgment against*—Where an insolvent, who had not received his discharge, left the jurisdiction of the Court pending the further hearing of his petition for the benefit of the Act for the Relief of Insolvent Debtors, and there was reason to believe that he would not return to the jurisdiction, the Court ordered judgment to be entered up under s 86 of the Act for the amount of the debts appearing in his schedule IN THE MATTER OF ENGLISH

[7 C. L. R., 378

4. ——————— *Discretion of Court as to entering up judgment against insolvent—Final discharge*—Under s 86 of the Insolvent Act (Stat 11 & 12 Vict, c 21), the Court has a discretion to grant or refuse an application to enter up judgment against an insolvent for the amount of his debts In exercising the discretion the Court must be guided by the circumstances of the insolvency IN THE MATTER OF HORMARJI ARDESIR HORMARJI

[I. L. R, 19 Bom, 297

5. ——————— *Entering up judgment against insolvent—Final discharge Discretion of*

sentenced to imprisonment for three months, his dis-

that the order to enter up judgment against insolvent should be discharged IN THE MATTER OF HORMARJI ARDESHIR HORMARJI I. L. R., 19 Bom., 778

INSOLVENT DEBTOR.

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

INSPECTION OF DOCUMENTS.

See Cases under Practice—Civil Cases—Inspection and Production of Documents.

1. CIVIL CASES.

1. ——— Time for ordering defendant to furnish list of documents.—The Court will not order a defendant to furnish the plaintiff with a list of documents till after the plaintiff shall have filed his written statement. Ogle *v.* Kunas

[2 Hyde, 279

2. ——— Practice—*Affidavit of documents—Insufficiency of affidavit—Alteration by letter of terms of notice already served—Civil Procedure Code (Act XIV of 1882), ss. 131 and 133.*—Before the Court will make an order under s. 133 of the Code of Civil Procedure, the preliminary steps mentioned in s. 131 must be taken by the party applying for the order. Mohendro Nath Dawan *v.* Ishun Chunder Dawn

[I. L. R., 10 Calc., 59

3. ——— *Production of documents—Discovery—Civil Procedure Code, 1882, ss. 131, 136.*—If a notice under s. 131 of the Civil Procedure Code be not answered as provided by s. 132, the party seeking the inspection of documents may apply for an order under s. 133, and his application must be supported by an affidavit. The Court has no jurisdiction to pass an order under s. 136, unless the provisions of s. 134 are strictly complied with. Dhapi *v.* Ram Pershad . **I. L. R., 14 Calc., 768**

4. ——— Discovery—*Civil Procedure Code, ss. 129, 136—Discovery of documents—Pardanashin women.*—In a suit brought by two Mahommedan parda-nashin ladies for recovery of immoveable property by right of inheritance, an order was passed, under s. 129 of the Civil Procedure Code, requiring the plaintiffs to declare by affidavit "all the papers connected with the points at issue in the case which were or had been in their possession or control." After some ineffectual proceedings, the plaintiffs were peremptorily ordered to file their affidavit on a certain date. On that date an affidavit was filed on their behalf by their brother and mooktear, with a list of their documentary evidence, but the affidavit and list were considered defective upon several grounds, one of which was that the affidavit ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them personally, praying that the Court would have it verified in any manner thought proper, provided that their parda-nashini were not interfered with. The Court, under s. 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under s. 129 not having been complied with, though ample opportunity had been given to the plaintiffs, and no sufficient ground for non-compliance had been shown. *Held,* without going into the question

INSPECTION OF DOCUMENTS —*continued.*

1. CIVIL CASES—*continued.*

of the sufficiency or non-sufficiency of the action of the plaintiffs, with regard to the orders made under s. 129 of the Code, that, looking at the disabilities of the plaintiff and the circumstances of their suit, the case was not one in which it was expedient to enforce the liability to which they might have exposed themselves under the peculiar provisions of s. 136. Kalian Bibi *v.* Safdar Husain Khan . . . . **I. L. R., 8 All., 265**

5. ——— *Civil Procedure Code, 1877, s. 135—Trial of issue before inspection granted.*—The intention of s. 135 of the Civil Procedure Code (Act X of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and therefore, from the nature of the case, before the hearing of the cause. It should be a rule of practice that when an order is made under s. 135 of the Civil Procedure Code (Act X of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge. Ahmedbhoy Hubibhoy *v.* Vulleebhoy Cassumbhoy . . . **I. L. R., 6 Bom., 572**

6. ——— Inspection of accounts—*Suit for wrongful dismissal.*—In a suit for wrongful dismissal of a servant of a gas company, in which the plaintiff alleged that the motive for dismissing him was his discovery of certain irregularities of the manager with regard to money-matters,—*Held* that he was entitled to inspect the accounts which had been checked by himself while in the company's service, the press-copy letter-book containing copies of correspondence regarding his own conduct while in the company's service, and the account of a particular item in respect of which he alleged he had made discoveries that he imputed to the manager as the cause of his dismissal. Mitchell *v.* Oriental Gas Company . . **1 Ind. Jur., N. S., 323**

7. ——— Right of mortgagee to withhold production of mortgage-deed or title-deeds for inspection—*Suit to avoid lien.*—*B* mortgaged by deed certain premises to *J D*, and at the same time delivered to him title-deeds comprising the said premises, and also other immoveable property of *B*. *B* subsequently became embarrassed and assigned all his immoveable estate to trustees for his creditors. The trustees sued *J D* for a declaration that the immoveable property other than the mortgaged premises was vested in them free from any lien of the defendant; and *J D* in his written statement claimed a lien on all the title-deeds, and submitted that he was not bound (until his claim was satisfied) to hand them over to the plaintiffs, or to produce them or his deed of mortgage for inspection. *Semble*—That on the authorities *J D* was not bound to produce the title-deeds before satisfaction of his claim. *Quære*—Whether before satisfaction he was bound even to produce his deed of mortgage. Beattie *v.* Jetha Dungarsi . **5 Bom., O. C., 152**

INSPECTION OF DOCUMENTS —*continued*

1 CIVIL CASES—*continued*

8. ——— **Inspection of will of Hindu**—*Application by next of kin*—The Court will, on the application of one who is next of kin of a deceased Hindu, order a person who is in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by the applicant IN THE GOODS OF BALKRISHNA GANPATJI [1 Bom, 114

9. ——— **Partnership books**—*Partnership—Production of documents*—One partner of a firm represents the other partners for the purposes of production of documents Therefore, where the plaintiff, alleging that he had been a partner with the defendant and others in the firm of Ibrahim Kadu & Co, and that, on the dissolution of that firm, the in the defendant to produce, for the plaintiff's inspection, the books of Ibrahim Kadu & Co, which application was resisted by the defendant on the ground that the other partners in the firm of Ibrahim Kadu & Co had an interest in those books, and were not parties to the present application, or shown to have consented to it *Held* that the plaintiff was entitled to the order JAKARIA v. KASIM [I. L. R., 1 Bom., 496

10. ——— **Privileged communications**—*Principal and agent—Suit for injunction to restrain use of trade marks—Civil Procedure Code (Act X of 1877), s 130*—Under s 130 of the Civil Procedure Code (Act X of 1877) a Judge has no discretion to refuse to allow inspection of docu

and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged WALLACE v. JEFFERSON I. L. R., 2 Bom., 453

11. ——— *Discovery—Production of documents—Privilege—Solicitor and client—Act XIV of 1882, s 133*—Letters written by one of the defendant's servants to another, for the

the use of the defendant's solicitor In order that

BIPRO DOSS DEY v SECRETARY OF STATE FOR INDIA IN COUNCIL . I. L. R., 11 Calc, 655

12. ——— *Discovery—Affidavit of documents—Sufficiency of affidavit*—

INSPECTION OF DOCUMENTS —*continued*

1 CIVIL CASES—*continued*.

Further affidavit—Inspection of documents—Practice—Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it

of the suit *Bewicke* v *Graham, 7 Q B D, 400*, followed ORIENTAL BANK CORPORATION v BROWN & Co I. L. R., 12 Calc, 265

13. ——— **Documents alleged not to be material**—*Code of Civil Procedure (Act XIV of 1882), s 135—Affidavit of documents—Production of documents—Specific performance of contract to purchase—Refusal to allow inspection*—In a suit for specific performance of a contract to efendant denied inal, and alleged sign the agreement by means of representations regarding the nature, the extent, the value, and the net income of the property, all of which representations the defendant charged were false and fraudulent to the knowledge of the plaintiff The plaintiff in his affidavit of documents set out a list of title-deeds evidencing his title to and the books of accounts and other papers and documents relating to the property agreed to be purchased, and these he claimed to withhold from the defendant's inspection, on the ground that they were not sufficiently material at that stage of the suit *Held* that the documents were not protected SUTHERLAND v SINGHEE CHURN DUTT I. L. R., 10 Calc, 808

14. ——— **Telegraphic messages**—*Sanction of Government to production*—Where parties require the inspection or production of telegraphic messages, it is for them, and not the Court, to obtain the necessary sanction of Government to the disclosal of such messages LECKRAJ v PALEE RAM 2 N. W, 210

15. ——— **Defendant's right to inspection of documents referred to in plaint before filing written statement**—*Practice*—A defendant is entitled to have inspection of documents referred to in the plaint, although he has not filed his written statement. RAM DYAL SALIGRAM v NURHURRY BALKRISHNA [I. L. R, 18 Bom., 368

in his written statement,—*Held*, on the hearing of a summons to consider the sufficiency of the affidavit,

INSPECTION OF DOCUMENTS
—*continued.*

1. CIVIL CASES—*continued.*

that the plaintiff could not cross-examine on the affidavit, but could only show it was not an honest affidavit. The proper course was to apply for inspection of the particular document referred to in the written statement and omitted from the schedule, if inspection was needed. KENNELLY *v.* WYMAN

[I. L. R., 1 Calc., 178

17. ———— Practice where portion of document is protected from inspection— *Practice—Sealing up immaterial parts.*—Practice to be followed where a party producing documents wishes to have a certain portion of them sealed up. HEERALALL RUKHIT *v.* RAM SURUN LALL

[I. L. R., 4 Calc., 835

18. ———— Discovery—*Affidavit of documents when there are several plaintiffs, some of whom are in England—Practice—Privilege—Grounds of privilege.*—Where there are several plaintiffs, all of them must join in making the affidavit of documents, unless some specific reasons to the contrary are shown. The fact that some of the plaintiffs reside in England is no reason why they should be excused from making such affidavit. Documents which contain the purport of interviews with, and of advice received from, the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken thereto, are privileged. Documents which record the steps taken by the plaintiffs from time to time in prosecuting their claim against the defendant are not privileged. Opinions upon, or steps taken in reference to, a suit in which plaintiffs and defendants are putting forward opposing contentions cannot be said to relate solely to the case of the plaintiff, and are not privileged. RYRIE *v.* SHIVSHANKAR GOPALJI . . I. L. R., 15 Bom., 7

19. - - - - - *Co-defendants—Inspection granted to defendant against co-defendant.*—A defendant may obtain discovery or inspection as against a co-defendant if the latter can be regarded as an opposite party. The plaintiff sued to set aside a mortgage made by his uncle (defendant No. 3) to defendants Nos. 1 and 2, alleging that, shortly after he (the plaintiff) had attained his majority, he had been induced to join in the mortgage by the undue influence and threats of his uncle (defendant No. 3), who represented that the money to be raised by the mortgage was required to pay off the debts of the plaintiff's father. The plaintiff further alleged that he had received none of the money, and that no money had been paid by defendants Nos. 1 and 2 to the third defendant in his presence. Defendants Nos. 1 and 2 took out a summons against the third defendant for inspection of certain account books and documents. It was objected that no question was raised in the suit between the third defendant and defendants Nos. 1 and 2, and that consequently, under s. 131 of the Civil Procedure Code (Act XIV of 1882), the latter were not entitled to inspection. *Held* that inspection must be given. It was possible that, not being able to set aside the mortgage as regarded himself, the third defendant was colluding with the plaintiff. Under the circumstances, he might be considered a "party opposite" to the first two defendants, although eventually the Court might not be able to make any order between him and them. ANANDRAO VITHAL *v.* BUDRA MALLA

[I. L. R., 17 Bom., 384

20. ———— Affidavit of documents, Sufficiency of—*Practice—Right to put in further affidavit in support of claim of privilege where original affidavit is not sufficient—Documents referred to in pleadings as stating facts on which party setting them up relies.*—Where an affidavit of documents stated, with regard to certain documents of which the plaintiffs asked for inspection, that the defendants objected to produce them for inspection "because such documents were obtained after dispute arose, and for purposes of litigation that might arise between them and the plaintiffs,"—*Held,* in an application for their production and inspection, that the affidavit was not sufficient to support the defendant's claim to privilege. *Held* also in such an application the party claiming privilege is entitled to put in and use a further affidavit in support of the claim of privilege, and is not confined to the grounds made in the affidavit in which the claim is first set up. *M'Corquodale* v. *Bell, L. R., 1 C. P. D., 471,* referred to. Where, however, the party comes into Court relying on the original affidavit as sufficient to support his claim of privilege, but asks the Court, if it should think otherwise, for leave to put in a further affidavit in support of his claim, *quære* whether he should be allowed to do so. In a suit brought in January 1884 to recover money for work done and materials supplied in the erection of certain mills for the defendants, in which the defence was that the quality of the work was inferior to that contracted for, and the defendants stated in their written statement that, "in consequence of the information which they had received with regard to the quality of the work done by the plaintiffs, they caused the same to be inspected by two independent engineers in the month of July 1893, and they at once discovered such extensive defects therein that the costs of making good such defects will far exceed any possible sum due to the plaintiffs,"—*Held* that the defendants could not set up a claim of privilege for the reports of the two engineers. *Anderson* v. *Bank of British Columbia, L. R., 2 Ch. D., 644,* referred to. Where a party expressly refers to documents in the pleadings as the source of his own information and knowledge of facts relevant to the suit and then sets up those facts by way of answer to the plaintiff's claim, he cannot afterwards attempt to make the case that the documents are confidential, and intended merely for his legal advisers, or for the purpose only of evidence in the case. UMBICA CHURN SEN *v.* BENGAL SPINNING & WEAVING CO.

[I. L. R., 22 Calc., 105

21. ———— Discovery—*Minor—Code of Civil Procedure (1882), ss. 129 and 136.*—An infant party to a suit cannot be compelled, under s. 129 of the

INSPECTION OF DOCUMENTS —*continued*

1 CIVIL CASES—*continued*

Code of Civil Procedure, to give discovery by affidavit and inspection of documents in his possession relating to the suit To adopt the practice lately introduced in England would be objectionable mainly on three grounds (1) because it is not contemplated by the Code of Civil Procedure, (2) because it is inconsistent with existing rules of practice, (3) because there is no method of enforcing an order for discovery against an infant *Waghji Thackersey* v *Khatao Rouji, I L R, 10 Bom, 167*, referred to *Nathmull Varsing Das* v *Malharrao Holkar I L R 19 Bom, 350*, distinguished DUNCAN *v* BHOYRO PROSAD
[I L R., 22 Calc, 891

22 ——— *Affidavit of documents—Minor—Practice—Civil Procedure Code (1882), s 129*—An affidavit of documents may be required from a minor defendant NATHMULL NARSINGDAS *v* MALHARRAO HOLKAR
[I. L R., 19 Bom, 350

23 ——— *Documents of title, Refusal to produce—Suit for ejectment*—The plaintiff sued to eject the defendant from certain pieces of land belonging to him being portions of a passage upon which the defendant had encroached. In his written statement the defendant denied the plaintiff's title, and stated that he would rely on certain deeds set forth in a schedule annexed thereto In

tend to prove or support the title of the plaintiff thereto *Held* that the defendant was entitled to refuse production of the deeds The Court could not go behind the defendant's affidavit of documents VINAYAKRAO DHUNDIRAJ *v* NAROTAM ANANDJI
[I. L R, 17 Bom, 581

24 ——— Place for inspection—*Account books of business—Place where business is carried on—Contract made in Bombay to be performed up country—Civil Procedure Code, 1877, s 132*—Defendant was owner of certain cotton ginning factories at and near A in the mofussil, and had also a *place of business in Bombay He entered into a* contract in Bombay with the plaintiff to gin certain cotton of the plaintiff's at the said factories of the defendant in the mofussil. Plaintiff brought a suit for damages for the breach of this contract, and demanded inspection in Bombay of all defendant's books relating to the business of the said ginning factories belonging to the defendant The defendant was willing to give the inspection asked for but contended that it should be had at A, where *all the books in* question were kept, and objected to bringing the books down to Bombay as demanded by the plaintiff *Held* that the contract, though made in Bombay, having been intended to be performed at a considerable distance from Bombay, at and near A, where the business of ginning was conducted, and where the books relating to the said business were kept, A was the proper place at which to give inspection KEVALDAS SAKARCHAND *v* PESTONJI NASSERVANJI
[I L R., 5 Bom, 467

25 ——— Disobedience of order for inspection—*Bombay Act I of 1865, s 14—Bombay Act IV of 1868, s 15*—To render a person liable for disobedience of a notice under s 15 of Bombay Act IV of 1868, it is necessary that the documents required for inspection should be therein specified Disobedience of an order to produce evidence under s 14 of Bombay Act I of 1865, cl 1, does not render a person liable to criminal prosecution but simply to an adjudication in his absence REG *v* MANIKRAM SURAJRAM
11 Bom, 231

26 ——— Inspection by agent of a party.—When under an order giving liberty to a party to a suit, his attorneys and agents, to inspect and peruse the documents produced by the opposite party, inspection by an agent is contemplated, the order should be read in such a way as would give the Court *some control over the persons to be appointed* to inspect the documents Such an order contemplates that the agent will be a person standing in the position of the party for the purposes of the suit *Held* tl
a person
inspect
which had been in his charge ENAMUL HUQ *v* EKRAMUL HUQ
I L R., 25 Calc, 294

2 CRIMINAL CASES

27 ——— Discovery—*Power of Court to order inspection—Criminal Procedure Code 1882, ss 94 99—Search warrant, Form and validity of*—*A* and *T*, the latter of whom was the book keeper in the firm of *J M & Co* were charged, on the complaint of that firm, with cheating by having dishonestly induced them to deliver to *A* certain sums of money between 1882 and 1887, and with having abetted each other in the commission of the said offence The offence charged was carried out by *T* omitting to make entries in the account books of sums due by *A* to the firm, and by making false entries therein of payments by *A* Whilst the charge was pending, the Presidency Magistrate, before whom the charge had been made, granted a search warrant in the following terms "To Inspector *M*—Whereas *A*

for the said property in the house of *A*, No. 13, Pollock Street, and if found to produce the same *forthwith before this Court*" In execution of this warrant, certain books and papers found in the house of *A* were seized and taken possession of by the police, and of those books and papers the Magistrate, on the application of the prosecution, made an order for

INSPECTION OF DOCUMENTS —*continued.*

2. CRIMINAL CASES—*continued.*

inspection. On a rule granted by the High Court to show cause why the order for inspection should not be set aside, it was contended that the search-warrant had been granted without proper judicial inquiry and upon insufficient materials; that it was bad on the face of it, as it did not "specify clearly," as directed in Form VIII, sch. V of the Criminal Procedure Code, whose khatta books were to be produced; and that there was nothing in the criminal law to enable a Court to make an order for inspection of documents by the prosecution in a criminal case. *Held per* NORRIS, *J.*, that, assuming the contention as to the search-warrant arose on the rule as granted, the warrant must be looked at as a whole, and so looked at it sufficiently and clearly showed that it was the khatta books of *A* which were referred to as being essential to the inquiry and the objects of the directed search; nor was there anything to show that the warrant was issued otherwise than regularly and in due course. *Per* NORRIS, *J.*—Though the Courts in England have constantly refused to compel discovery in criminal cases, on the ground that no man should be compelled to produce evidence to criminate himself, the Legislature in this country has authorized the production, and under certain circumstances the compulsory production, of an accused person's documents in Court. When once an accused person's documents are in the possession of the Court by virtue of the due execution of a search-warrant issued under the provisions of s. 96 of the Criminal Procedure Code, there is no distinction between such documents and those of any description found upon his person at the time of his arrest or on his premises at the time of, or subsequent to, his arrest, and it was never doubted that the latter may be used in evidence against him. If, as laid down in the case of *Dillon* v. *O'Brien, 20 Irish L. R., 300,* the right to seize and detain property of any description in the possession of a person lawfully arrested for treason, felony, or misdemeanor, rests "upon the interest which the State has in a person justly or reasonably believed to be guilty of a crime being brought to justice and in a prosecution once commenced being determined in due course of law," a right to inspect such property must exist, as well as a right to seize and detain it, and the proper persons to inspect it are those conducting the prosecution. It would, moreover, be unreasonable that the police or those conducting the prosecution should not have an opportunity of inspecting and examining documents, etc., found on a prisoner when arrested, or on his premises at the time of, or subsequent to, his arrest, before tendering them in evidence. *Per* GHOSE, *J.*—The contention as to the validity of the search-warrant did not arise on the rule as granted, but *semble* that the search-warrant was bad in law, no summons under s. 94 of the Criminal Procedure Code having been, in the first instance, issued for the production of the documents, and there being no evidence to show that they would not be produced on summons only; that although the warrant was not specific, still, inasmuch as no objection was raised to the form of the warrant before the Magistrate, and the accused had not been prejudiced by reason of the specification of the documents being somewhat indistinct, and it was clear what was really meant, the objection as to the form of the warrant should be disallowed. *Per* GHOSE, *J.*—There is no doubt that by the criminal law of this country, as laid down in the Criminal Procedure Code since 1861, an accused person may be compelled to furnish evidence, the production of which might have the effect of criminating him. The Magistrate has to determine at the time when he makes an order under s. 94 of the Criminal Procedure Code, or issues a search-warrant under s. 96, whether the documents are necessary for the inquiry; but when they are brought into Court, the inspection should not rest with the Magistrate who does not prosecute and has no interest one way or the other in the result of the prosecution. It is reasonable that those who conduct the prosecution should have such inspection, for the production of such documents is for the purpose of using them in evidence, and this could not be done unless the prosecution had an opportunity of inspecting them. In the case of a search or seizure by the police under Ch. XIV of the Criminal Procedure Code, the prosecutor would necessarily have an opportunity of looking at the documents and articles seized, and there is no reason why he should not have the same opportunity or privilege where, under the order of the Court, any particular document or other thing is seized under a search-warrant and brought up to the Court. Bearing in mind the purpose for which any document or thing is seized and brought before the Court, it seems that the Legislature, while providing for the seizure and production in Court of documents, etc., intended by implication that the prosecution should, under the order of the Court, have the power to inspect them, and determine whether they should go in as evidence. *Held per Curiam*—for the reasons above given—that the Magistrate had power to allow the inspection, but such inspection must be limited to the books named in the search-warrant. IN THE MATTER OF THE PETITION OF AHMED MAHOMED. MAHOMED JACKARIAH & Co. *v.* AHMED MAHOMED . **I. L. R., 15 Calc., 109**

28. ——— Summons to produce document or thing—*Criminal Procedure Code (Act X of 1882), s. 94.*—A complaint having been preferred against an accused for criminal breach of trust with reference (amongst other items) to a sum of R1,77,131-1-2, which sum was, in an enquiry held by the Chief Presidency Magistrate, proved to have been paid to the accused in seventeen notes of rupees ten thousand each (the numbers of which were identified) and the remainder in small notes and cash, the accused in cross-examination, for his own purposes, proved that fifteen of these notes were still in his possession; whereupon an application was made, under s. 94 of the Code, for a summons on the accused, directing the production of these notes. This application was refused. Subsequently, the accused, through a third person, cashed five of these notes, whereupon a second application was made under s. 94 by the prosecution for the production of the notes or their proceeds as against accused and such third person.

INSPECTION OF DOCUMENTS—concluded

2 CRIMINAL CASES—concluded

stating that he had in his power five of the notes mentioned in the summons claimed a lien on the same used to make any rule having been ...im to show cause ...side, and why the notes or the proceeds thereof in the hands of the third person should not be produced) stated in h s explanatory letter that he entertained doubts as to his power to compel such third person to produce the five notes, inasmuch as a lien had been claimed on them and that he was of opinion that the proceeds of the notes cashed not being specific objects did not come within the purview of s 94 *Held* the Magistrate s order must be set aside IN THE MATTER OF THE NIZAM OF HYDERABAD v JACOB

[I. L. R, 19 Calc, 52

INSPECTION OF PROPERTY

——— **Form of order for inspection**—*Civil Procedure Code (1882) s 499—Judicature Acts, Order 50 Rule 3*—The plaintiff brought an action against the defendant for damages alleged to have been caused to his house by the erection by the de-

materials employed therein and formations thereof and to dig excavations for the purpose of exposing the foundations it was objected by the plaintiff that the Court had no jurisdiction to make the order as the

the excavation of the foundations *Held* that the house and premises of the plaintiff formed the subject of the suit' within the meaning of s 499 and under that section the Court had power to make the order applied for *Held* also that this was a case in which the order should be made DHORONEY DHUR GHOSE v RADHA GOBIND KUR

[I L R, 24 Calc, 117
1 C W N, 99

INSPECTOR, MUNICIPAL

See PUBLIC SERVANT

[I. L R., 13 Mad., 131

INSTALMENTS

——— **Decree or money payable by**—

See CASES UNDER BOND

INSTALMENTS—concluded

See CASES UNDER CIVIL PROCEDURE CODE 1882 ss 257, 258 (1859, s 206)

See DECREE—ALTERATION OR AMENDMENT OF DECREE 2 Hay, 68, 95
[4 Bom, A C, 77
I. L R., 2 All, 129, 320
I L R, 11 Calc., 143
I L R., 14 Calc, 348

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—INSTALMENTS

See DEKKAN AGRICULTURISTS RELIEF ACT 1879, s 15B I. L R, 7 Bom, 532
[I L R., 19 Bom, 318

See DEKKAN AGRICULTURISTS RELIEF ACT 1879 s 20
[I. L R, 5 Bom, 604
I. L R., 12 Bom., 326

See CASES UNDER LIMITATION ACT, 1877 ARTS 74 AND 75

See LIMITATION ACT 1877 ART 178
[I. L R, 15 Calc, 502

See CASES UNDER LIMITATION ACT, 1877 s 179 (1871 ART 167 1859 s 20)—ORDER FOR PAYMENT AT SPECIFIED DATES

See NEGOTIABLE INSTRUMENTS SUMMARY PROCEDURE ON I L R., 1 Calc, 130

See RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM
[12 B. L. R., 37
7 W R., 309
I. L R., 3 All., 717

See CASES UNDER WAIVER

"INSTRUMENT," MEANING OF—

See GUARDIANS AND WARDS ACT s 39
[I. L R, 18 Bom, 375

INSULT

——— **Intent to provoke a breach of the peace**—*Penal Code s 504*—*A* abused *B* to such an extent as to reduce *B* to a state of abject provo have of an ...N EM ...PERSS v JOGAYYA I L R, 10 Mad, 353

INSURANCE

		Col
1	LIFE INSURANCE	4071
2	MARINE INSURANCE	4074

See CARRIERS

[I L R, 18 Calc, 427, 620
L R., 18 I A, 121
I L R., 19 Calc, 538

INSURANCE—*continued.*

—— **Policy of –**

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.

[I. L. R., 18 Mad., 24

See STAMP ACT, 1869, s. 34.

[I. L. R., 3 Calc., 347

See STAMP ACT, 1879, s. 3, CL. 15.

[I. L. R., 19 Calc., 499
I. L. R., 19 Bom., 130

1. LIFE INSURANCE.

1. —— **Assignment of policy**—*Death of assignee—Death of assured—Notice by assignee to company—Payment of premia by executors of assignee—Absence of legal personal representative of assured—Refusal to pay over.*—*A*, having insured his life in a certain Life Insurance Company, assigned his rights under the policy to *B*, the assignment on the face of it expressing no consideration whatever. The fact of the assignment was notified to the company. *B*, after paying all premia due, died, appointing *C* and *D* his executors, who took out probate of his will, and paid all subsequent premia on the policy. *A* died, and *C* and *D* then demanded payment of the policy-money. The company, however, refused payment unless *C* and *D* first obtained the concurrence of the legal representative of *A* to the payment. *Held* that the company were justified in refusing to pay the money in the absence of the legal representative of *A*. RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE COMPANY

[I. L. R., 7 Calc., 594: 10 C. L. R., 561

2. —— **Age of assured**—*Proof of age—Onus of proof—Mistake in statement of age—Fraud.*—*A* insured his life with the defendant company. By the terms of the policy the declaration of the assured as to his age was made the basis of the contract, and the policy was issued, subject to the express condition that, in case any statement contained in the declaration were untrue, the policy should be void. The assurance was also expressly made, subject to the regulations and conditions contained in the prospectus of the company. The prospectus contained the following provision with regard to the age of parties insured: "Age admitted in the company's policies in all cases where proof is given satisfactory to the directors. Proof of age can be furnished at any time; if not furnished, it will be necessary on settlement of claim;" and after stating the nature of the "evidence as to age," which the company would accept, the prospectus continued: "The directors recommend applicants to furnish any of the above as soon as possible and get the age admitted in the policy, as it is required by all soundly conducted companies on settlement of claim if not previously produced." *A* died, and his administrators claimed the amount of the policy. *Held* that the above condition contained in the prospectus, which must be read into the policy, imposed on the assured or his representatives the obligation of giving proof of age before the company could be called upon to pay. If the evidence had been given in the lifetime of the assured, and an admission of age was attached to the policy, no further proof would be needed, and the onus of disputing the age would be thrown on the company; but in the absence of such evidence and of such admission, it lay upon those claiming upon the policy by reasonable proof to satisfy the Court as to the age of the assured. The prospectus of the company contained a further provision that "policies held by parties on their own lives are indisputable on any ground whatever except fraud." *Held* that this provision did not relieve those claiming upon the policy from the burden of giving proof of age, but it covered a misstatement as to age as well as other misstatements, provided they were not fraudulent. It relieved the assured from the legal effect which an innocent misrepresentation as to age would otherwise have had under the strict terms of the contract. The result therefore was that the plaintiffs should give proof of the age of the assured, but, if such proof disclosed nothing more than an innocent mistake as to age on the part of the assured, the policy would not be vitiated. Subject to the above terms of the prospectus, any untruth in the declaration as to the age of the assured would vitiate the contract. The statement as to the age of the assured amounts to a warranty, and the warranty being broken, the risk under the policy would not attach. ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO. *v.* SARAT CHANDRA CHATTERJI . . I. L. R., 20 Bom., 99

3. —— **Premiums on policy**—*Condition of prepayment of premium—Waiver—Sterling premiums—Case stated under Ch. XXXVIII, Code of Civil Procedure.*—An insurance company, in order to carry out an agreement with the assured to convert a rupee policy into a policy of sterling value, made an endorsement of the conversion on his policy, it being stated that such conversion was in consideration of all future premiums being paid in sterling. The policy so endorsed was re-delivered to the assured without any demand for the prepayment of the first sterling premium. Subsequently, and before the first sterling premium became due, the assured died. *Held* that the prepayment of sterling premium as a condition precedent to the right to the sterling assurance had been waived, and that the representatives of the assured were entitled to payment of the full amount of the sterling policy. *Canning* v. *Farquhar, L. R., 16 Q. B. D., 727,* distinguished. IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE . . . . I. L. R., 23 Calc., 320

4. —— **Insurance effected by one person on the life of another in whose life he has no interest**—*Wager—Contract Act (IX of 1872), s. 30—Stat. 14 Geo. III, c. 48—Stat. 8 & 9 Vict., c. 106—Assignment of life policy to a stranger without interest in the life insured.*—The defendant company issued a policy for a term of ten years for R25,000, on the 23rd August 1894, on the life of *M*, the wife of one *A*, who was a clerk in the

INSURANCE—*continued.*

1 LIFE INSURANCE—*continued*

employment of one *N F B*, a barrister practising at Hyderabad On the 1st September 1894 *M* assigned the policy to the plaintiff *A*, who was the wife of *N F B* On the 2nd October 1894 *M* died The

been effected not by *M* or for her use or benefit or on her account, but by the said *N F B* for his own use and benefit, and that he had no interest in the life of *M*, and that therefore the policy was void *Held* (1) on the evidence that the policy had not been effected by *M* or for her use and benefit, but had been effected by *N F B* for his own use and benefit, and that he had no interest in the life of *M* (2) That in India an insurance for a term of years on the life of a person in which the insurer has no interest is void as a wagering contract under s 30 of the Contract Act (IX of 1872), and that therefore the policy sued on was void *Quære*—Whether an assignment of a life policy to a stranger having no interest in the life of the insured is void? ALAMAI *v* POSITIVE GOVERNMENT SECURITY LIFE ASSURANCE CO . **I. L. R., 23 Bom., 191**

5 ———— **Truth of answers to queries of Life Insurance Company**—*Warranty—Declaration by assured to Medical Examiner of Company—Admissibility of evidence to show declarations not made by assured—Verbal representation to Medical Examiner, Effect of*.—*G* applied to the defendant company in Calcutta to insure his life for the sum of R10,500, to be secured by five different policies The policies were duly executed by the company and delivered to the plaintiff, the wife of *G*, on his behalf The company's printed form of application for insurance and the printed form of declarations to the medical examiner of the

pany. He warranted them to be full, complete, and true, whether written by his own hand or not, and

unless such statements, representations, or information be reduced to writing and presented to the officers of the said company at their home office in the city of New York on the application On *G*'s death, the plaintiff sued the company for the amounts due under the policies. The plaintiff admitted that certain statements and representations made by *G* both in his applications and declaration to the medical

INSURANCE—*continued*

1 LIFE INSURANCE—*concluded.*

declaration, (2) that *G* showed to the medical examiner a *certain statement drawn up by G* of an illness he had suffered from for three years, and that the knowledge thus acquired by the medical examiner must be imputed to the company *Held*, reversing the decision of the Court below, that the plaintiff was bound by the terms of the contract between *G*

That the misstatements and misrepresentations made by *G* were amply sufficient to warrant the company in avoiding the policy NEW YORK LIFE INSURANCE CO *v* GAMBIE . **I. L. R., 27 Calc., 593**

2 MARINE INSURANCE

6 ———— **Open cover**—*Proposal to issue policy—Acceptance—Refusal to issue policy in terms of open cover*—An open cover to an amount stated for insurance on cargo to be shipped for a

there being an acceptance, there having been a refusal to issue any policy. BHUGWAN DAS *v.* NETHERLANDS INDIA SEA AND FIRE INSURANCE COMPANY OF BATAVIA . **I. L. R., 16 Calc., 564**
[L. R., 16 I. A., 60

7. ———— **Construction of policy**—*Onus probandi—Exceptions in policy.*—*A* sued *B & Co.* on a policy of insurance on the ship *Alaye*, from noon of the 24th November 1865 to noon of the 24th February 1866, "at and from and to all ports and places" The words "and to all ports and places" were written, the rest being printed. *B & Co.* in their written statement admitted the policy, but set up the following exception "All risks or losses arising from detention, etc, also from storms and gales of wind, or other perils of the sea, while touching or trading on the coast of Coromandel from Point Palmyras to Ceylon, and within soundings, between the 15th October and the 15th December inclusive, are hereby excepted, which risks or losses are to be borne by the assured, and not by the assurers, notwithstanding anything to the contrary hereinbefore expressed." *Held*, firstly, it lay upon *A*

INSURANCE—*continued.*

2. MARINE INSURANCE—*continued.*

to prove that the loss did not fall within the exception. *Held*, secondly, that the meaning of the policy was that the ship was to be at liberty to proceed to or stay at any port she pleased, but that the insurers were not liable for any loss arising from perils of the sea in which the three following events were combined: first, that she was at the time touching or trading on the coast of Coromandel; secondly, that she was at the time within soundings; thirdly, that the loss happened between the 15th October and 15th December. *Held*, thirdly, upon the facts, the loss was within the policy, notwithstanding the exception. AGA SYUD SADUCK *v.* JACKARIAH MAHOMED

[2 Ind. Jur., N. S., 308

8. ——————— *Goods partly in bales and partly in cases—Insurance for gross amount.*—A policy was effected upon a quantity of piece-goods, part in bales and part in cases. The bales and cases were separately enumerated and separately valued in the body of the policy, but the gross total was made up. *Held* that the words "free from particular average," following directly upon the gross total, must be taken to apply to the whole value of both lots, and not separately to the bales and separately to the cases. BEEROOPPO SETTY *v.* HURSMULL RAMCHUND . . . 2 Hyde, 74

9. ——————— *Particular average loss—Liability of underwriters.*—In a policy of insurance effected in Bombay upon goods shipped from Calcutta to Jeddah, two clauses were inserted in writing, the rest of the policy being in the ordinary English printed form. The first written clause was in English as follows: "Warranted free of particular average, unless stranded, sunk, or burnt." The second was written on the margin of the policy in the Gujarathi language, and was to the following effect: "Insurance upon the goods to be without damage. The loss arising from damage is to be on the head of the owner of the goods." *Held* the underwriters of such a policy are liable to the insurer for a particular average loss where the vessel in which the insured goods are shipped is stranded, sunk, or burnt. ESMAIL *v.* SHAMJEE POONJANI

[I. L. R., 2 Bom., 550

10. ——————— *Notice of claim by insured—Action brought before expiration of six months from date of notice—Constructive total loss—Meaning of the words "sunk," "stranded."*—Where insurers on receiving notice of a claim made against them under a policy of insurance distinctly repudiate and deny that any claim exists against them or that the party serving such notice has any right to recover against them, there arises an immediate right to sue, and the insured is not bound to wait for the expiration of six months before taking proceedings to enforce his claim. Where it appeared upon evidence that goods on board a ship that was wrecked on a voyage from Karachi to Bombay, although much damaged by sea-water, were nevertheless of such merchantable value as to make it worth while to send them on to their port of destination,—*Held*, in an action against the insurers of the goods, that no claim for constructive total loss was maintainable. In an action upon a policy of marine insurance the evidence given with respect to the loss of the ship was as follows: "The vessel grounded near Dwarka. After the vessel struck, the water constantly broke right over all. . . . The cargo was all under water. The labourers were only able to work at ebb tide, and at high tide they could only see the top of the vessel's masts. . . . The vessel lay where she stranded seven days, and was then raised with casks." Some of the goods on board were insured by a policy which contained the clause "warranted free of particular average, unless sunk or burnt." It was contended for the plaintiffs that the ship had "sunk," and that the damage to the goods was therefore covered by the policy. *Held* that where a vessel runs aground and lists over, and is in consequence covered by the high tide, which causes damage to goods on board, it cannot be said that she has "sunk" within the meaning of the word as used in a policy of insurance, and therefore that a claim for particular average cannot be sustained under a clause in the policy—"warranted free of particular average, unless sunk or burnt." LATHAM *v.* HURRUCKCHAND SOORATRAM

[I. L. R., 4 Bom., 314

11. ——————— *Insurable interest—"Interest or no interest," effect of these words in a policy—Stat. 19 Geo. II, c. 37—Loan on "avung"—Insurance effected after loss of subject-matter of insurance—Meaning and effect of the words "lost or not lost" in a policy.*—Policies of insurance between natives of India (those, at least, which do not contain the words "interest or no interest") are to be construed in the same way as such instruments have been uniformly construed by the general law merchant in Western Europe, *viz.*, as contracts of indemnity. A certain trade is carried on between native merchants in Western India with the costs of Africa and Madagascar by means of native vessels which leave the Indian ports early in the year, and after remaining in the ports of Africa and Madagascar for four or five months, leave on the return voyage about August or September. This trade consists in shipping goods at the Indian ports, to be disposed of at the African and Madagascar ports, and purchasing with the proceeds fresh goods to be similarly disposed of in the home ports. To enable traders to embark in this venture, it is their practice to borrow money of merchants on what is termed "avung," that is, money borrowed on the condition that it is not to be repaid except in case of the safe arrival of the goods in the home ports on the return voyage, in which event the loan becomes repayable with interest at a high rate. *Held* that, having regard to the long-established practice in the port of Bombay of insuring such risks, the interest of the lender of such a loan in the goods on board a ship on her return voyage to India is an insurable interest. *Semble*—That an avung loan does not give the lender a charge on the goods. *Held* that a policy of marine insurance on goods is not invalid by reason of its having been effected subsequently to the loss

INSURANCE—*continued.*

2 MARINE INSURANCE—*continued*

of the goods, although the policy does not contain the words "lost or not lost" JIVANJI NOORBHOY *v* COORJI LILLADHAR I. L R , 4 Bom , 305

12 ———— — *Separate insurance of different species of article* —Where a policy has been effected on a gross quantity of sugar, the

does not raise any p

surance upon each separate species of sugar was intended by a policy holder JOOSOOF *v* VARDON [1 Hyde, 198

13 ———— *Covering note—Concealment of material fact* —On the 15th March 1897, the plaintiff, who was a shipper of salt, applied for and obtained from the defendants' company in Bombay a preliminary covering note for R51 000 for salt to be shipped by him from Bombay to Calcutta The *note stated that a stamped policy* in completion hereof would be issued on receipt of particulars. The plaintiff's practice was to bring salt from his salt works at Uran in native prows

steamer *Nairung* The transhipment commenced on the 27th April Forty nine bags had been transhipped, when a storm arose and the prow shipped water and sank with the remaining 545 bags on board, which were thus wholly lost Their value was R4 360 On the 29th April 1897, the plaintiff applied to the defendants' company for a policy and paid the premium, and on the 30th April a policy of insurance was issued to him It was 'an insurance (lost or not lost) at and from Bombay to Calcutta upon any kind of goods and merchandise and freight of or on the sh

including all risl

ship or vessel"

recover the value of the lost salt, *viz*, R4,360

plaintiff had concealed the fact from them The plaintiff alleged that information of the loss was given on the 27th April, when the policy was applied for, and he further contended that in any event the defendants were liable, inasmuch as the covering note of 15th March 1897 was a complete and final contract binding upon the defendants, whatever events may subsequently happen. *Held*, affirming CANDY, *J* that the plaintiff was not entitled to recover KASAM HAJI MITHA *v* BRITISH AND FOREIGN MARINE INSURANCE CO

[I. L R , 23 Bom., 737

14. ———— Evidence of loss—*Jettison.* —*Protest of nacoda* —In an action on a policy of insurance to recover the value of a portion of the goods insured lost by jettison, the protest of the nacoda and the Custom House vouchers showing that on the return of the ship to her port of sailing (being driven back by stress of weather) the goods alleged to have been lost were not on board her are not sufficient as even *primâ facie* proof *of the loss* RAMABHAI GIRDARBHAI *v* ALI AKBAR KAJRANI 1 Bom., 6

sales, and that on p

of the policy the owner is entitled to recover his average loss cannot be upheld, such not being a reasonable usage RANSORDASS BHOGILAL *v.* KESRISING MOHANLAL 1 Bom., 229

DICH GHOSAUL *v* APCAR Bourke, 410

On appeal in same case,—*Held* the rule allowing one third "new for old" in cases of insurances on h is not inflexible therefore, where the ship

[1 Ind. Jur, N. S.,

17 ———— Unseaworthiness of ship—

[Cal. 5:

18 ————

reason of an insufficient crew she having sailed from

INSURANCE—*continued.*

2. MARINE INSURANCE—*continued.*

the intermediate port without sufficient hands to work the vessel, although she had a sufficient crew at the time she started for the voyage. *Semble*—There is no implied warranty of seaworthiness in a time policy. JENKINS *v.* HEYCOCK

[5 Moore's I. A., 361

19. ——— Goods overvalued—*Reason for overvaluation failing—Liability of underwriters.*—Where, in a valued policy of insurance, the goods insured were valued at an amount greatly in excess of their real value, which amount was intended to include the amount in which the insured was liable to Government on account of bonds executed by him in respect of the goods insured, and after loss of the goods Government elected not to enforce the bonds,—*Held* that the underwriters were entitled to be subrogated in the amount of the bonds, and were liable to the insured only for the real value of the goods together with a fair profit. HARIDAS PURSHOTAM *v.* GAMBLE . . . 12 Bom., 23

20. ——— Abandonment—*Notice of abandonment.*—Where an insurance office is sued on a constructive total loss, there must be a distinct and decided abandonment of all right on the part of the insured. The notice of abandonment should be immediate. The question always is whether the delay in giving notice is reasonable, with reference to the particular circumstances and the owner's means of ascertaining the position of the ship; where the suit is for a total loss, the judgment may be as for an average loss. SEEDICK GHOOSAL *v.* APCAR

[Bourke, O. C., 391

21. ——— *Abandonment of ship and cargo—Sale—Right of purchaser.*—The ship *Maharanee* was wrecked and abandoned with her cargo to the underwriters. Nine cases, part of the cargo which with two others were separately insured, were recovered in good condition from the wreck. Of this all parties had notice. The wreck and cargo were subsequently sold by the ship's agents, who were also agents for the underwriters, for the benefit of all concerned, the cargo being described generally. *Held* that the nine cases did not pass to the purchaser at the sale, as they could not be legally abandoned; and on the facts that the defendants were not liable as having induced the plaintiff to believe that they intended to sell more than what was ceded to the underwriters by the abandonment. MITCHELL *v.* GLADSTONE

[1 Ind. Jur., N. S., 406

22. ——— Constructive total loss.—In a suit on a policy of insurance as for a total loss, where goods were shipped for the voyage from Surat to Kurrachee, and the vessel having sprung a leak was forced to put into Dwarka, at which place the goods (with exception of some iron thrown overboard during the voyage) were landed and placed in a warehouse, from which a portion (some castor oil and jagari) was carried off by robbers; and the residue of the cargo, consisting principally of cotton seeds which were dried and cleaned, was sold; and the proceeds, after deducting freight expenses, remained in the hands of mahajans, to be paid to whomsoever might be entitled to them,—*Held*, first, that the loss by robbers, although not expressly mentioned in the policy, was one of the perils insured against; second, that the Judge below being erroneously of opinion that when the goods were once landed damaged there was nothing to do but to sell everything for the benefit of underwriters, and having consequently recorded no finding on the material question whether the whole or any part of the cargo was practicallly capable of being sent in a marketable state to the port of destination, the suit must be remanded, in order that the Judge might determine whether there was a constructive total loss which entitled the plaintiffs to abandon; and if not, that he might award such a proportion of the value of the iron and of the jagari and oil which were actually lost, and of the amount of the deterioration in the cotton seeds and other articles, as the sum insured by the defendant bore to the whole sum, taking into account also in that case what proportion the sum insured bore to the actual value of the goods. DWARKADAS LALUBHAI *v.* ADAM ALI SULTAN ALI

[3 Bom., A. C., 1

23. ——— *Value of ship when repaired.*—In a suit to recover the amount of insurance on a ship which had been abandoned on an alleged constructive total loss, it appeared that the ship had sustained severe injury from foul weather, but that her value, after being repaired, would exceed the cost of repairing her by about 3,000 dollars. *Held* therefore that there was not a constructive total loss, and that, in order to establish a constructive total loss, there must have been a threatened destruction, or absolute temporary privation, of the insurer's ownership, or an alienation of his property in the thing insured. GAHAN *v.* OWEN

[Bourke, O. C., 17: Cor., 149

Held no constructive total loss in MACKINNON *v.* DUNDAS . . . Bourke, O. C., 228

24. ——— *Notice of abandonment.*—A cargo, consisting of railway sleepers, was insured by the plaintiffs in the ship *Heimdhal* from Geography Bay to Calcutta, and expressed in the policy to be warranted from all risks, except total loss. In proceeding up the river Hooghly, in charge of a pilot, on the 30th April, the vessel grounded on the Rungafulla Sand, heeled over, and lay imbedded in the sand. Endeavours were made unsuccessfully to get her off. On 5th May, Lloyd's surveyor inspected the vessel, and reported that, considering her position, the state of the tide at that season, and the expense of getting her off, it was unadvisable to go to further expense in doing so; and that the cost of repairs would, in all probability, amount to much more than the value of the ship when repaired. Some of the sleepers had been then jettisoned, and the surveyor recommended that the vessel and cargo should be abandoned and sold by public auction to the highest bidder. Attempts were made, but unsuccessfully, to get some of the cargo off, and the sleepers were of such a quality that they would not float. The consignees accordingly

INSURANCE—*concluded*

2 MARINE INSURANCE—*concluded*

caused the ship and cargo to be sold by public auction in Calcutta on 12th May No notice of abandonment was given The sleepers realized the sum of R450 The purchaser hired boats and began unloading the ship he unloaded 78 sleepers in all On 14th May the ship floated off and came up the river, with the rest of the cargo in safety, proving not to be so much damaged as was supposed In an action on the policy of insurance,—*Held* that there was not such a total l ss of tl

recover as for .

abandonment

MACPHERSON,

necessity for the sale of the ship, or that it was impracticable to convey the sleepers, or a material portion of them, to their destination But if the insured

circumstances at the time of the sale that the ship

to its destination The sale caused a total loss, and there was no need for notice of abandonment EAST INDIAN RAILWAY COMPANY *v* AUSTRALASIAN INSURANCE COMPANY . 6 B L R, 218

S C on appeal . . 7 B. L. R., 347

INSURANCE COMPANY.

——— Liability of, to pay license tax.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 87 . I. L R, 22 Calc., 581

INTENTION.

See CASES UNDER CRIMINAL TRESPASS

——— Absence of—

See CASES UNDER CULPABLE HOMICIDE.

See CASES UNDER MURDER.

——— Dishonest—

See CASES UNDER FORGERY.

See CASES UNDER THEFT

——— of joint or several ownership.

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

See CASES UNDER HINDU LAW—PARTITION—REQUISITES FOR PARTITION

——— to evade Stamp laws.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE
[I. L. R., 1 Mad., 40
I. L. R., 3 Bom., 230

INTENTION—*concluded*

See STAMP ACT, 1862, s 17.
[3 B. L. R, A. C, 329
3 Bom, O. C, 153
13 W. R., 102

See STAMP ACT, 1869, ss 24, 29
[24 W. R., Cr, 1
6 Mad., Ap, 5

See STAMP ACT, 1879, ss 37, 61, 63, 67
[I. L. R., 8 Calc, 259
I L R, 7 Mad., 537
I. L. R., 12 Mad., 231
I. L R, 23 Mad., 155

——— to get innocent person punished.

See STOLEN PROPERTY—OFFENCES RELATING TO I. L. R., 1 All., 379

INTENTION OF PARTIES.

See ESTOPPEL—ESTOPPEL BY CONDUCT
[4 B L. R, P C., 16
I. L. R., 18 Calc, 34
L. R, 18 I A., 9

See CASES UNDER EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

See GRANT—RESUMPTION OR REVOCATION OF GRANTS I L. R, 10 Calc, 238

See HINDU LAW—JOINT FAMILY—POWER OF ALIENATION BY MEMBERS—MANAGER . . I. L. R., 18 Bom, 631

See MORTGAGE—FORM OF MORTGAGES
[2 Agra, 124
1 N W., 161
I. L R., 21 Calc, 882
L R, 21 I. A., 96
I. L. R., 19 All., 434
I. L. R., 22 All., 149

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS
[I. L. R., 2 All., 826
I. L. R, 9 Calc, 961
I. L. R., 6 Bom., 561
I. L. R, 10 Bom., 88
I. L. R., 8 Mad., 246
I. L. R, 11 Mad., 345
I. L. R, 20 Mad., 488
I. L. R., 10 Calc., 1035
L. R., 11 I. A., 126
I. L. R., 18 Bom., 86
I. L. R., 21 Bom, 567
3 C. W. N., 153
4 C. W. N., 769

See REGISTRATION ACT, 1877, s 49 (1864, s 13) . . 1 B. L R., A C, 37
[25 W. R., 376

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 23 Calc., 179
I. L. R., 27 Calc, 7
3 C. W. N., 207

INTENTION OF PARTIES—*concluded.*

—— **Intention as to future action, expressed between parties, not amounting to a contract**—*Expressed intention to make particular person an heir—Effect in succession of reversionary heirs.*—A mutual expression of intention between parties caused expectation on either side that the intention would be carried out, but no contract was made. A childless person, since deceased, expressed to the father of the minor son of his sister his intention to make the boy his heir, and that, if he, the intending donor, should have children of his own, he would give the boy a share of his property. The father assented and made over charge of the boy. The widows and mother of the deceased, taking his estate for their lives, admitted the boy to joint possession with them, and, on being sued by the reversioners of the family estate expectant upon their deaths, defended, as co-defendants with the boy, on the ground that they had, in obedience to the known wishes of the deceased, recognized the boy as heir to him. *Held* that the reversioners could only be deprived of the inheritance after the death of the widows, who could not transfer any estate to last beyond their own lives, by the act of the deceased in contracting with the father of the boy to make the boy the heir, if such contract had been made. And that the substantial question was whether the representations made between the two had amounted to a contract to that effect. On evidence wholly oral, it was found that no such contract had been made. Only enough had been said between the two to give rise to the expectation on either side that the boy would, the then intended course being followed, get the inheritance. NARAIN DAS *v.* RAMANUJ DAYAL

[I. L. R., 20 All., 209

LALA NARAIN DAS *v.* LALA RAMANUJ DAYAL

[2 C. W. N., 193

INTEREST.

INTEREST—*continued.*

See CASES UNDER BENGAL REGULATION, XV OF 1793.

See CONTRIBUTION, SUIT FOR—INTEREST.

[10 B. L. R., 352, 353 note

See CASES UNDER COSTS—INTEREST ON COSTS.

See CASES UNDER HINDU LAW—USURY.

See CASES UNDER MAHOMEDAN LAW—USURY.

See CASES UNDER MORTGAGE—ACCOUNTS.

—— **Payment of—**

See CASES UNDER LIMITATION ACT, 1877, s. 20 (1871, s. 21).

—— **Receipt of, in advance.**

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . . **9 B. L. R., 261**

[15 B. L. R., 331, 338 note

I. L. R., 6 Calc., 241

—— **Stipulation for, at high rate.**

See CASES UNDER CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY COURT.

1. MISCELLANEOUS CASES.

1. —— **Accounts**—*Suit for balance of accounts—Absence of contract for interest.*—In a suit relating to balance of accounts, probabilities are not sufficient to support a decree for interest in the absence of a contract for interest. JOY NARAIN BHUGGUT *v.* KASHEE CHOWDRY . **16 W. R., 148**

2. —— *Execution of decree.*—Where, in the course of executing a decree, accounts, in which interest was entered and charged, had from time to time been filed in Court, and no objection had been taken thereto by the judgment-debtor from 1870 up to 1880,—*Held* that it was too late to object to interest being allowed, and that the High Court would not interfere to alter the rate where it appeared that the District Judge had found that the rate ruling in the district was 12 per cent., and had allowed that rate accordingly. GOPAL SAHU DEO *v.* JOYRAM TEWARY **I. L. R., 7 Calc., 620**

[9 C. L. R., 402

INTEREST—*continued*

1 MISCELLANEOUS CASES—*continued*

3 ——— Arrears of rent—*Act X of 1859, s 20—Direction of Court*—The enactment of s 30 of Act X of 1859, that arrears of rent, unless otherwise provided by written agreement, shall be liable to interest at 12 per cent. per annum, does not make it imperative on the Court to award ... but the ... in such a ... question ... involved

BECKWITH v KISHTO JEEBUN BUCKSHEE [Marsh, 278 : 2 Hay, 286

KASHEENATH ROY CHOWDHRY v MYNUDDEEN CHOWDHRY 1 W. R., 154

4. ——— *Prolongation of rent suit by tenant*—In a suit for seven years' arrears of rent it appeared that the plaintiff had previously sued and been nonsuited, and that the tenant had protracted the proceedings *Held* that the Court ought to award interest on the arrears. RAMJEEBUN BOSE v TRIPOORA DOSSEE [Marsh., 396 : 2 Hay, 449

5. ——— *Withholding rents.*—Where rents are withheld, interest may be given, whether it is provided for in the pottah or not LALLA SHEO SAHAY SINGH v KUMMORUNISSA BEGUM 2 W R, Act X, 68

6. ——— *Bengal Act VI of 1862—Discretion of Court*—Bengal Act VI of 1862 did not alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears of rent BISSONATH DEB v HURRO PERSHAD CHOWDHRY 2 W R, Act X, 88

7. ——— *Agreed instalments of rent*—Interest may be decreed with arrears of rent, but it should not be decreed upon instalments of rent as from dates during the currency of the year, unless the parties had agreed that the rent should be paid by instalments at those dates BHARUTH CHUNDER ROY v BEPIN BEHAREE CHUCKERBUTTY [9 W. R., 495

8. ——— *Pendency of suit for enhancement*—While a suit for enhancement of rent is pending, defendant is not liable for interest, inasmuch as his rent is undetermined, but after the rent is determined, he is liable to interest for all arrears from, and for all instalments after, that date. RAJMOHUN NEOGEE v ANUND CHUNDER CHOWDHRY 10 W. R., 166

9. ——— *Discretion of Court*—It is in the discretion of the Court to allow interest on arrears of rent. SATTYANAND GHOSAL v ZAHIR SIRDAR 6 B. L. R., Ap, 119

RADHIKA PROSUNNO CHUNDER v URJOON MAJHEE 20 W. R., 128

10. ——— *Enhancement of rent*—In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due AHSANOOLLAH v KAJEE AFTABOODDEEN I. L. R., 4 Calc, 594 [3 C. L. R., 382

11. ——— *Discretion of Court*—Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear interest at 12 per cent from the time when it, or each instalment of it, became due The discretion which a Court has to refuse interest can only be exer- ...

BULLAB LALL I. L. R, 5 Calc, 102 [4 C. L. R., 349

12 ——— *Waiver—Omission to claim rent for some years at the stipulated rate, whether amounts to a waiver*—The mere omission to claim interest for some years from a tenant at the rate stipulated in the lease does not amount to a waiver of the landlord's right to claim interest at such rate *Johoory Lall v Bullab Lall, I L R, 5 Calc, 102,* followed SHYAMA CHARAN MANDAL v HERAS MOLLAH I. L. R., 26 Calc., 160

13. ——— *Bengal Act VIII of 1869, s 21—Rate of interest*—Under Bengal Act VIII of 1869 s 21, it is discretionary with the Judge to give interest at 12 per cent, he is not obliged to award interest to that extent DHIRAJ MAHTAB CHAND v DEBKUMARI DEBI [7 B L R., Ap, 26

14. ——— *Bengal Act VIII of 1869, s 21—Discretion of Court*—In suits for arrears of rent, a Court of Justice is not bound in every instance to award interest at 12 per cent., the rate specified in Bengal Act VIII of 1869, s. 21, but has discretion either to disallow interest alto- ...

Court reduced the rate of interest to 6 per cent KUSSEEBUN v ASHRUFOONNISSA 26 W. R., 463

15. ——— *Erroneous dismissal of* ... *admission* ... enhanced ... cient evide ... should not be dismissed altogether if defendant admits a certain sum to be due for the years in question, but should be decreed to the extent of the admission In such a case where the first Court had decreed rent at the rates admitted with some enhancement, and the lower Appellate Court, seeing no grounds for enhancement, dismissed the suit, the High Court granted the amount admitted with interest from the date of the first Court's decree AKASHBUTTY KOOER v HEERA RAM MUNDUR [24 W. R., 82

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

16. ———————— *Bengal Act VIII of 1869, s. 21.*—Where a pottah stipulates that, in case of default of punctual payment of rent, all arrears shall bear the customary and legal interest, 12 per cent. per annum will be allowed in analogy to Bengal Act VIII of 1869, s. 21. ANUNGO MOHUN DEB ROY *v.* MUDDUN MOHUN MOZOOMDAR

[1 C. L. R., 147

17. ———————— *Mesne profits—Interest—Rent in kind.*—Where rents were collected in kind instead of in money, and the Judge, in awarding mesne profits, allowed a much larger rate of interest than was usually allowed on rents paid in money,—*Held* that he was wrong in so doing. No difference in that respect should be made between rents paid in kind and those paid in money. RAIKISORI DASI *v.* BONOMALI CHARAN MAITI

[1 B. L. R., S. N., 14: 10 W. R., 209

18. ———————— *Place of payment of rent—Office of landlord—Bengal Tenancy Act, s. 67.*—Where defendants, residents of Calcutta, held a village in Midnapur under the plaintiff who had no office there for collecting rent, and the tenants refused to continue paying the rent at the plaintiff's residence at Burdwan, but offered to pay it at Calcutta which was not agreed to by the plaintiff who did not appoint any convenient place for payment and the rent got into arrears,—*Held* that the defendants were bound to pay the rent notwithstanding the plaintiff had no village office, and did not appoint a convenient place for payment. In absence of any agreement, the defendants were bound to go to the land lord and pay there rent as it fell due. Rent falling into arrears under the above circumstances was liable to interest under s. 67 of the Bengal Tenancy Act. FAKIR LAL GOSWAMI *v.* BONNERJI

[4 C. W. N., 324

19. ———————— *Right to interest*—In March 1884 the rent payable by an occupancy-tenant was fixed by the Settlement Officer under s. 72 of the N.-W. P. Land Revenue Act (XIX of 1873). In 1885 the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement Officer's order as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent prior to 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held,* upholding the decision as to the rent, that the plaintiff was entitled to interest at 1 per cent. on the sum decreed from the date of the institution of the suit. RADHA PRASAD SINGH *v.* JUGAL DAS

[I. L. R., 9 All., 185

20. ———————— *N.-W. P. Rent Act (XII of 1881), s. 34, cl. (a)—Contract Act (IX of 1872), s. 73—Liability of defaulting thikadar to pay interest.*—The non-application of cl. (*a*) of s. 34 of Act XII of 1881 to a thikadar does not exempt the thikadar from his liability under s. 73 of Act IX of 1872. Hence where a thikadar makes default in payment of his rent, he is liable to be charged with interest on the sums due up to the date of payment. GHANSHIAM SINGH *v.* DAULAT SINGH

[I. L. R., 18 All., 240

21. ———————— *Bengal Tenancy Act (VIII of 1885), ss. 67 and 178 - Rate of interest specified in kabuliat—Sale for arrears of rent of right of defaulting tenant who has held over—Purchaser of tenure, Rights of.*—In execution of a decree for arrears of rent against a tenant whose term under a kabuliat had expired, but who had held over, the plaintiff put up the tenure for sale, and the defendant purchased it. The plaintiff afterwards sued the defendant for interest at the rate and according to the instalments specified in the kabuliat. *Held,* reversing the decision of the Subordinate Judge, that the defendant was liable only for interest at the rate specified in s. 67 of the Bengal Tenancy Act. *Ishan Chunder Chowdhury* v. *Chunder Kant Roy,* 13 *C. L. R.,* 55, distinguished. ALIM *v.* SATIS CHANDRA CHATURDHURIN

[I. L. R., 24 Calc., 37

22. ———————— *Bengal Tenancy Act (VIII of 1885), ss. 67, 178—Tenant holding over.*—A tenant executed a kabuliat before the passing of the Bengal Tenancy Act for a period of nine years and agreed to pay interest at 75 per cent. per annum on arrears of rent due from him; the term of the lease expired after the Bengal Tenancy Act came into force, and after the expiration of the term the tenant continued to hold over without any fresh kabuliat or settlement. Held that the landlord was not entitled to recover interest as stipulated in the kabuliat, but he was only entitled to interest at the rate of 12 per cent. per annum as provided in s. 67 of the Act. *Kishore Lal Day* v. *Administrator General of Bengal,* 2 *C. W. N,* 303, and *Alim* v. *Satis Chandra Chaturdhurin, I. L. R.,* 24 *Calc.,* 37, referred to. ALI MAHMUD PRAMANICK *v.* BHAGABATI DEBYA CHOWDHURANI . . 2 C. W. N., 525

23. ———————— *Bengal Tenancy Act (VIII of 1885), ss. 67, 178, sub-s. 3, cl. (h), and 179—Contract to pay interest at higher rate than allowed by s. 67 of the Act.*—A contract by a tenant holding under a permanent mokurari lease to pay interest on the arrears of rent at a higher rate than 12 per cent. per annum is not enforceable in law. BASANTA KUMAR ROY CHOWDHRY *v.* PROMOTHA NATH BHUTTACHARJEE

[I. L. R., 26 Calc., 130

BASUNTA COOMAR ROY CHOWDHRI *v.* BAKSU MOLLAH . . . . . 3 C. W. N., 37

24. ———————— *Bengal Tenancy Act (VIII of 1885), ss. 67, 178—Suit for arrears of rent and interest at an exorbitant rate—Rule relating to hard and unconscionable bargain—Liability of a purchaser of a tenure at a sale for arrears of rent to pay interest.*—A stipulation for the payment of interest at an unusual and an exorbitant rate cannot be supposed to be an incident of tenancy which would attach to it even after a sale for arrears of rent. In execution of a decree for rent against a tenant who held under a kabuliat,

INTEREST—*continued*

1 MISCELLANEOUS CASES—*continued*

dated March 1880, the plaintiff put up the tenure for sale and the defendant purchased it on the 20th November 1891 Subsequently, a suit for rent with interest at 225 per cent per annum, specified in the *kabuliat* executed by the former tenant, was brought by the plaintiff against the defendant The defence was that the plaintiff was not entitled to interest at such a high rate *Held* that the plaintiff was not entitled to recover interest at the rate claimed, it being an exorbitant one and not an ordinary incident of a tenancy *Held* also that

being the ordinary rate of interest for arrears of rent *Per* RAMPINI, *J*—By the sale of an ordinary raiyati tenancy for arrears of rent, a new contract is created between the auction purchaser and the landlord at the date of the sale, therefore, in a case where the

3 C. W. N, 194

25. ———— *Right to interest on rent from transferee—Oudh Rent Act (XXII of 1886), s 141*—Under the Oudh Land Revenue Act, 1876, ss 121, 123, the shares of defaulting under proprietors were transferred to three of them who offered to pay In a suit brought by the superior proprietor, the talukhdar, in whose estate the mehal was comprised, against the whole body of under proprietors for arrears of rent accrued while the term of the above transfer was running, interest was also claimed *Held* as to the interest that under-proprietors were not tenants within the meaning of the Oudh Rent Act, 1886, s 141, providing for payment of interest on rents due from tenants MUHAMMAD MEHNDI ALI KHAN *v* MUHAMMAD YASIN KHAN

[I. L. R, 26 Calc, 523

26. ———— *Bengal Tenancy Act (VIII of 1885), ss 67, 178, 179—Contract as to interest.* S. 179 of the Bengal Tenancy Act controls s 178, so a darpatni talukh created, after the Act came into force, by a permanent tenure-holder in a permanently settled area comes within the scope of s. 179, and is not affected by the provisions of s 178 (*h*) regarding interest. ATULYA CHURN BOSE *v* TULSI DAS SARKAR 2 C. W. N., 543

LAL SHAHA *v* JOY NARAIN SHAHA CHOWDHRY

[23 W. R., 105

INTEREST—*continued*.

1 MISCELLANEOUS CASES—*continued*

28. ———— Bill of exchange—*Deduction*

of discount from the amount advanced on a bill of exchange, if such deduction be made with the full knowledge and consent of the borrower, and under such circumstances as would not lead to the inference that unfair advantage was taken of the position of the borrower The fact that a loan company, registered under the provisions of Act X of 1866, has published and caused to be registered rules regarding the payment of interest on loans, does not bind a borrower to pay the interest as required by those rules unless he has contracted to do so TIPPERAH LOAN OFFICE *v* GOUR CHUNDER BARMAN

[2 C. L R., 349

29. ———— Bond—*Construction of bond—Calculation of interest*—On the adjustment of an account of the principal and interest due on a bond, a kararnamah or deed of agreement was entered into by the parties, in which, besides the original sum, a further sum for interest accrued thereon was declared due and agreed to be paid off by instalments before a given time Payments were made at irregular periods, which payments the bond holder claimed to appropriate to keeping down the interest upon the whole sum composed of both the original principal sum as well as the sum mentioned in the kararnamah as accrued thereon for interest *Held*, upon the construc-

first instance to satisfy such interest, the excess of the payments only being appropriated towards the liquidation of the principal sum due BAMUNDOSS MOOKERJEA *v* OMEISH CHUNDER RAE

[6 Moore's I. A., 239

decree for the principal and balance of interest up to date of decree LUCHMESWAR SINGH *v* LUTF ALI KHAN 8 B. L. R, P. C., 110

31. ———— Compound interest—*Interest per mensem.*—Interest at the rate of one per cent per mensem, to be calculated at the end of each year, does not mean compound interest, so as to admit of interest being charged upon the note, but interest calculated per mensem, but payable per annum. RAJUNDER NARAIN RAE *v* BIJAI GOVIND SINGH

[2 Moore's I. A, 253

32. ———— *Decree of Privy*

low, was held as intended to give the plaintiff the

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

moiety claimed by him of the sum which he alleged to be due for principal and arrears of interest (at 12 per cent.) equal to the principal upon a certain kararnamah and bond, and to allow the interest from the date of the institution of the suit up to realization. *Held*, further, that in the account taken by the appellant as the foundation for his proceedings in execution he was not warranted in making a rest at the date of the order of the Principal Sudder Ameen dismissing the suit, and assuming that interest should run upon the consolidated sum from that date; as in the absence of special directions it could not be presumed that the Appellate Court intended to make an order *nunc pro tunc* which would give compound interest from the date of the decree of the Court of first instance. GOPEE KISSEN GOSSAMEE *v.* BRINDABUN CHUNDER SIRCAR . . . . 19 W. R., P. C., 41

33. ———————— *Illegal contract —Sonthal Pergunnahs Settlement Regulation (III of 1872), s. 6—Sonthal Pergunnahs Justice Regulation (V of 1893), s. 24—"Unlawful" consideration, Meaning of.*—There is no law or regulation laying down that an agreement between any two persons living in the Sonthal Pergunnahs to pay compound interest upon the amount borrowed is "unlawful" within the meaning of s. 23 of the Contract Act. All that the law provides is that compound interest will not be decreed by any Court. Referring to the Sonthal Regulations, s. 6 of Regulation III of 1872 and s. 24 of Regulation V of 1893, it was *held* in respect of an agreement to pay interest on an amount composed partly of the principal and interest due on a former debt that such agreement is not void under s. 24 of the Contract Act, and that the obligee may recover such sums of money as he is entitled in law to recover, notwithstanding that part of the consideration is compound interest. SHAMA CHARAN MISSER *v.* CHUNI LAL MARWARI . I. L. R., 26 Calc., 238

34. ———————— Costs—*Costs not mentioned in decree.*—*Held* that the principle of the Full Bench ruling, *Mosoodun Lall* v. *Bhekaree Singh*, *B. L. R., Sup. Vol.*, 602 : 6 *W. R.*, *Mis.*, 109, is as much applicable to interest upon costs as it is to interest upon mesne profits not awarded by the decree, and must be applied to all decrees passed, either before or after the date of that judgment. LEELANUND SINGH *v.* RAM NARAIN SINGH . . . 15 W. R., 415

35. ———————— *Interest on costs where decree does not specially give it.*—Costs in the suit carry interest unless the contrary is distinctly stated in the decree. BHARUT CHUNDER SIRCAR *v.* GOUREE PARSHAD ROY . . . 18 W. R., 34

HARADHUN SANDYAL *v.* RASH MONEE DASSIA [2 W. R., Mis., 21

36. ———————— *Interest not mentioned in decree—Execution of decree—Procedure.*—The Court in executing a decree has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. ULFUTUNNISSA *v.* MOHAN LAL SUKAL [6 B. L. R., Ap., 33

BROJO SOONDUREE DEBIA *v.* ANUND MOYEE DEBIA [16 W. R., 302

37. ———————— *Interest not mentioned in decree.*—Where the decree gives a interest upon the principal sum recovered only, but not upon costs, the plaintiff is not entitled to such interest. AMEEROONISSA KHATOON *v.* MAHOMED MOZUFFUR HOSSEIN CHOWDHRY . . 18 W. R., 103

38. ———————— *Interest not mentioned in decree.*—Where a decree gives interest upon the principal sum recovered only, and no mention is made as to interest on costs, the successful party is not entitled to such interest. MAHTAB CHUNDER BAHADOOR *v.* RAM LALL MOOKERJEE [I. L. R., 3 Calc., 351: 1 C. L. R., 158

39. ———————— *Interest not mentioned in decree—Decree of Privy Council—Mesne profits.*—In a suit to recover certain property, the plaintiff obtained a decree for a portion thereof, but on appeal the High Court reversed the decree and declared him entitled to the whole. On appeal to the Privy Council, the decree was that the decision of the High Court be "reversed with costs," and the decree of the first Court "affirmed with costs." On this the first Court ordered the restitution of the property with wasilat, and also that the defendant should obtain interest on the costs both of the first Court and of the Privy Council; but he disallowed the costs of the High Court as not being expressly awarded by the Privy Council decree. *Held* the defendant was entitled to mesne profits. Interest on the costs of the Privy Council should not be given, the decree being silent on the point; but the costs of the first Court would carry interest. The words "with costs" in the portion of the decree of the Privy Council affirming the decree of the first Court mean the costs of the proceedings in the High Court. GURUDAS RAI *v.* STEPHENS [13 B. L. R., Ap., 44: 21 W. R., 195

BHOZA RUGHBUR SINGH *v.* BHOZA RAJ SINGH [3 N. W., 319

40. ———————— *Execution of decree of Privy Council—Costs of translation and printing.*—Where, on appeal to the Privy Council, it was ordered that the decree of the High Court be reversed with £376 12*s.* 2*d.* costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £276 12*s.* 2*d.* MADAN THAKUR *v.* LOPEZ [9 B. L. R., Ap., 22

S. C. MUDDUN THAKOOR *v.* MORRISON [18 W. R., 253

UMATUL FATIMA *v.* AZHUR ALI [9 B. L. R., Ap., 23 note

S. C. OOMATOOL FATIMA *v.* AZHUR ALI [15 W. R., 356

INTERREST—*continued*

1 MISCELLANEOUS CASES—*continued*

ASGUR ALI *v* NOGENDRO CHUNDER GHOSE
[23 W. R., 463

SARODA PRASAD MULLICK *v* LUCHMIPAT SINGH DUGAR (where, however, MARKBY, J, dissented from the practice)
[9 B. L R., Ap, 23 note: 18 W. R, 89

41 ——— *Execution of decree of Privy Council—Costs of translation and printing*—Where an order of Council in England awarded costs incurred in this country, including charges for translation and printing,—*Held* that the costs should carry interest at 6 per cent NIL MADHUB DOSS *v* BISSUMBHUR DOSS
[21 W. R., 411

42 ——— *Privy Council order awarding costs—Execution of decree—Act XXIII of 1861, ss 10 and 11—Interest not given by decree*—Where an order passed by Her Majesty in Council on report of the Judicial Committee awards costs, but is silent as to interest on the costs so awarded, it is not competent to the Court which has to execute the order to direct payment of the costs with interest The principle of the decisions in cases arising under ss 10 and 11 of Act XXIII of 1861, which have established a similar rule of practice in executing decrees passed by the Courts in India,

[illegible]
[I L. R., 3 Calc, 161: L R., 4 I A, 137

LEKRAJ ROY *v* MAHTAB CHAND 21 W. R, 147

43. ——— *Interest on costs not given in decree of Privy Council*—Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any

[illegible]
[I. L R., 23 Calc, 357

44 ——— *Calculation of*

NUT *v* BINDHOO 13 W. R, 138

45 ——— *Interest of costs refunded*—Interest is awardable on costs refunded on the reversal of a decree on which costs were recovered. KEDAR NATH PAKRASEE *v* DOYA MOYEE DEBIA
[20 W. R, 49

INTEREST—*continued*

1 MISCELLANEOUS CASES—*continued*

below the amount of the principal UNNODA SOONDUREE DOSSEE *v* OODHUB NATH ROY
[11 W. R., 125

47 ——— **Debtor and creditor**—*Power of Court to give interest or any sum overdue*—Where a sum of money becomes due and payable at a specified time, the Court may award interest in the shape of damages for such period thereafter as the money remains unpaid. TARA CHAND BISWAS *v* NAFAR ALI BISWAS 1 C. L. R., 236

48. ——— *Suit on bond—Offer to pay amount into Court*—In a suit on a bond, where it was shown that the obligor had offered to pay the principal and interest into Court—*Held* that he should be relieved from interest from the date of such offer GUDI JANAKAYYA GARU *v*. GARUDA REDDI GARUDA REDDI *v* GUDI JANAKAYYA GARU 1 Mad., 124

49. ———*Right to interest*

50. ——— *Delay in suing*—A creditor is not bound to bring his action to suit the convenience of the debtor, and may, where two parties are jointly and severally liable on a bond as principal and surety, defer bringing his suit to the last moment the law allows, and he is not entitled to a less sum for interest if he does so MAHOMED ROHEEMOODDEEN *v* INDOOR CHUNDER JOWHUREE
[12 W. R, 192

51. ——— *Decree on mortgage—Leave to pay at once to avoid high rate of interest*—In giving the plaintiff a decree on a mortgage which provided interest at 24 per cent, it was

[illegible]
[7 C. L. R., 206

See CHOTOOLALL *v* MILLER 7 C. L. R, 267

52. ——— *Principle of deducting payments on account of decree*—The rule as

pal so as to produce compound interest. GOOROO DASS DUTT *v* UMA CHURN ROY 22 W. R., 525

paid on account of Government revenue had been

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

twice credited as alleged by the obligor (appellant), the Court held that it had only once been credited. The respondent on cross-appeal claimed interest on the R350 for six years and eight months at twelve per cent. per annum, on the strength of a stipulation in the bond that, from a certain date, interest should accrue on the principal; but the Court disallowed the claim on the ground that payment of interest on the item paid as Government revenue was neither expressly stipulated for nor contemplated by the parties, and because it was open to the respondent to take measures to realize the sum so paid instead of letting it lie over and double itself by interest. SHIBESSURREE DEBIA *v.* LADLY . . . . 17 W. R., 71

54. ———— *Mortgagee in possession—Suit for redemption.*—The principle of construction, that when a creditor sues for his principal and interest (the latter being equal or more than equal at the time of the commencement of the suit to the principal) he is not debarred from charging subsequent interest for the period during which he is kept out of his money by the debtor's resistance of the demand, is not applicable to a case in which a mortgagee in possession is not a party suing for the money, but the party resisting by every means in his power a claim to redemption and the final settlement of the account. AJIMUT ALI KHAN *v.* JOWAHIR SINGH . . . . 14 W. R., P. C., 17

S. C. AZIMUT ALI KHAN *v.* JOWAHIR SINGH [13 Moore's I. A., 404

55. ———— *Delay of decree-holder to take out execution.*—The fact of a decree-holder having delayed for a considerable time to take out execution of his decree is no ground for the Court refusing to allow him interest at the rate directed by such decree, to be paid upon the principal sum recovered, from the date of decree until realization. BANY MADHOB TRIVADI *v.* RAM GOPAL SIRCAR [3 C. L. R., 523

56. ———— *Setting up adverse title.*—In a suit to recover title-deeds and other property, the defendant claimed a certain sum as being due to him, and in the plaint the plaintiff offered to pay the defendant all that was due up to that date, provided the deeds and property were given up. The defendant, however, claimed a right to hold them under an adverse title. *Held* that the defendant was only entitled to interest up to the date of the plaint, and not up to the date when the money due was actually paid. JUGGERNATH DASS *v.* BRIJNATH DOSS [I. L. R., 4 Calc., 322: 3 C. L. R., 375

57. ———— Goods sold—*Suit for price of goods—Interest before suit.*—Where there was no time fixed or agreed for payment of the price of goods bought, nor was any demand of price made accompanied with an intimation that interest from the date of demand would be charged,—*Held* that interest could not by law be decreed for the period prior to the institution of the suit. PALMER *v.* MADHOO PERSAUD . . . . . 2 Agra, 131

58. ———— *Interest on price and charges not legally demandable in absence of special contract.*—The defendant made an offer in writing to the plaintiffs for the purchase of 200 bales of pepperill drill at 9*s.* 2*d.* A few days later the plaintiffs' salesman tendered for signature to the defendant an indent containing certain terms not contained in the original offer, and in particular containing the words, "Free Bombay Harbour and interest." This the defendant refused to sign. The plaintiffs, however, ordered out the goods, and on their arrival tendered them to the defendant, demanding at the same time such sums for charges, expensess, and interest as would have been due under a contract entered into on the added terms. These the defendant refused to pay. In a suit claiming the deficiency (after a sale by public auction of the 200 bales),—*Held* that, in the absence of any contract to that effect, interest could not be legally demanded on the contract price, and still less could it be demanded on the incidental charges in the invoice. MAHOMED HAJI JIVA *v.* SPINNER . I. L. R., 24 Bom., 510

59. ———— Government promissory notes—*Interest on interest of Government paper withheld.*—Interest may be claimed on the interest of Government promissory notes withheld by another. TARUCKNATH MOOKERJEE *v.* GOUREECHURN MOOKERJEE . . . . . 3 W. R., 147

60. ———— Insolvency proceedings—*Power of High Court—Proceedings under Insolvent Act, 11 & 12 Vict., c. 21.*—Proceedings were taken under the Insolvent Act, 11 & 12 Vict., c. 21, and the proceeds of certain goods claimed by the Official Assignee paid by the Assignee into the Bank of Bengal. In a suit brought in the High Court at Calcutta by *A* against the Official Assignee claiming the proceeds of the goods paid into the Insolvent Court,—*Held,* on the Court making a decree in favour of the plaintiff, that the High Court, being a Court of law and equity, had power to award interest on the amount as against the Official Assignee. MILLER *v.* BARLOW . 14 Moore's I. A., 209

61. ———— Mesne profits—*Decree for mesne profits—Judgment-debt.*—According to the practice of the native Courts in Bombay, a sum found due for mesne profits was a judgment-debt and carried interest by its own force. On petition in the native Court after decree upon appeal in England, interest was awarded on the amount of mesne profits decreed, though not prayed for in the plaint, or given by the decrees in India or the order of affirmance in England. KIRKLAND *v.* MODEE PESTONJEE KHOORSHEDJEE . . . 3 Moore's I. A., 220

62. ———— *Suit for mesne profits.*—In a suit for mesne profits (not being a suit for land and its mesne profits) interest on mesne profits cannot be recovered. CHAKU MODAN TOHANA *v.* DULLABH DWARKA . . . . 9 Bom., 7

63. ———— *Interest previous to suit.*—Although interest as such cannot strictly be allowed upon mesne profits previously to the institution of the suit, the Court, in estimating what loss has

INTEREST—*continued*

1. MISCELLANEOUS CASES—*continued.*

been sustained by the plaintiff in being kept out of possession, may take into consideration that, if he had received the rents year by year, he would have been able to make use of the same, and may thus calculate the interest in the damages to be awarded PROTAP CHUNDER BOROOAH *v* SURNO MOYEE [14 W. R., 151

64 ———— *Discretion of Court*—There being no rule of law obliging the Court to allow interest on mesne profits, it is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not KRISHNANAND *v* KUNWAR PARTAB NARAIN SINGH [I. L. R., 10 Calc., 792: L. R., 11 I. A., 88

ABDUL GHAFUR *v.* RAJA RAM [I. L. R., 22 All., 262

65. ———— *Calculation of interest*—Interest on mesne profits may be allowed year by year during the period of dispossession MUNEERAM ACHARJEE *v.* TURUNGO 7 W. R., 173

of the decree, since the amount is not ascertained before that time BENGAL COAL COMPANY *v* DAREEMBAH DABEA . Marsh., 105: 1 Hay, 181

MOBARUK ALI *v* BOISTUB CHURN CHOWDHRY [11 W. R., 25

67. ———— *Date of assessment of mesne profits*—Although the common practice is to make interest payable from the date on

been made to pay, from the date when they ought to have been paid by the defendants SOKHEE MONEE DEBIA *v* BRIJORAJ MOOKERJEE 17 W. R., 228

68. ———— *Right to interest*—The plaintiffs were held entitled to interest on mesne profits LULEET SINGH *v* ALI REZA [8 W. R., 322

69. ———— *Act XXXII of*

interest as of course on mesne profits

of the institution of the suit in which they were claimed Such interest is not forbidden by the terms of the Act referred to HURROPERSAUD ROY *v.* SHAMAPERSAUD ROY [I. L. R., 3 Calc., 654: 1 C. L. R., 499 L. R., 5 I. A., 31

70. ———— *Interest from*

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*continued.*

71. ———— *Jurisdiction of Court of Revenue—Act XVIII of 1873, s 93, cl. (h)—Suit for profits*—A Court of revenue is competent, in a suit for profits, under s 93, cl (h), of Act XVIII of 1873, to award the interest claimed on such profits. TOTA RAM *v* SHER SINGH I. L. R., 1 All., 261

72 ———— *Interest up to decree Rate of interest*—*Held*, on the sum ascertained as the assets, less the collection charges, derived each year from the estate, interest at six per cent per annum should be allowed, to be calculated on each year's mesne profits up to the date of the decree of the lower Court HURRODURGA CHOWDHRAIN *v* SHABAT SOONDERY DABIA [I. L. R., 4 Calc., 674: 3 C. L. R., 517

73 ———— **Money lent**—*Interest on money lent according to contract*—Interest on money lent was contracted to be payable, "even if a suit should be instituted," at the rate fixed for the period for which the money was lent *Held* that interest must be decreed at this rate, according to the contract, down to the institution of the suit BALGOBIND DAS *v* NARAIN LAL [I. L. R., 15 All., 339 L. R., 20 I. A., 116

74. ———— **Mortgage**—*Agreement to take profits of property under deed of usufructuary mortgage in lieu of interest—Interest until possession*—Where a deed of usufructuary mortgage provided that the mortgagee should take the profits of the property mortgaged in lieu of interest, and was silent as to any interest should the mortgagee not obtain possession, it was held that the mortgagee, who had remained in possession of the property for the

DULLI *v* BAHADUR 7 N. W., 57

75. ———— **Payment into Court**—*Pay-*

the decree has a ...

will not be interfered with in special appeal. PARESNATH MUKHOPADHYA *v* KISTO MOHUN SAHA [3 B. L. R., Ap., 105: 12 W. R., 50

76. ———— *Interest on decre-*

which the decree-holder applied to get it from the Court will depend on whether the decree-holder had any notice of the money being so deposited to his credit KALEE DASS GHOSE *v* PURAN KOOMAREE BIBEE . . 16 W. R., 304

77. ———— *Refusal to deposit money in Court*—The defendant was invited, by an injunction issued upon him in another suit,

INTERESTcontinued.

1. MISCELLANEOUS CASES—*continued.*

to deposit in Court the money admittedly due under the bonds now sued upon, but having refused to do so, was held liable to pay interest from the date of that injunction. RAM DASS GOSSAMEE *v.* PROSSUNNO MOYEE DOSSEE . . 16 W. R., 297

78. ——— *Payment in satisfaction of decree—Payment subject to objection.*—A judgment-debtor who wants to be released from the claim of his creditor must pay the money covered by the decree into Court to the credit of the decree-holder unconditionally. If he chooses to make a protest, the creditor is not bound to take the money out, subject to any liability which may arise as the consequence of such protest. *A* got a decree against *B* for a sum of money, the balance of an account. *B* deposited the amount of the decree in Court objecting that R9,000, part of that sum, should not be paid out to *A* on the ground that he had appealed as to three items of the account which covered that amount. The lower Court paid no attention to the objection, but did not formally disallow it, and *A* declined to take the R9,000. *B*'s appeal having been dismissed, *A* applied for the R9,000, and got it. He then applied for interest thereon during the time it had been deposited in Court. *Held* that he was entitled to it, for it was owing to *B*'s act that *A* had been deprived of the money during the period for which he claimed interest. RAJENDRA KISHORE SING *v.* PERSHAD SEN [2 C. L. R., 183

79. ——— Principal and agent—*Agent retaining money until required to pay—Fraud.*—An agent retaining his principal's money, which he has not been required to pay, should not ordinarily be required to pay interest; but if his conduct has been fraudulent, he should be charged with interest. MONOHUR DOSS *v.* SITUL PERSHAD [23 W. R., 325

80. ——— Profits of business—*Rate of interest on decree for profits of business.*—In the absence of accounts or other evidence to show the profits of business in a suit where a share of money representing the capital of the business was decreed to the plaintiff, interest was awarded at 12 per cent. per annum. HEERUN *v.* BIBEE MARIUN [14 W. R., 87

81. ——— Profits of watan—*Decree for arrears of profits of share in a watan.*—Where the plaintiff sued to establish a right to share in a watan and to recover a portion of the profits thereof for seven years, and obtained a decree for the arrears, it was held that there was no law by which interest on such arrears could be awarded also. GUNDO ANANDRAV *v.* KRISHNARAV GOVIND . 4 Bom., A. C., 55

82. ——— Refund of excess payments—*Interest on refund of excess amount under decree.*—While a special appeal was pending, the decree-holder took out execution and realized a sum in satisfaction of his whole decree. The decree having been modified and the amount decreed reduced, the judgment-debtor applied for a refund of the excess payment, and this was awarded to him with interest

INTEREST—*continued.*

1. MISCELLANEOUS CASES—*concluded.*

Held that interest was rightly awarded. WOOMA SONDUREE BURMONIA *v.* GOOROO PERSHAD ROY [15 W. R., 74

83. ——— *Suit for refund of excess rents.*—Where rent at an enhanced rate was decreed by the High Court in 1863, but the decree, as far as the enhanced rate was concerned, was reversed by the Privy Council in 1873, and between the two dates other decrees at the enhanced rate had been obtained based on the original one of 1863,—*Held*, in a suit for a refund of the excess rents, that, under the circumstances, no interest would be given. KALICHURN DUTT *v.* JOGESH CHUNDER DUTT [2 C. L. R., 354

84. ——— *Enforcing payment of rent after agreement to allow deduction.*—Where a lessor who has agreed to deduct rents in case of his special appeal being unsuccessful compels payments of such rents, notwithstanding a decree of the lower Court being against him, he must pay interest if the result of the litigation shows that he had no right to the money. TARAMONEE DASSEE *v.* MACKINTOSH . . . . 9 W. R., 272

85. ——— *Refund of amount wrongly levied in execution of decree—Civil Procedure Code, ss. 244, 583.*—The Court has power to award to a successful appellant interest upon an amount found on appeal to have been improperly levied in execution of a decree. AYYAVAYYAR *v.* SHASTRAM AYYAR . . I. L. R., 9 Mad., 506

PHUL CHAND *v.* SHANKAR SARUP [I. L. R., 20 All., 430

86. ——— *Costs — Reversal of decree—Refund of costs recovered by execution—Interest.*—A successful appellant in an appeal to the High Court applied, in execution of his decree, for a refund of a sum of money which he had paid to the respondent, by way of costs with interests thereon, in execution of the lower Court's decree. He further applied for interest on the refund claimed, at the rate of R6 per cent. per annum. The respondent objected to paying interest on the refund. *Held* that the appellant was entitled to the interest claimed on the refund of costs. *Forester* v. *Secretary of State for India in Council, I. L. R., 3 Calc., 161,* referred to. RAM SHAI *v.* BANK OF BENGAL I. L. R., 8 All., 262

87. ——— Unliquidated damages—*Right to interest.*—Interest should not be awarded on unliquidated damages. FRAMJI HARMASJI *v.* COMMISSIONER OF CUSTOMS . 7 Bom., A. C., 89

And *see* CHAKU MODAN ISANA *v.* DULLABH DWARKA . . . . . . 9 Bom., 7

2. CASES UNDER ACT XXXII OF 1839.

88. ——— *Act XXXII of 1839—Bond—Interest not specified—Stat. 3 & 4 Will IV, c. 42, s. 28.*—By Act XXXII of 1839, extending the provisions of the Stat. 3 & 4 Will. IV, c. 42,

INTEREST—*continued*

2. CASES UNDER ACT XXXII OF 1839 —*continued*

s 28 to India it was enacted "That upon all debts

terest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time" An instrument in the nature of, though not strictly, a bond was executed in 1833, which provided for the liquidation of the amount therein specified by instalments, but no provision was made for the allowance of interest The condition for payment not having been performed,—*Held, in an action brought in 1849 to recover principal* and interest upon the bond, that the Act XXXII of 1839 was retrospective in its operation and authorized the allowance of interest, although it was not provided for in the bond BOMMARAUZE BAHADUR *v* RANGASAMY MUDALY

[6 Moore's I. A., 232

89 ——— *Notice—Previous suit between the parties* —Where, in order to entitle the plaintiff to charge interest, a notice by law is *required to be served upon the defendant, the existence* of a previous litigation upon the same subject matter is a sufficient notice MOFOKHURL MOOLK MUSSEERUD DOWLA SYED SUFDAR ALLY KHAN *v* MACKINTOSH 2 Hay, 123

Act— XXXII interest

on sums of money payable by virtue of a written instrument, at a certain time, or, if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed" *Held* that the statute had not the effect of restraining the power of the Court to allow interest in other cases, in which interest was allowed before the Act Therefore interest may be allowed on payments of revenue made by one co sharer on behalf of others, notwithstanding no demand of interest may have been made before suit GOLAM AHMED SHAH *v* BEHARY LAL

[Marsh, 239. 1 Hay, 500

91. ——— *Interest prior to suit* —Interest cannot legally be awarded prior to suit *in cases governed by the provisions of Act* XXXII of 1839 ABDOOL KUREEM *v* MEA JAN

[6 W. R., 288

92. ——— *Suit for contribution* —Interest may be allowed in a suit for contribution, although no demand for interest may have been made before suit. NULLIT BISWAS *v* PROSUNNO MOYEE DOSSEE 17 W. R., 179

93. ——— *Interest prior to suit—Demand* – In the absence of a demand in writing, interest up to the date of suit cannot be awarded on sums not payable under a written instrument of which the payment has been illegally delayed.

INTEREST—*continued.*

2 CASES UNDER ACT XXXII OF 1839 —*continued.*

KISARA RUKKUMMA RAU *v* CRIPATI VIYANNA DIKSHATULU , 1 Mad., 369

94. ——— *Promissory note payable on demand* —In an action for the balance due on a promissory note payable on demand, the Court refused to allow interest, there being no proof of a demand in writing BANK OF HINDUSTAN, CHINA, AND JAPAN *v* WILSON

[1 B L R, O C, 41

95 ——— *Interest from demand of payment* —In a suit to recover (with interest) money which had been advanced as part of the consideration for the purchase of land under a contract which defendant broke the Court in decreeing the claim, awarded interest from the time when the demand of payment was made, i e, from the date the suit was instituted PATSAHEE DOBAIN *v* HURDEO NARAIN SAHOO 24 W. R., 457

96 ——— *Damages*—

[I. L R, 7 Calc, 594. 10 C L R., 561

97. ——— *Wagering contract in opium—Discretion of Court* —Act XXXII of 1839 (authorizing the allowance of interest in certain cases) does not affect debts contingent in amount and time of becoming due, *e g*, a wagering contract for the payment of the excess over the average price of opium at the next ensuing public of the Court erest in cases appeal JUGGOMOHUN GHOSE *v* MANICK CHUND

[4 W R, P. C, 8. 7 Moore's I A., 263

98 ——— *Decree of Privy*

junction with the decree, what rate was intended to be given AMEEROONNISA KHATOON *v* MAHOMED MOZAFFER HOSSEIN 18 W. R, 103

99 ——— *Notice of intention to claim interest—Demand of interest already due* A letter demanding interest on an outstanding debt, from which the intention of the creditor to claim interest up to date of payment is made clear, is a sufficient notice, within the meaning of the Interest Act, 1839, to entitle the creditor to claim interest prospectively from the date of the letter,

[I. L. R., 23 Mad., 41

INTERESTS—*continued.*

2. CASES UNDER ACT XXXII OF 1839 —*concluded.*

100. ——— *Interest, power of Court to allow—Actionable right to interest—Compound interest.*—Act XXXII of 1839 enables the Court to allow interest in certain cases, but does not create a right to interest which could be made the subject-matter of a suit. It is doubtful whether the Act gives power to allow compound interest on a debt, but even if there is such jurisdiction, the Court, in the exercise of its discretion, will not allow compound interest except where it is expressly provided for by the agreement. MARSHALL v. BENGAL SPINNING AND WEAVING CO. [1 C. W. N., 219

101. ——— *Whether a Court is to allow interest from the date of the debt where there is no contract to pay, and no demand made for payment of interest.*—In a suit for money lent without any written instrument, where it was found that there was no express contract to pay interest, but it was not found that any demand of payment was made in writing and that there was any demand giving notice to the debtor that interest would be claimed from the date of the demand, it was held that the creditor was not entitled to any interest before suit. SURENDRA KUMAR BASU v. KUNJA BEHARY SINGH . I. L. R., 27 Calc., 814 [4 C. W. N., 818

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

(a) SUITS.

102. ——— **No rate of interest proved**—*Discretion of Court.*—Where no rate of interest is proved, the rate is in the discretion of the Court. After date of decree, the Court rate is six per cent. GREGORY v. DULSOOK ROY . . . Cor., 9

103. ——— **Rate of interest**—*Interest up to date of filing of plaint.*—Interest at the stipulated rate should only be allowed up to the date of the filing of the plaint; afterwards at the Court rate of six per cent. ANDERSON v. SREEMUNTO. ANDERSON v. RAJNARAIN DOSS . . . . . Cor., 3

104. ——— **Interest before and after decree**—*Suit for arrears of maintenance.*—*A*, on behalf of her infant son *B*, contracted with *C* that he should be allowed, for the maintenance of her daughter whom he was about to marry, land situate at X that should yield annually R900. *B*, after coming of age, contracted at Y to pay *C* the annual allowance, and ratified the contract which had been made by his mother. *Held*, in a suit for recovery of certain of the yearly payments, that the Court might decline to allow interest on the arrears found to be due prior to the commencement of the suit, there being no stipulation in the contract for interest, and might award interest on the amount decreed from the commencement of the suit to the date of the decree and interest upon the aggregate amount and upon the costs, from the date of the decree until payment. KISHENKINKUR GHOSE v. BORADAKANTH ROY [Marsh., 533: 2 Hay, 656

INTERESTS—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

105. ——— *Discretion of Court.*—Interest at the stipulated rate, no matter how usurious, will be awarded down to decree. The rate at which subsequent interest is to be awarded is entirely in the discretion of the Court. If a plaintiff has contracted to receive interest at twelve per cent. only, that rate will be carried down to decree, but should he have contracted for a higher rate, six per cent. only will be allowed. DHUNPUT SINGH DOGARE v. GOLAM HADEE . 2 Hyde, 106: Cor., 12

106. ——— *Interest not mentioned in decree.*—A plaintiff cannot recover more than is clearly given to him by the decree, either in express terms or by necessary inference. Where the plaint prayed for interest up to the date of the suit together with subsequent interest and the decree purported to be an award in accordance with the prayer of the plaint,—*Held* that the plaintiff was not entitled to interest subsequent to the date of the decree. PRABHULANADHO PILLAY v. PONNUSWAMY CHETTY . . . . . . 6 Mad., Ap., 1

107. ——— **Interest between date of filing of plaint and decree**—*Date of making and date of satisfaction of decree.*—The compensation due to a plaintiff for the delay which must ensue between the date when the plaint is filed and the date when the decree can be reasonably expected to be satisfied is, as a general rule, best and most simply estimated by a uniform rate of interest upon the total amount decreed, reckoned from the date of the decree. DOORGA DUTT SINGH v. BUNWAREE LALL SAHOO . . . . . . 19 W. R., 34

108. ——— **Interest where no rate is agreed on after certain time**—*Reasonable rate—Discretion of Court.*—In a suit to recover a sum of money due on an agreement under the term of which interest for fifteen days only was payable at the rate of one rupee per diem,—*Held* that, as no rate was agreed upon after the expiration of the fifteen days, the Court had power to fix a reasonable rate of interest subsequent to that time. IN THE MATTER OF MOIZOODDY SHAIK . 14 W. R., 450

109. ——— **Rate of interest after suit where rate before is stipulated**—*Assessment of rate.*—The Sudder Court having reduced the rate of interest allowed by the Zillah Judge before the commencement of the suit from 12 per cent. to 10 per cent., the rate at which the account current between the parties bore interest, it was held by the Privy Council that the same consideration should have determined the rate of interest to be allowed from the date of suit; and that the amount of this should also be calculated at 10 per cent. per annum. MIRTUNJOY CHUCKERBUTTY v. COCHRANE [4 W. R., P. C., 1: 10 Moore's I. A., 229

110. ——— **Interest from decree to date of realization**—*Decree under s. 53, Act XX of 1866.*—Interest from the date of decree to date of realization cannot be awarded by a decree under s. 53, Act XX of 1866. MAHOUM CHUND v. MAHTAB . . . . 3 Agra, 318

INTEREST—*continued*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued*

111. ——— *Further interest ordered by Court under Act XXIII of 1861.*—When the Court orders further interest under Act XXIII of 1861, s. 10, it is to be from the date of the decree to the date of the payment of the principal sum adjudged, and not for a limited period RAMASWAMI AYYAN *v* APPAVAIYAN 1 Mad, 211

(*b*) DECREES

112. ——— **Decree not giving interest**—*Decree for mesne profits* —Interest on mesne profits cannot be awarded for the period previous to the ascertainment where the decree does not give interest on mesne profits HURO GOBIND BHUKUT *v* DEGUMBUREE DEBIA . . 9 W. R., 217

113. ——— *Decree for mesne profits—Act XXIII of 1861, s 10* —Where a decree of the Privy Council ordered possession with mesne profits but without interest,—*Held* that the decree did not interfere with the power of the Judge who executes it to award interest under s 10 of Act XXIII of 1861 on the aggregate sum adjudged, and costs from the date of decree to date of payment AHMED REZA *v* KHUJOORUNNISSA 15 W. R., 469

114. ——— *Decree for mesne profits—Execution of decree—Act XXIII of 1861, s 11* —When a decree is silent as to interest, the Court executing the decree has no power to award interest Act XXIII of 1861, s 11, refers only to questions of amount of interest or mesne profits which are left open and not determined by the decree MOSOODUN LALL *v* BEKAREE SINGH
[B. L R, Sup Vol., 602: 6 W. R., Mis., 109

ABDUL ALI *v* ASHRUFFAN
[7 B. L. R., Ap, 30 note. 14 W. R, 62

JARDINE, SKINNER & Co *v* SHAMA SOONDUREE DEBIA 10 W. R., 60

JOYKISSEN BOSE *v* WISE
[W. R, 1864, Mis, 37

BECHARAM DOSS *v* BROJONATH PAL CHOWDHRY
[9 W. R., 369

115. ——— *Power of Court executing decree* —When a decree does not provide for the payment of interest, it is not competent to the Court executing the decree to add to it by giving interest KUPPA AYYAR *v* VENKATARAMANA AYYAR . . . . 3 Mad., 421

LEELANAND SINGH *v* JOY MUNGAL SINGH
[15 W. R., 335

LEELANAND SINGH *v*. RAM NARAIN SINGH
[15 W. R., 415

NUBO KISHORE MOJOOMDAR *v*. AUNUND MOHUN MOJOOMDAR . . . . 17 W. R., 19

JEWAN LALL MAHATAB *v*. DOORGA DUTT SINGH
[20 W. R., 477

MAHOMED YAKOOB *v* MAHOMED ZUHOORUL HAQ
[22 W. R., 533

INTEREST—*continued*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

ENAYET ALI *v*. MAHOMED ZUHOORUL HAQ
[22 W. R., 534

Contra, LUCHMEE NARAIN *v* SHUDASHEO SINGH
[5 W. R., Mis, 12

where it was held that interest runs on sums decreed as a matter of course, unless a specific order is recorded to the contrary

This case must be considered, however, as now overruled

116. ——— *Interest allowable by Court executing decree* —A Court executing a decree can award interest, from date of decree to date of payment, on the amount decreed to be paid by the judgment debtor to the decree holder, if the Court which passed the decree made no order on that point BEER CHUNDER JOOBRAJ *v* RAM KOOMAR DHUR . . 6 W. R., Mis., 26

117. ——— *Court executing decree* —Where a decree ordering payment by instalments does not provide for the payment of interest, the Court executing it is bound to refuse giving interest upon objection being taken thereto, even [illegible]

[illegible] SURNO MOYEE DOSSEE *v* KISHEN KOOMAREE
[14 W. R, 324

118. ——— *Execution of decree—Suit for damages* —Where a decree is silent as to future interest, interest cannot be recovered by proceedings in execution of the decree, but it may be recovered as damages by a separate suit. SETH GOKUL DAS GOPAL DAS *v* MURLI
[I. L R, 3 Cal., 602: 2 C. L. R, 156
L. R., 5 I. A, 78

NILAMBUR SEIN *v*. PITAMBUR SEIN
[5 W. R., Mis, 28

119 ——— *Verbal promise to pay interest—Execution of decree* —A judgment- [illegible] of time being allowed him [illegible]

[illegible]
[5 W. R., Mis., 1

120. ——— *Postponement of sale by consent on condition of payment of interest not decreed—Condition enforced* A judgment-debtor having applied to the Court to postpone the sale of his property, so as to enable him to raise money by sale or mortgage to satisfy the decree, the creditor consented to the adjournment, on the debtor

INTERESTS—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

undertaking to pay interest from the date of suit, which was not provided for by the decree, and the Court by order postponed the sale accordingly. *Held* that, under the circumstances, it was to be inferred that the Court approved of and sanctioned the condition, and that the condition could be enforced in execution of the decree. LAKSHMANA *v.* SUKIYA BAI [I. L. R., 7 Mad., 400

121. ———— **Decree not specifying rate of interest.**—Where a decree did not specify the rate of interest,—*Held* that the Court ought not to have allowed a higher than the usual Court rate, namely, 12 per cent. SOOBUDRA BEBEE *v.* SHEO CHURN LALL . . . . 7 W. R., 375

122. ———— A decree directed that from the original cause of action to date of suit, and from date of suit to date of decision, interest should be given at 12 per cent.; and from date of decision to date of liquidation, interest should be given without specifying the rate. The Judge gave 12 per cent. for this period, and an appeal from his order, on which it was contended that no rate being specified no interest could be given, was dismissed. LALUN MANI *v.* BEHARI LAL MOOKERJEE [7 B. L. R., Ap., 30

123. ———— Although the decree in this case did not specify the rate of interest before or after the decree, yet as it appeared that, in calculating the amount then due, the Court gave 12 per cent., and that that was the usual rate,—*Held* that the intention of the Court, when it passed the decree, was to give the same rate. ABDOOLLAH *v.* REASUT HOSSEIN . . . 17 W. R., 414

124. ———— *Alteration of rate of interest given by decree—Rate where no rate is specified.*—Where a decree awarded a certain sum which was calculated in the schedule, plus costs and interest, the Court executing was held to have committed an error in altering the amount somewhat by reducing the rate of interest during the pendency of the suit. The same Court was pronounced not to have done wrong in estimating the interest, the rate of which was not specified, at a rate which, under the circumstances of the case, it thought reasonable. RUGHOONUNDUN SINGH *v.* ARCOTT . 19 W. R., 46

125. ———— *Court rate.*—Where a decree was given for a certain amount with interest, the rate not being specified, the High Court considered itself bound by the authorities to affirm an order made by the Court executing the decree, allowing the Court rate usual at the time of the making of the decree. MADHUB LAL KHAN *v.* NOYAN GHOSE . . . . . 6 C. L. R., 231

126. ———— **Decree in suit on mortgage**—*Civil Procedure Code (Act XIV of 1882), s. 209—Discretion of Court—Rate of damdupat.*—In a suit brought by a mortgagee against his mortgagor (both parties being Hindus) the decree ordered the defendant to pay interest from the date of suit to decree upon the total found due after applying the rule of damdupat at the date of suit. It was objected that this order of further interest violated the rule of damdupat. *Held* that the discretionary power as to awarding interest conferred on the Courts by s. 209 of the Civil Procedure Code (Act XIV of 1882) may be exercised without reference to the law of damdupat. DHONDSHET *v.* RAVJI [I. L. R., 22 Bom., 86

127. ———— **Decree for sale in suit by puisne mortgagee**—*Rate agreed on in mortgage—Act XXIII of 1861, s. 10—Civil Procedure Code, s. 209.*—Upon a claim by a puisne mortgagee to redeem prior incumbrances and in the alternative for a decree ordering the sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order, and with redemption by the plaintiff of a prior mortgagee who was to have an option to redeem. As regards the Court's power to regulate the interest, *held* that, although in the decree for sale the rate of interest on the debt, payable to the mortgage decree-holder, was reducible from the date of the decree from the rate stipulated, to the Court rate, an order to that effect could only be made for the benefit of the judgment-debtor as a party to the suit. The plaintiff, seeking to redeem a mortgage prior to the suit, must pay the interest at the rate agreed upon in the mortgage; there being no authority, either under s. 10 of Act XXIII of 1861 or under the Civil Procedure Code, s. 209, to reduce it to the Court rate. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA [I. L. R., 18 Calc., 164
L. R., 17 I. A., 201

128. ———— **Suit to declare property attached not liable in execution**—*Injunction against sale of property pending decision of suit on plaintiff giving security for interest on the sum representing value of attached property—Subsequent dismissal of suit with costs—Application by defendant in execution of decree for the interest for which security ordered by injunction—Civil Procedure Code (Act XIV of 1882), ss. 492, 497.*—*K*, having obtained a decree against one *V*, attached a house in execution. *V* intervened under s. 278 of the Civil Procedure Code (Act XIV of 1882), and applied that the house, if sold, should be sold subject to his mortgage. His application was dismissed, and he thereupon brought a suit (No. 648 of 1887) for a declaration that the house was not liable in execution of *K*'s decree. That suit was dismissed by the lower Court, and *V* appealed. Pending the hearing of the appeal, he applied for and obtained under s. 492 of the Civil Procedure Code an injunction restraining the sale until the result of the appeal on his giving security for interest at six per cent. on R2,000, the acknowledged value of the house. The appeal was heard in due course and was dismissed with costs, and thereupon *K*, in execution of the decree in this last-mentioned suit (No. 648 of 1887), applied to recover the interest for which security was ordered to be given by the District Court. *Held* that he was not

INTERESTS— *continued*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued*

entitled to recover it A Court of execution cannot award interest when the decree is silent The respondent *K had his remedy under s 497 of the* Civil Procedure Code, and that remedy was obtainable on application not to the Court of execution, but to the Court which issued the injunction VARAJLAL MULCHAND *v* KASTUR DHARAMCHAND

[I. L. R., 22 Bom., 42

(c) CONTRACTS.

129. ———— Wagering contract—*Contract without stipulation as to interest—Mercantile usage—Act XXI of 1848*—Neither by the English nor the Hindu law, unless there be mercantile usage, can interest be imported into a contract which contains no stipulation to that effect In an action on contracts known as tajee mundee chitties—

mercantile usage at Calcutta to import interest into the contract, the interest claimed could not be allowed. JUGGOMOHUN GHOSE *v*. KAISREECHUND

[9 Moore's I. A , 256

See JUGGOMOHUN GHOSE MANICK CHUND

[4 W. R , P. C , 8 : 7 Moore's I. A., 263

130. ———— Contract rate of interest —*Power of Court to withhold interest*—When by the terms of a contract money is to bear interest, interest is as much payable by virtue of the contract as the principal, and the Court has no power in such a case to withhold interest. BUNWAREE LALL SAHOO *v* MOHESHUR SINGH

[Marsh., 544 : 2 Hay, 644

KOTOO *v*. KO PAY YAH 6 W. R., 255

131. ———— *Obligation of Court to award such rate*—A Court is bound to enforce an agreement between the parties as respects the amount of interest to be paid upon a bond, instead of limiting a claim for accumulated interest to a sum not exceeding the principal KALICA PROSAD MISSER *v*. GOBIND CHUNDER SEIN

[2 W. R , S. C. C. Ref , 1

132. ———— *Act XXVIII of 1855—Inequitable contracts*—The provision contained in Act XXVIII of 1855, that any rate of interest which the parties may have agreed upon shall be awarded, in no way prevents the Courts in India which administer both law and equity from examining into the character of agreements between parties holding relations to each other which enables one to

[4 Bom , A. C , 202

133. ———— *Rate of interest on bond up to decree—Act XXVIII of 1855, s. 2—Civil Procedure Code, 1877, s 209*—The contract rate of interest must be allowed up to date of decree in accordance with Act XXVIII of 1855, s. 2. The Civil Procedure Code, s 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act. BANDARU SWAMI NAIDU *v*. ATCHAYAMMA

[I. L. R., 3 Mad., 125

134. ———— *Setting aside* ... *rest on* ... sale as ... id made ... nstances which showed that she had been imposed upon, interest was allowed on a sum of R26 000 which had been actually advanced, at the contract rate of six per cent in lieu of five per cent. awarded by the Sudder Court, and in preference to the current Court rate of twelve per cent LALLA BUNSEEDHUR *v* BINDESEREE DUTT SINGH 10 Moore's I. A , 454

135. ———— *Subsequent interest*—Where a Civil Court awards interest under an admitted contract, it is bound to award it at the stipulated rate up to the date of decree, but for any time after that date it has power to exercise its own discretion as to the rate of interest to be awarded. BHUGWAN DOSS *v* TEKAIT THAN NARAIN DEO

[23 W. R., 309

136. ———— Interest after due date of bond—*Date of refusal of payment*—In a suit upon a bond, when the genuineness of the bond and the defendant's liability under it are clearly established, the plaintiff is entitled to interest from the time the defendant declined payment of the sum due upon the bond GUNGA BISHUN TEWAREY *v* ROY MOHUN LALL MITTER . . W. R., 1864, 291

137. ———— *Discretion of Court*—When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit. SITANATH BOSE *v* MATHURA NATH ROY

[2 B. L. R., Ap , 10 : 11 W. R., 68

JOYRAM GOSSAMEE *v* NOBIN CHUNDER DOSS

[25 W. R., 318

138. ———— *Bond under s 52, Act XX of 1866*—When a bond under s 52, Act Act XX of 1866, is enforced on a decree, no interest is to be allowed on it, if the bond does not provide for interest after the date on which the debt was payable KALLOORAM BABOO *v*. DOORGANATH TALUKHDAR . . . . 10 W. R., 175

139 ———— *Interest after filing of plaint—Interest at rate stated in bond—Discretion of the Court—Civil Procedure Code (Act XIV of 1862) s 209*.—Interest after date of suit is in the discretion of the Court, notwithstanding that a fixed rate of interest is mentioned as payable

INTEREST—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

"up to realization" in the bond sued upon. MANGHIRAM MARWARI *v.* DHOWTAL ROY [I. L. R., 12 Calc., 569

140. ———— *Provision for interest between due date and date of enforcement.*—Where a registered bond provided for payment of interest between the date upon which the bond fell due and the date upon which enforcement was applied for, the bond was construed strictly against the debtor. RAM DASS GOSSAMEE *v.* PROSONOMOYE DOSSEE . . . . . . 16 W. R., 297

141. ———— *Discretion of Court.*—In a suit brought to recover the principal and interest due upon a written security given for the payment of the principal money on a day specified, with interest at a stipulated rate up to such day, the Court may, in its discretion, award interest on the principal sum from due date at such rate as it thinks fit, and is not bound to award such interest at the stipulated rate. The principle laid down in *Cooke* v. *Fowler, L. R., 7 H. L., 27,* followed. DEEN DOYAL LALL *v.* HET NARAYAN SING [I. L. R., 2 Calc., 41

S. C. DEEN DOYAL LALL *v.* CHOA SINGH [25 W. R., 189

142. ———— *Failure of former suit on bond for want of jurisdiction.*—Where in a previous suit on a bond, which suit was lost on account of want of jurisdiction, the plaintiff sued for a specific sum, and for interest as from a certain date, he was daclared, in a subsequent suit instituted by him on the same bond, entitled to interest on the bond only from the date from which he sued for it in the first suit, to the date of the present decree of the Judicial Committee. NARAIN DASS *v.* ESTATE OF THE EX-KING OF DELHI . 10 W. R., P. C., 55

S. C. LALLA NARAIN DOSS *v.* ESTATE OF EX-KING OF DELHI . . . . 11 Moore's I. A., 277

143. ———— *Limitation in suit on bond.*—On mortgage bonds, dated 1832, the Court allowed interest only for six years, following *Vital Mahde* v. *Daud Valad Muhammad Husen, 6 Bom., A. C., 90,* and *Narayan* v. *Satvaji, 9 Bom., 83.* NARAYAN DESHPANDE *v.* RANGUBAI [I. L. R., 5 Bom., 127

144. ———— *Mortgage-bond —Agreed rate of interest.*—In a suit on a mortgage-bond the plaintiffs are entitled to recover the agreed rate of interest without any deduction. FUTTEHMA BEGUM *v.* MOHAMMED AUSUR [I. L. R., 9 Calc., 390

145. ———— *Measure of damages.*—A suit was brought in 1884, upon a hypothecation-bond executed in April 1875, in which the obligors agreed to repay the amount borrowed with interest at R1-8 per cent. per mensem, in June of the same year. There was no provision as to payment of interest after due date. The bond specified certain property as belonging to the obligors and contained the following provision: "Our rights and property in the aforesaid talukh Rajapur shall remain pledged and hypothecated for this debt." Interest was claimed in the suit at the rate of R1-8 per cent. per mensem as well for the period after as for the period before the due date of the bond. *Held* that, although cases might arise in which a jury or a Judge might refuse to give a plaintiff any interest, *i.e.,* damages, *post diem,* at all, the circumstances would have to be of a very exceptional character as, for example, where the interest contracted to be paid before due date was exorbitant and extortionate. *Cooke* v. *Fowler, L. R., 7 H. L., 27,* referred to. *Held* that in determining the amount of damages the question whether the plaintiff has unnecessarily delayed bringing his suit, and so allowed his claim to mount up to a sum far in excess of the principal money originally advanced, may be taken into consideration as a reason for not making the original rate of interest the basis on which to assess such damages. *Juala Prasad* v. *Khuman Singh, I. L. R., 2 All., 617,* referred to. The principle upon which the obligee of the bond may recover interest after due date does not rest upon any implied contract by the obligor to pay such interest, but proceeds upon the breach of contract which has taken place by reason of the non-payment on due date, and the reasonable amount to which the obligee is entitled for such breach. The decision of the question by what standard the damages should be measured must depend in each case upon its special circumstances. BISHEN DAYAL *v.* UDIT NARAIN . I. L. R., 8 All., 486

146. ———— *Interest otherwise than at contract rate.*—Where a debtor by his bond stipulated to pay interest at 12 per cent. per annum up to the time fixed for payment, but the money remained unpaid for a long time, the High Court refused to interfere with the decree of the lower Court awarding plaintiff interest at the rate stipulated for up to the time fixed for payment, and a lower rate afterwards. GOSSAIN LUCHMEE NARAIN POOREE *v.* TEKAIT HET NARAIN SINGH . . 18 W. R., 322

147. ———— *Power of Court to alter contract as regards interest—Bond payable by instalments—Civil Procedure Code (1859), s. 194, (1877) s. 210.*—Neither Act VIII of 1859, s. 194, nor Act X of 1877, s. 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments, as to the consequence of default in punctual payment of the instalments. A debt being presently due, an agreement to pay it by instalments, with a stipulation that on default the creditor may demand immediate payment of the whole balance due with interest is not to be relieved against inequity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying

INTERESTT—*continued.*

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the second, which fell due on the 3rd August 1878 On the 20th August plaintiff sued to recover the whole balance due on the bond Defendant admitted

on overdue instalments only *Held* by the High Court on second appeal that neither of the lower Courts had jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred RAGHO GOVIND PARANJPE v. DIPCHAND I. L. R., 4 Bom, 96

148. ——— *Power of Court to alter rate of interest—Civil Procedure Code Act (1859), s. 194.*—In exercise of the discretion given by s 194 of the Code of Civil Procedure (Act VIII of 1859), the Court of first instance in a suit on a mortgage bond gave a decree to the plaintiff making the amount awarded payable by instal ... no interest after the institution

Held that, although the stipulated rate ... awardable, the award of the lower rate was not illegal or beyond the competence of the Court below, with whose discretion the High Court will not interfere CARVALHO v NURBIBI [I. L. R., 3 Bom, 202

But *see* JAFREE BEGUM v AHMED HOSSEIN KHAN [1 Agra, 270

149. ——— *Exorbitant rate—Discretion of Court to give or not the contract rate*—When the rate of interest stipulated for in a bond is exorbitant, and there is no express understanding that the interest is to continue at the same rate after the expiration of the period fixed for repayment, a Court need not assume that the parties are bound by contract to that rate after such period MAHOMED HOSSEIN v. TUQUEEROODEEN [15 W. R., 284

150. ——— *Discretion of Court to give or not the contract rate*—Where a party borrowing money entered into a bond stipulating to pay R24 per cent per annum as interest until the whole debt, principal and interest, was paid off, and, if the whole was not paid within the time mentioned, that the bond should be enforced as a registered deed,—*Held* that the rate of interest was not a question of discretion, but must be paid at the rate stipulated. REASUT HOSSEIN v JUSMUNT ROY 15 W. R., 396

INTEREST—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued*

151. —— *Interest—Com* ... tion for com ... the compour ... of contract, and a Court enforcing ... decree should give the compound interest also. LAND MORTGAGE BANK OF INDIA v RADHA KRISHNA DUTT 25 W. R., 323

152. ——— *Mortgage-bond—Compound interest from co-sharer enforcing pre-emption*—*B* stipulated in the instrument of mortgage to pay the interest annually, and in case of default to pay compound interest The mortgage was afterwards foreclosed, and *A*, the mortgagee, sued for and obtained possession *S*, a co-sharer, sued for and was held entitled to pre emption in respect of a share in the property *Held per* STUART, C. J., SPANKIE J and STRAIGHT, J, that, inasmuch

v SUKHAN I. L. R., ... All., ...

153. ——— *Discretion of Court—Rec* ... *rate of interest*—*G* gave *B* a bond for the ... tain time, w ... mensem, in which he agreed ... the obligee "should be at liberty to recover the principal money and interest from his person and property" and mortgaged "his four-anna share in mouzah K until payment of the principal money and interest" *Held* that the bond contained an express contract for the payment of interest after due date at the rate of 1½ per cent per mensem, and that such contract was enforceable. *Semble*—That, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date cannot be implied, but the Court must determine what would be a reasonable rate to allow In such a case the rate agreed to be paid before such date may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive BALDEO PANDAY v GOKUL RAI [I. L. R., 1 All., 603

154. ——— *Damages.*—*He* ... ag ... the date it became due, that the question as to the amount of interest to be allowed after that date sh uld be ... regard to ... the bond ... which the suit thereon was ... ber 1878) interest at the rate of 8 annas per cent. per mensem was an equitable rate to allow after the date the bond became due. *Held* also that but for the plaintiff's laches the rate agreed by the defendant to be paid under the bond (one rupee per cent.

INTEREST—*continued.*

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per mensem) was a reasonable basis on which to estimate the subsequent damages. JUALA PRASAD *v.* KHUMAN SINGH . . I. L. R., 2 All., 617

155. ———— *Excessive interest.*—Upon a contract for the payment, on a day certain, of money borrowed with interest at a certain rate down to that day, further contract for the continuance of the same rate of interest after that day until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary, the Court will reduce the rate to a reasonable amount. NANCHUND HANSRAJ *v.* BAPU RUSTAMBHAI . . I. L. R., 3 Bom., 131

156. ———— *Covenant to pay at a certain rate—Obligation of Court to give stipulated interest.*—In a deed of mortgage, dated in July 1870, the mortgagors covenanted, among other things, as follows: "That having repaid the principal amount in the course of three years, we shall take back this bond, and we shall continue to pay annually interest on the said amount at the rate of R1-2 per cent. per mensem; that should we in any year fail to pay the amount of interest, it shall, at the close of the year, be consolidated with the principal amount, and we shall pay compound interest at R1-2 per cent. per mensem . . . that, in the event of non-payment of the principal and interest on the expiration of the appointed time, the" mortgagee "shall be at liberty to recover from us the whole amount due to him with interest by means of a law-suit." *Held* that the terms of the bond amounted to a covenant to pay interest at the stipulated rate after the period of three years, so long as the principal remained due; that, the bond containing an express covenant for the payment of interest at that rate, the interest was not affected by the considerations of the reasonableness or otherwise of the rate; and that the mortgagee was therefore entitled to interest up to the date of the decree at the rate of R1-2 per mensem. *Buldeo Panday* v. *Gokal Rai, I. L. R., 1 All., 603,* referred to. CHHAB NATH *v.* KAMTA PRASAD . . I. L. R., 7 All., 333

157. ———— *Bond—Interest post diem—Non-payment of principal and interest at agreed date.*—Interest as interest cannot be allowed on money lent on a hypothecation-bond, or on a deed of conditional sale, unless it appears from the bond or deed that it was intended by the parties that interest should be payable, and then only for the period during which it so appears that it was so intended. Where no such intention appears, interest can be given only by way of damages. *Cook* v. *Fowler, L. R., 7 H. L., 27,* referred to. MANSAB ALI *v.* GULAB CHAND . I. L. R., 10 All., 85

158. ———— *Civil Procedure Code, s. 209—Stipulated interest—Interest after filing plaint.*—A creditor having stipulated for interest at a certain rate is entitled to a decree for interest at that rate up to the date of decree *Mangniram Marwari* v. *Dhowtal Roy, I. L. R., 12 Calc., 569,* dissented from. RAMACHANDRA *v.* DEVU . . . I. L. R., 12 Mad., 485

159. ———— *Bond—Interest post diem—Damages for non-payment on due date.*—A contract to pay interest *post diem* on a mortgage ought not to be implied when the parties to the written contract have not expressed therein any such intention. This is particularly the case where the written contract does in clear terms provide for the payment of interest and compound interest during the term of the mortgage. *Narain Lal* v. *Chajmal Das, unreported,* followed. *Chhab Nath* v. *Kamta Prasad, I. L. R., 7 All., 333; Baldeo Pandey* v. *Gokal Rai, I. L. R., 1 All., 603,* referred to; and *Cook* v. *Fowler, L. R., 7 H. L., 27.* BHAGWANT SINGH *v.* DARYAO SINGH I. L. R., 11 All., 416

160. ———— *Mortgage-bond—Interest post diem—Damages—Bond.*—Interest *post diem* on a mortgage-bond for a term certain and containing no express provision as to the payment of *post diem* interest is nothing else than damages for the breach of a contract. Such interest cannot be regarded as a mere continuance of the *ad-diem* interest due on the mortgage-bond, and, as such, as forming an integral part of the mortgage-debt, nor even as resembling such interest and forming a "charge" upon the property, though nominally damages. In respect of *post diem* interest given by way of damages, no distinction is to be drawn between simple bonds and mortgage-bonds. *Mansab Ali* v. *Gulab Chand, I. L. R., 10 All., 85,* and *Bhagwant Singh* v. *Daryao Singh, I. L. R., 11 All., 416,* followed. *Cook* v. *Fowler, L. R., 7 H. L., 27; Bishen Dayal* v. *Udit Narain, I. L. R., 8 All., 486;* and *Rajpati Singh* v. *Kesh Narain Singh, All. Weekly Notes, 1890, p. 149,* referred to. NIWAS RAM PANDE *v.* UDIT NARAIN MISR . . I. L. R., 13 All., 330

161. ———— *Mortgage-bond—Interest at rate stated in bond—Discretion of the Court—Civil Procedure Code (Act XIV of 1882), s. 209—Transfer of Property Act, s. 86.*—The terms of s. 86 of the Transfer of Property Act exclude the discretion conferred on the Court by s. 209 of the Civil Procedure Code in cases coming under the Transfer of Property Act. *Mangniram Marwari* v. *Dhowtal Roy, I. L. R., 12 Calc., 659,* distinguished. *Mangniram Marwari* v. *Rajpati Koeri, I. L. R., 20 Calc., 366 note,* approved. S. 86 of the Transfer of Property Act binds the Court to give a decree at the rate of interest provided by the mortgage if it be a rate to which no valid legal objection can be taken; that interest must be so computed down to the day fixed by the Court, according to the terms of the second paragraph of the section, that is, the day being one within six months from declaring in Court the amount due. The amount to be declared due is the amount due for principal and interest on the mortgage, including interest at the rate provided by the mortgage-deed up to the day so fixed; it is the same whether it be ascertained on an account being taken by the order of the Court, or be

INTEREST—*continued*

3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

ascertained by the Court itself. SURYA NARAIN SINGH *v* JOGENDRA NARAIN ROY CHOWDHURY

[I. L. R., 20 Calc., 360

MAGNIRAM MARWARI *v* RAJPATI KOERI

[I. L. R, 20 Calc, 366 note

162. ———— *Transfer of Property Act (IV of 1882), s 86—Mortgage decree—Contract rate—Subsequent interest—Civil Procedure Code (Act XIV of 1882), s 209*—When a decree for sale is passed in a mortgage suit, interest at the contract rate should be decreed for the period allowed for payment by the mortgagor, and subsequent interest should be decreed at six per cent. only. SUBBARAYA RAVUTHAMINDA NAINAR *v* PONNUSAMI NADAR . I L R., 21 Mad, 364

163. ———— *Interest Act (XXXII of 1839)—Interest on mortgage-money—Transfer of Property Act (IV of 1882), s 88—Charge on mortgaged property*—The Court has power under the Interest Act (XXXII of 1839) to give interest on mortgage money, as it is money payable at a certain time and under a written instrument, and the terms of s 88 of the Transfer of Property Act make such interest, recoverable or payable out of the mortgaged property The interest on the mortgage is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also include interest which under the law is payable, *e g*, interest after the due date of the mortgage, where there is no stipulation for interest after the due date BIKRAMJIT TEWARI *v* DURGA DYAL TEWARI

[I. L. R., 21 Calc, 274

[illegible]

first by the second—There being a [illegible] mortgage of the same property, a mortgage-decree (that upon the first by consent) was obtained by each mortgagee respectively, neither of them being a party to the decree obtained by the other. In the first mortgage it was agreed that, on default by the mortgagor, interest at 12 per cent should be paid on the principal and interest taken together, the latter being calculated with annual rests. At a judicial sale under the decree obtained by the first mortgagee, he bec[illegible] of the greater part of the proper[illegible] first [illegible] the se[illegible] for a [illegible] mortgagee was entitled to redeem the [illegible] second mortgagee But the Appellate Court, referring to the mortgage But the Appellate Court, referring to the consent decree having given simple interest only, made this the basis of an inference that compound interest must now be disallowed. *Held* that this was not the right inference, and compound interest was allowed according to the terms of the mortgage. GANGA PERSHAD SAHU *v.* LAND MORTGAGE BANK

[I. L. R, 21 Calc., 366
L. R., 21 I. A, 1

INTEREST—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

[illegible]

the mortgage premises RAMA REDDI *v* APPAJI REDDI I. L. R, 18 Mad., 248

KRISTNA REDDI *v.* VARADARAJULU REDDI

[I. L. R, 18 Mad., 338 note

166. ———— *Mortgage—Interest post* [illegible] *s. 88*—Where [illegible] hypothecating [illegible] provide for inte[illegible] claim in the nature [illegible]

[illegible] *v* SAMI PILLAI I. L. R, 18 Mad., 257

THAYAR AMMAL *v* LAKHSHMI AMMAL

[I L. R., 18 Mad., 331

167 ———— *Interest post* [illegible]

[illegible] should be paid after the due date NITYANANDA PATNAYUDU *v.* RADHA CHERANA DEO

[I. L. R., 20 Mad., 371

[illegible]

No agreement or usage giving a right to interest was alleged, and no written demand and notice had been given under the Interest Act. *Held* that the plaintiff was not entitled to interest. KAMALAMMAL *v* PEERU MEERA LEVVAI ROWTHEN

[I. L. R., 20 Mad., 481

169. ———— *Interest post diem—Interest Act (XXXII of 1839)—Transfer of Property Act (IV of 1882), ss. 88 and 89—Interest on mortgage money—Charge on mortgaged property.*—When in a suit for sale under ss. 88 and 89 of Act IV of 1882 a Court allows, under Act XXXII of 1839, interest *post diem*, its decree, so far as such *post diem* interest is concerned, is not a decree for sale under s. 88, but is a decree for money which can be executed in the manner provided for the execution of simple money decrees. *Bikramjit Tewari v. Durga Dyal Tewari, I. L. R., 21 Calc., 274*, dissented from NARINDRA BAHADUR PAL *v.* KHADIM HUSAIN . . I. L. R., 17 All., 581

INTEREST—*continued*

3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued*

Decree for sale on a mortgage—Interest after date fixed for payment—Civil Procedure Code (1882), ss 209 and 222—In a suit upon a mortgage for the sale of the property mortgaged the Court has no power to allow in the account under s 86 of the Transfer of Property Act 1882, or in its declaration under that section, interest for a period beyond the date of payment which has to be fixed within six months from the date of the decree Ss 209 and 222 of the Code of Civil Procedure, 1882, do no affect the special provisions as to allowance of interest contained in the Transfer of Property Act, 1882 AMOLAK RAM v LACHMI NARAIN

[I L R, 19 All, 174

See PIRBHU NARAIN SINGH v RUP SINGH

[I L R, 20 All, 397

177. —————— *Transfer of Property Act (IV of 1882), s 86—Mortgage by conditional sale—Interest Act (XXXII of 1839)—Limitation Act (XV of 1877), sch II arts 116 and 132*—*Held* by a majority of the Full Bench (MACLEAN, C J, O'KINEALY, J, and MACPHERSON, J) that when a mortgage bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839) Art 116 of sch II to the Limitation Act prescribes the period of limitation in such a case, and therefore only six years interest after the due date at 6 per cent per annum is recoverable The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs *Gudri Koer* v. *Bhubaneswari Coomar Singh, I L R, 19 Calc 19*, approved *Mathura Das* v *Narindar Bahadur, L R, 19 All, 39 L R, 23 I A, 138 Cook* v *Fowler, L R, 6 H L, 27*, and *Bikramjit Tewari* v *Durga Dyal Tewari, I L R, 21 Calc, 274*, referred to *Held* (by TREVELYAN and BANERJEE, JJ) that the interest after due date should be regarded as interest due on the mortgage within [illegible] rty Act comes a period interest to the Limitation Act (XV of 1877) MOTI SINGH v RAMOHARI SINGH I. L. R, 24 Calc, 699

[1 C. W., N. 437

178. —————— *Amount secured by mortgage-bond with interest repayable by three instalments—Whole amount to become due on failure to pay any instalment—No provision for post diem interest*—By a registered mortgage bond it was stipulated that the mortgage debt secured thereby and interest thereon at one per cent per annum should be repaid by three annual instalments, the first of which was to become due on a certain date, and it was provided that, if default should be made in payment of any instalment, the whole amount secured by the bond should at once become payable The bond contained no provision for the payment of *post diem* interest Default having been made, the mortgagee sued for principal and for *post diem* interest *Held* that the covenant must be construed to be one for the payment of interest as long as the principal sum was improperly withheld *Moti Singh* v *Ramohari Singh, I L R, 24 Calc, 699*, considered GHANTAYYA v PAPAYYA

[I. L R, 23 Mad, 534

179 —————— *Interest post diem—Construction of bond—Damages*—On the construction of a written contract to repay in two years from its date money with interest at 15 per cent to be paid half yearly, arrears of interest being added half yearly to the principal, the Judicial Committee concurred with the High Court that there was no contract to pay interest at that rate after the date fixed for repayment *Held* that on that construction the creditor would be entitled on default made in the repayment to receive interest, but technically as damages assessed, and the rate *primâ facie* would be the same as that provided by the contract during the two years although there is no rule of law making that rate necessarily the measure of the damages The compounding the interest after the expiration of the two years was disallowed, and an account was directed on the basis that the interest *post diem* should be simple, at 15 per cent down to the date of the plaint, and after that date at 6 per cent till payment CHAJMAL DAS v BRIJ BHUKAN LAL

[I L R, 17 All, 511
L R, 22 I. A, 199

180 —————— *Mortgage—In*[illegible]

Practice—The Court has power, under a decree in [illegible]

Lachmi Narain, I L R, 19 All, 174, dissented from ACHALABALA BOSE v SURENDRA NATH DEY

[I. L R, 24 Calc, 766
1 C W. N, 550

181. —————— *Mortgage—Construction of mortgage—Post diem interest where none is stipulated for in the deed*—Where a mortgage deed contained a covenant for payment of principal and interest at a fixed rate in two years and further covenants not to transfer the mortgaged property until payment of principal and interest, and also on failure of payment of interest for one year to treat [illegible]

interest at the stipulated rate to the date of the decree of the first Court and at the rate of 6 per cent thereafter *Mathura Das* v *Narindar Bahadur Pal*,

INTEREST—*continued.*

3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*continued.*

I. L. R., 19 All., 39 : L. R., 23 I. A., 138, referred to. SARALA DASI *v.* JOGENDRA NARAYAN BASU
[I. L. R., 25 Calc., 246

182. ———— *Decree for sale on a mortgage—Interest allowable after date fixed by decree for payment of the mortgage-money.*—In construing a decree for sale upon a mortgage, the terms which are susceptible of being construed either as allowing interest only up to the date fixed by the decree for payment of the mortgage-debt or as allowing interest also after that date until realization, the proper construction, to make the decree in accordance with law, is that interest is allowed up to the date of realization and not merely up to the date fixed by the decree for payment of the mortgage-debt. *Amolak Ram* v. *Lachmi Narain, I. L. R., 19 All., 174; Nain Dat* v. *Harihar Dat, Weekly Notes, All., 1898, p. 57,* and *Maharaja of Bhartpur* v. *Kanno Dei, Weekly Notes, All., 1898, p. 164,* as to this point overruled. *Achalabala Bose* v. *Surendra Nath Day, I. L. R., 24 Calc., 766,* and *Subbaraya Raruthaminda Nainar* v. *Ponnusami Nadar, I. L. R., 21 Mad., 364,* referred to. *Rameswar Koer* v. *Mahomed Mehdi Hossein Khan, I. L. R., 26 Calc., 39,* followed. BAKAR SAJJAD *v.* UDIT NARAIN SINGH
[I. L. R., 21 All., 361

183. ———— *Enforcement of mortgage made before Transfer of Property Act—Rate of interest from date of suit to date fixed for realization—Civil Procedure Code (Act XIV of 1882), s. 209—Transfer of Property Act (IV of 1889), s. 86.*—One of two mortgages bore interest at 12 per cent. on the mortgage-debt payable with costs, and the other carried simple interest. Payments made by the debtor had been appropriated by the creditor to payment of the interest on the bond bearing simple interest, while the compound interest, on the other hand, had been left to accumulate. The creditor sued the representative of the debtor after his decease, to enforce the mortgage bearing compound interest. The Transfer of Property Act, 1882, was in force when the suit was instituted, but not when the relation of debtor and creditor between the parties commenced. *Held,* assuming that a discretionary power to a Court remained under s. 209, Civil Procedure Code, to decree interest to run, at less than the contract rate, in a suit commenced before Act IV of 1882 became law, still the best guide to discretion in this case was to be found in s. 86 of that Act, which required the Courts to decree mortgage-debts with interest at the rate provided by the mortgagee (if to that rate no valid legal objection could be taken) down to the date fixed for realization. RAMESWAR KOER *v.* MAHOMED MEHDI HOSSEIN KHAN . . . . . I. L. R., 26 Calc., 39
[L. R., 25 I. A., 179
2 C. W. N., 633

184. ———— *Negotiable Instruments Act (VI of 1881), ss. 79, 80—Interest on promissory note—No mention of interest or rate of interest in instrument.*—Certain promissory notes, on which a suit was brought, were in the following terms: "On demand we promise to pay ——— or order the sum of R—— for value received." Plaintiffs claimed interest. On its being contended that where an instrument is completely silent about interest, s. 80 of the Negotiable Instruments Act, 1881, has no application, and no interest can be allowed, —*Held* that the mercantile usage which would have enabled the Court to award interest on such an instrument prior to the passing of the Negotiable Instruments Act, 1881, has not been abrogated by that Act, though the interest that can now be awarded is limited by s. 80 to six per cent. S. 80 governs alike the case in which interest, but no rate of interest, is mentioned in the instrument, and that in which interest is not mentioned. In the case of a note payable on demand, the date of the demand, and not that of making the note, is the date from which interest must be taken to run. BEST *v.* MAHAMMAD SAIT . . . . I. L. R., 23 Mad., 18

185. ———— *Acknowledgment to prevent debt being barred—Rate of interest from date of acknowledgment.*—In reference to a debt carrying interest at a certain rate, the debtor gave to the creditor, on the approach of the date when the debt would have been barred by limitation, an acknowledgment to prevent that from occurring. *Held* that the acknowledgment, being intended only for the purpose of eluding the law of limitation, had not, by any novation of the contract, given to the creditor a right, in the absence of special stipulation to the contrary, to claim interest at a rate higher than that which the debt had borne down to the date when the acknowledgment was made. TANJORE RAMACHANDRA RAU *v.* VELLYANADAN PONNUSAMI . . . I. L. R., 14 Mad., 258
[L. R., 18 I. A., 37

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

186. ———— **Stipulation for increased interest**—*Act XXVIII of 1855, s. 2—Penalty.*—S. 2 of Act XXVIII of 1855 is the law applicable to suits on contracts whereby interest is recoverable, and it applies to such contracts indiscriminately of the creed of the contracting parties. Where it was stipulated in a bond that, on default of the payment of the principal amount together with interest at the rate of 1⅞ per cent. per mensem within a certain period, interest should be payable at the rate of 6¼ per cent. per mensem from the date of the execution of the bond, and that, on default of payment of such interest at the end of any six months, compound interest should be payable at the rate of 12½ per cent. per mensem, the Court, treating the rate of interest agreed to be paid on default as intended as a penalty, came to the conclusion that the rate was so high that it would not be equitable to enforce the penalty, and therefore decreed the principal amount claimed with interest at the rate of 1⅞ per cent. per mensem. LACHMAN SINGH *v.* PIRBHU LALL . 6 N. W., 358

INTEREST—*continued*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

187. ——— *Default in payment—Act XXVIII of 1855—Penalty* —Where a [illegible]

[illegible] from PAVA NAGAJI *v* GOVIND RAMJI [10 Bom., 382

188 ——— *Usury—Act XXVIII of 1855, s 2—Liquidated damages* —The plaintiff advanced money to the defendants on an [illegible]

[illegible] an ijara of the defendants [illegible] in certain property which his loan was to aid them in recovering A 4 anna share of the profits, after deducting Government revenue and expenses, was to go in payment of interest on the money lent, half of the remaining three-fourths to go towards payment of the principal, and the other half to the defendants If at the end [illegible]

[illegible] the money and obtained a receipt therefor from the defendants The defendants failed in giving the plaintiff the ijara In a suit brought to recover the sum lent by the plaintiff with interest, the first Court gave a decree for the plaintiff for the sum claimed, [illegible]

[illegible] MARKBY, J. (whose opinion prevailed), being of opinion that since the passing of Act XXVIII of 1855, there was no legal restriction on the rate of interest, that the stipulation for interest at 75 per cent. was not a penalty, but an alternative stipulation for interest at a higher rate on the happening of events [illegible] and [illegible] ap- [illegible] the [illegible] interest at 75 per cent was not in the nature of a penalty, nor was it an alternative stipulation, it was an estimate by the parties of the damages to which the plaintiff would be entitled in the event of a breach of the contract by the defendants in not giving the ijara OMDA KHANUM *v.* BROJENDRO COOMAR ROY CHOWDHRY [12 B. L. R., 451: 20 W. R., 317

And on appeal ZEBONNISSA *v* BROJENDRO COOMAR ROY CHOWDHRY . 21 W. R., 352

GRISH CHUNDER GUHA *v* GOUR CHUNDER DASS [12 C. L. R., 161

189. ——— *Penalty—Liquidated damages* —Defendant agreed to supply 100 kantlams of jaggery by a specified rate at R14½ per kantlam, and received R100 advance. Defendant further agreed that in default he would pay interest at one per cent. per mensem and nafa at R7 per kantlam No delivery was made by defendant. In a suit by the plaintiff to recover R7 per kantlam and the interest,—*Held* that the amount sued for was in the nature of liquidated damages which plaintiff had a legal right to enforce, and not a penalty against which the Court would relieve The doctrines of the *English and Roman law upon the subject of penalties* and liquidated damages examined. ADANKY RAMACHANDRA ROW *v.* INDUKURI APPALARAJU GARU [2 Mad., 451

190 ——— *Condition for payment in nature of interest on mortgage—Unreasonable condition—Penalty* —A mortgage-deed contained a condition that, if the principal were not repaid by a certain day, the mortgage should only be redeemed by payment of one mura of rice for each rupee of the mortgage-money The mortgagee was in possession under a prior iladarawara mortgage, and rice rose in the market. *Held* that the condition was unreasonable, and such as should not be enforced in equity MAILARAYA *v* SUBBARAYA BETT [1 Mad., 81

191. ——— *Penalty.*—A bond stipulated for payment of principal and interest at one per cent. per mensem within six months from the date of the bond, and in default that the rate of interest should be raised to six and a quarter per cent. per mensem. *Held* that the higher rate of interest was not in the nature of a penalty and that the plaintiff had a right to enforce payment thereof. ABULU MASTRY *v* WAKTEEY CHINNAYEN [3 Mad., 295

192. ——— [illegible] *note payable by instalments—Penalty* —Where a promissory note payable by [illegible] for interest at two per [illegible] and [illegible] default of punctual payment [illegible] at one anna per rupee per mensem [illegible] the note, it was held that the [illegible] interest was a penalty which [illegible] on payment of the [illegible] *v* SAYANA BIN BAGD[illegible]

MOTOJI BIN RAVKAJI [illegible]

[illegible]

193. ——— [illegible] promissory note, payable [illegible] for money lent and interest [illegible]

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

12½ per cent. per mensem, contained an agreement to continue to pay that rate of interest after the due date if the money was not then repaid. *Held* that the high rate of interest so agreed to be paid did not constitute a penalty against which the Courts would relieve. HAKMA MANJI *v.* MEMAN AYAB HAJI

[7 Bom., O. C., 19

194. ———— *Instalments—Penalty—Liquidated damages.*—*A* executed an instalment-bond for R1,000 in favour of *B*, in which he stipulated that from the year 1271 (1864) to 1275 (1868), both inclusive, R200 should be paid in the month of Jaishta (May 13th to June 12th) in each year, and that "in the event of any instalment being then due, all the remaining instalments should be deemed lapsed, and the principal should be paid with interest at the rate of 10 per cent. per mensem, from the date of the instalment-bond." The first instalment, which fell due on the last day of Jaishta 1271 (12th June 1864) was paid only on the 13th Falgun of the same year (13th February 1866), other instalments were paid in Jaishta 1272, 1273 (1865, 1866). *B* accepted payment of these instalments as part payment of the principal sum due to him, and never made any demand for interest under the terms of the bond. The further instalments due in Jaishta 1274 and 1275 (May 13th to June 12th, 1867 and 1868) were never paid. On 13th Kartick 1275 (30th October 1868) *B* sold the bond and all his interest thereunder to *C* for R800. On 2nd Jaishta 1276 (14th May 1868) *C* brought a suit against *A* for the whole amount of the bond with interest thereon at 10 per cent. per mensem, from the date thereof till the date of suit, namely, R6,099, less the amount R600, which had been realized by *B* in the three instalments for 1271, 1272, and 1273 (1864, 1865, and 1866). The Judge awarded him only the amounts of the unpaid instalments for 1274 and 1275 (1867 and 1868), namely, R400 with interest from the date of the instalments till date of suit at one per cent. per mensem, in all R488 odd, proportionate costs and interest on all at one per cent. per mensem till date of realization. On appeal to the High Court by *C*,—*Held* that the clause in the bond relied on was a mere penalty clause. The original obligee of the bond having waived the exaction of any penalty, *C* was not entitled to more than the Judge had awarded him. BOLEY DOBEY *v.* SIDESWAR RAO BABOO ROY KUR **. 4 B. L. R., Ap., 92 : 14 W. R., 437 note**

195. ———— *Bond payable by instalments—Penalty—Usury—Liquidated damages.*—The defendant executed a bond in favour of the plaintiff, by which he agreed to pay "interest at 8 annas per cent., month after month, and to repay the principal money within the period of three years." It was further stipulated in the bond that, "should I fail to pay the principal and interest as agreed upon, I shall pay interest at 4 per cent. per mensem from the date of this bond to that of liquidation." The defendant made default in payment. *Held* in a suit brought on the bond that the stipulation in the bond for the payment of interest at 4 per cent. per mensem was in the nature of a penalty, and the plaintiff was only entitled to recover interest at a reasonable rate. In this case one per cent. per mensem was given. BICHOOK NATH PANDAY *v.* RAM LOCHUN SINGH

[11 B. L. R., 135 : 19 W. R., 271

HURREENATH DOSS *v.* KALEE PERSHAD ROY

[22 W. R., 474

196. ———— *Penalty.*—The plaintiff lent the defendant R700 on an agreement that it should be repaid with interest at 8 annas a month by instalments; if not repaid in four years, the interest to be paid on the sum advanced was to be at 1 per cent a month. In a suit after the four years had elapsed to recover the loan with interest, the Courts below held that the stipulation as to the higher percentage was a penalty, and refused to give interest at that rate. On special appeal the High Court reversed their decisions and allowed interest at 1 per cent. per mensem. PEETAMBUR CHATTERJEE *v.* KALEECHURN ROY

[11 B. L. R., 137 note : 14 W. R., 436

197. ———— *Penalty.*—Where interest at R2-8 per month was stipulated for in a bond, and it was objected in a suit on the bond that the rate was exorbitant, it was held the Court was justified in giving interest at that rate up to date of decree, that being the agreement between the parties at the time of making the contract. After decree, 12 per cent. per annum was given. RASHESSUR SURMAH *v.* KALEEKANATH SURMAH

[11 B. L. R., 138 note : 11 W. R., 455

198. ———— *Penalty.*—In a bond executed by the defendant in favour of the plaintiff it was stipulated that a loan should bear interest at R1-8 per mensem for three months, when the principal and interest were to be repaid, and in the event of its not being then repaid, an enhanced rate of interest at 5 per cent. per mensem should be payable from the date of the execution of the bond to payment. A decree was given in a suit on the bond in accordance with the terms thereof, and on appeal to the High Court on the ground that the stipulation for interest at 5 per cent. per mensem was a penalty, and would not be enforced, the Court dismissed the appeal with costs. SOHODEA BIBEE *v.* DEENDYAL LAL . . . . **11 B. L. R., 138 note**

199. ———— *Penalty.*—A bond stipulated that the loan secured thereby should be payable in five months with interest at 2 per cent. per month, and if not then repaid, interest at 5 per cent. per month should be charged. In a suit on the bond in default being made in payment, the defendant pleaded that the higher rate of interest stipulated for in the bond could not be enforced as being contrary to Hindu law, and in the nature of a penalty. *Held* that the Court was bound to give effect to the contract entered into by the parties, and would not therefore look on the higher rate of interest as a

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

penalty BROJOKISHORE ROY *v* MADHUB PERSAD MISSEE 12 B. L R , 456 note: 17 W. R., 373

IN THE MATTER OF NOBO COOMAR BOSE [12 B. L R , 457 note: 17 W. R , 431

200. ———— *Penalty*—A kabuliat contained a clause that "in default of a kist, that is, failing to pay the malguzari on the day fixed for (paying) instalments, I shall pay the zamindar's malguzari with half as much again" In a

given at the ordinary rate HURRULLUBH NARAIN SINGH *v* GENDA MAHARAJ [12 B L R., 473 note: 20 W. R., 257

201. ———— *Penalty—Sti-*

damages, for it provided not an unvarying lump sum, but a sum increasing with the time during which the obligee was kept out of his money, and was therefore very appropriate as a measure of the proper compensation Even when a stipulation is intended to operate as a penalty, it is incumbent on the Court to consider what amount of money would properly measure the damages consequent on the default. BOOLAKEE LALL *v* RADHA SINGH 22 W. R , 223

202 ———— *Penalty—Stipulation for higher rate on default in payment of mortgage bond—Power of sale under mortgage*—Defendant entered into a bond agreeing to pay a specified rate of interest in instalments on a sum borrowed and to repay the principal in twelve years,

defendant in respect of any of the conditions of the bond, the mortgagee would be competent, after two months' notice, to sell the property, or portions thereof, and pay himself the principal and the interest thereon for the unexpired portion of the twelve years A portion of the interest having come into arrear

for twelve years He obtained a

suit was not maintainable, either as an action to damages for the amount which plaintiff could have

INTEREST—*continued.*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

obtained by *the sale or on the bond itself* VENCATAVARADA IYENGAR *v* VENCATA LUCHMAMAL [23 W. R., P. C., 91

203 ———— *Penalty—Rate of damages*—Where, interpreting a contract regarding the payment of interest, a Court held that the rate of interest stipulated to be paid in default of the punctual payment of the agreed interest must be regarded as a penal rate, it should have gone on to determine what reasonable damages within the stipulated rate the plaintiff was entitled to for the delay Under the terms of a bond, dated the 18th of August 1870, the principal sum was repayable on demand, *together with interest at the rate of 16¼ per cent* per annum (which was payable at the end of every four months), and in default of punctual payment of the agreed interest it was repayable with interest at the rate of 36 per cent per annum Two instal-

sufficient to award the plaintiff 20 per cent per annum, to commence from the expiry of eight months from the date of the bond BIHARI LAL *v* JUNI [7 N. W., 108

204. ———— *Promissory note—Stipulation to pay interest at high rate on default in payment of note—Penalty—Contract*

R400 "for value received in cash in hand paid on signing and delivering this bond, should we neglect or fail to pay this amount on due date, then only shall it carry interest from and on due date to date of payment at the defaulting rate of 10 per cent.

payment,— certain sum was agreed to be paid on a breach of contract, and therefore s. 74 of the Contract Act did not apply The stipulation to pay interest at the "defaulting rate" was not in the nature of a penalty. *Held* also that, looking at the nature

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

of the transaction, the note contained a false statement of the consideration, which amounted only to R275; and there being nothing to show that the defendant understood the real nature of the transaction, the rate of interest being exorbitant and the consideration inadequate, the transaction was not one which ought to be enforced by a Court of equity. MACKINTOSH *v.* HUNT . . I. L. R., 2 Calc., 202

See MACKINTOSH *v.* WINGROVE [I. L. R., 4 Calc., 137: 2 C. L. R., 433

205. ——— *Compound interest—Penalty.*—*Held* that a stipulation in a bond that the interest on the principal sum lent should be paid six-monthly, and, if not paid, should be added to the principal and bear interest at the same rate, was not one of a penal nature. TEJPAL *v.* KESRI SINGH . . . . I. L. R., 2 All., 621

206. ——— *Compound interest.*—*D* gave *M* a bond for the payment of certain moneys on a certain date and for the payment of interest on such moneys at R1-12 per cent. per mensem, stipulating to pay the interest six-monthly, and in default "to pay compound interest in future." *Held* (*i*) that the stipulation to pay compound interest could not be regarded as a penal one, and (*ii*) that the bond contained an agreement to pay interest after the due date at the rate payable before that date, and that, if it had been otherwise, the obligee was entitled to interest after that date at that rate, such rate not being unreasonable. MATHURA PRASAD *v.* DURJAN SINGH . . I. L. R., 2 All., 639

207. ——— *High rate of interest—Penalty.*—The obligors of a bond agreed to pay the principal amount by instalments without interest, and in case of default to pay interest at the rate of R3-2 per cent. per mensem, and hypothecated immoveable property as security for the payment of the bond-debt, sufficient for the discharge of the debt, and furnished a surety. *Held* by STUART, *C.J.*, in a suit on the bond, that the principal amount being payable in the first instance without interest, the stipulation to pay interest at the rate of R3-2 per cent. per mensem in case of default was a penal one, and reasonable interest should only be allowed. *Held* by SPANKIE, *J.*, that, looking at all the circumstances of the case, the very high rate of interest imposed in case of default should be regarded as penal, and should be reduced. The Court under the circumstances allowed interest at the rate of 1 rupee per cent. per mensem. CHUHAR MAL *v.* MIR [I. L. R., 2 All., 715

208. ——— *Penalty.*—The defendants, on the 8th May 1869, gave the plaintiff a bond for the payment of R2,000 on the 16th February 1870. This amount consisted of two items, *viz.*, R1,650 principal and R350 interest in advance at the rate of two per cent. per mensem for the period between the date of the bond and its due date. The bond provided that, in default of payment on the due date, interest on the whole amount of R2,000 should be paid at the rate of two per cent. per mensem from the date of the bond. *Held*, in a suit on the bond in which interest was claimed at the rate of two per cent. per mensem from the date of the bond, that this provision was penal, and the penalty ought not to be enforced. MAZHAR ALI KHAN *v.* SARDAR MAL . . . . I. L. R., 2 All., 769

209. ——— *Penalty.*—The defendant, having borrowed R50 from the plaintiff, gave him, on the 9th November 1878, an instrument which was in effect as follows: *B* (defendant) writes this rukka in favour of *A* (plaintiff) for R50, cash received, to be repaid on the 13th November 1878. In the event of default, he shall pay interest at R1 per diem. *Held* that, looking to the whole instrument, it was equitable to hold that the term "interest" was not intended to mean interest in the strict sense of that term, but a penalty, and the amount of interest should be so treated, and a reasonable amount only be allowed. The observations of PONTIFEX, *J.*, in *Bichook Nath Panday* v. *Ram Lochun Singh, 11 B. L. R., 135,* concurred in. BANSIDHAR *v.* BU ALI KHAN [I. L. R., 3 All., 260

210. ——— *Penalty.*—A bond for the repayment of money lent provided that such money should be repaid on a certain date; that interest at the rate of R7-8-0 per cent. per annum should be paid at the end of every year; and that, if default were made in the payment of interest, such money should be repaid with interest at the rate of R37-8-0 per cent. per annum. The bond contained an hypothecation of immoveable property as collateral security. In a suit on the bond the obligee, the obligor having failed to pay any interest, claimed interest from the date the bond became due to the date of institution of the suit at R37-8-0, the defaulting rate. *Held*, following the principle laid down in *Bansidhar* v. *Bu Ali Khan, I. L. R., 3 All., 260,* that the provisions of the bond, as regards the rate of interest payable on default of the payment of interest, were in their nature penal and so excessive that, as a matter of equity, they should not be enforced. *Held* also, with reference to the question what was a reasonable amount of compensation for the obligor to pay for breach of contract, that unpaid interest should bear interest at the rate of R11-4-0 per cent. per annum from the date of default to the date of the High Court's decree. KHURRAM SINGH *v.* BHAWANI BAKSH [I. L. R., 3 All., 440

211. ——— *Penalty—Equitable relief.*—By a registered bond for R4,500, dated the 4th October 1875, in which immoveable property was hypothecated as collateral security, it was provided that the obligor should pay interest at the rate of R1-4-0 per cent. per mensem at the end of every six months, and upon default in the payment of such interest, that he should pay interest at the rate of R2 per cent. per mensem from the date of the bond. The bond also contained a stipulation against alienation, and declared that the

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

principal sum was payable on demand The obligees sued the obligor upon the bond claiming to recover the principal sum and interest from the date of the bond for three years eleven months and twenty days less different sums amounting to R1 600 paid from time to time on account at the defaulting rate of R2 per cent *Held* that having regard to the fact that the security of property was given for the loan

of contract in respect of interest Accordingly the Court made a decree giving the obligees interest on the principal sum from the date of the bond to the date of the decree at R1 4 0 per cent per mensem and compound interest from the date of default in the payment of interest to the date of the decree at the rate of four annas per cent per mensem by way of damages for such default *Bansidhar* v *Bu Ali Khan I L R 2 All 260* followed *Mackintosh* v *Wingrove I L R 4 Calc 137,* dissented from KHARAG SINGH *v* BHOLA NATH

[I L. R., 4 All., 8

212 ———— *Penalty* —By a deed of mortgage the defendant agreed to pay interest at the rate of one pice per rupee per mensem and it was provided that the mortgagee was to remain in possession for a period of 25 years in lieu of principal and interest and that the mortgagor was not to claim the property back unless he paid the principal and interest that might accrue due in 25 years from the date of the bond *Held* that the clause in the mortgage deed as to payment of 25 years' interest was not a penalty BAPUJI BALAL *v* SATYABHAMA BAI

I L R., 6 Bom., 490

213 ———— *Penalty* —The obligor of a bond agreed that if the principal amount were not paid at the end of 12 months with the

principal and interest for the purpose of carrying interest could not be regarded as removing the transaction from the region of an ordinary contract on a bond under which an obligor was bound by the terms to which he had agreed. SARJU PRASAD *v* BENI MADHO

I. L. R., 6 All., 6

214. ———— *Penalty* —The ... the amount ... if he made ... at the rate of R2 per cent per mensem *Held,* in a suit on the bond that such interest was not penal *in its* character, but contract interest the liability to pay

which was not made contingent on any breach of any part of the contract and therefore should not have been reduced KUNJBEHARI LAL *v* ILAHI BAKHSH

[I L. R., 6 All., 64

215 ———— *Solenamah payable by instalments—Penalty* —A decree was passed on a solenamah by the terms of which a sum of two lakhs of rupees declared to be due to the plaintiff from the defendant was to be paid by yearly instalments of R30 000 each But if at any time two instalments should be due at the same time the whole debt should be recoverable forthwith with interest calculated at 12 per cent instead of 6 per cent otherwise payable *Held* that the condition whereby the amount of interest payable should be increased in default in due payment as above being made must be looked upon as part of the decree of the Court and not as a penalty *Bichook Nath Panday* v *Ram Lochun Singh 11 B L R 135* cited and distinguished. RUN BAHADOOR SINGH *v* ROY NARAIN DASS

7 C L. R., 82

216 ———— *Compensation for breach of contract—Contract Act s 74* —*V* lent R1 500 to *C* and the members of his family under a bond by which it was agreed that *C's* family should demise certain land on kanom to *V* and receive a further sum *It was also stipulated in the bond that C* and the members of his family should pay interest *at 6 per cent* upon R1 500 until the *execution of* the kanom deed and interest at 24 per cent from the date of the loan in the event of their not making the demise The demise was not made *Held* that the stipulation for the enhanced rate of interest did not create an independent obligation, and that the proper course was to determine what would be a sufficient compensation for the breach of contract VENGIDESWARA PUTTER *v* CHATU ACHEN

[I L R., 3 Mad., 224

217 ———— *Penalty—Act IX of 1872 s 74* —The obligor of a bond promised to pay the amount on demand with interest at the rate *of R6 4 per cent per mensem to pay the interest*

the sense of s 74 of the Contract Act ... rate of interest stipulated to be paid could not be interfered with BHOLA NATH *v* FATEH SINGH

[I L. R., 6 All., 63

218 ———— *Act IX of 1872 s 74—Penalty* —The obligor of a bond for the payment of money agreed therein in respect of interest as follows I will pay the money with interest at one rupee one anna per cent per mensem on demand as regards interest, I agreed that I will pay the interest of the amount every six months which may be found due

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

under the accounts: in the event of non-payment every six months, I will pay the interest at the rate of one rupee eight annas per mensem from the date of the execution of the bond." *Held* by STUART, *C.J.*, that the stipulation to pay the higher rate of interest in case of non-payment of interest at the lower rate was a stipulation in the nature of a penalty, and should be so treated in the accounts to be taken. *Bichook Nath Panday* v. *Ram Lochan Singh, 11 B. L. R., 135,* referred to. *Kharag Singh* v. *Bhola Nath, I. L. R., 4 All., 8,* observed on. *Held* by TYRRELL, *J.*, that the non-payment of interest at the lower rate was not a breach of the contract, the contract being that the obligor might adopt either of the scales of payment, and therefore the stipulation in question was not in the nature of a penalty. *Mackintosh* v. *Hunt, I. L. R., 2 Calc., 202,* followed. *Kharag Singh* v. *Bhola Nath, I. L. R., 4 All., 8,* distinguished. NARAIN DASS *v.* CHAIT RAM

[I. L. R., 6 All., 179

219. ———— *Penalty—Promise to pay interest at unusual rate to secure prompt payment—Contract Act, s. 74.*—A promise to pay interest if the principal sum is not repaid within fifteen days at the rate of one anna per rupee per diem from the date of the promise (intended to secure prompt payment) cannot be enforced, but interest at the current rate may be allowed. *Per* INNES, *J.* *Quære*—Whether s. 74 of the Contract Act is applicable to such a case? VYTHILINGA MUDALI *v.* RAVANA SUNDARAPPAYYAR . . I. L. R., 6 Mad., 167

220. ———— *Penal clause in contract—Increased interest on default of payment—Contract Act (IX of 1872), s. 74.*—A mortgage-bond contained a proviso that in case of default in payment of the principal sum, with interest at the rate of one per cent. per mensem on a certain day, interest should be paid at the rate of two per cent. per mensem from the date of the bond. *Held* that the stipulation to pay increased interest must be construed as a penal clause. MATHURA PERSAD SINGH *v.* LUGGUN KOER . . I. L. R., 9 Calc., 615

221. ———— *Promissory note—Failure to pay on due date—Enhanced rate of interest—Penalty—Breach of contract.*—Where money is borrowed under a contract for repayment with interest on a certain day, and the contract stipulates that if the money is not paid at the due date it shall thenceforth carry interest at an enhanced rate, such a stipulation is not a penalty, and the enhanced rate agreed to be paid may be recovered in its entirety. *Mackintosh* v. *Hunt, I. L. R., 2 Calc., 202,* followed. *Bansidhar* v. *Bu Ali Khan, I. L. R., 3 All., 260,* considered. MACKINTOSH *v.* CROW. MACKINTOSH *v.* GORE I. L. R., 9 Calc., 689 : 13 C. L. R., 102

222. ———— *Penalty—Contract Act, s. 74.*—In consideration of an advance of R118, the defendants executed in favour of the plaintiff a mortgage-bond, dated 3rd November 1879, by which it was stipulated that the amount should be repaid "in kind by delivery of half the amount of the rabi crops of every description produced at the first class rates, and in case the same is not paid in kind, it will be paid principal with interest from the date of execution at one anna per cent. per mensem in cash in the month of Baisakh 1287 F. S. (April 1880)." *Held* that the increased rate of interest, being made payable from the date of the bond, and not only from the breach of the contract, must be taken to be in the nature of a penalty, and only to be taken into consideration as a basis upon which damages for the breach of contract were to be estimated. The principle on this subject laid down in the case of *Mackintosh* v. *Crow, I. L. R., 9 Calc., 689,* approved of. SUNGUT LAL *v.* BAIJNATH ROY

[I. L. R., 13 Calc., 164

223. ———— *Bond—Penalty—Contract Act, s. 74—Act XXVIII of 1855, s. 2.*—The stipulation in a bond was in these terms: "I cannot pay R1,000 now, so I will pay it within two months and 15 days; if I do not pay it within that period, I will pay the amount with interest from the date of the bond at the rate of 2 annas per rupee per month." *Held* that the stipulation was one for the payment of interest within the meaning of s. 2, Act XXVIII of 1855, and did not fall under s. 74 of the Contract Act. *Mackintosh* v. *Crow, I. L. R., 9 Calc., 689,* approved. *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* considered. ARJAN BIBI *v.* ASGAR ALI CHOWDHURI

[I. L. R., 13 Calc., 200

224. ———— *Instalment-bond—Agreement to pay enhanced rate of interest on default.*—An agreement to pay the principal of a debt by instalments with interest, and on default of payment of each instalment to pay an enhanced rate of interest thereon from the date of default of payment, is not an agreement which should be relieved against. Dictum of WILSON, *J.*, in *Mackintosh* v. *Crow, I. L. R., 9 Calc., 689,* approved. JAGANADHAM *v.* RAGUNADHA

[I. L. R., 9 Mad., 276

225. ———— *Penalty—Bond.*—The lender of money, for the use of which interest is to be paid, may, at the time of making the loan, protect himself against breach of the borrower's contract to pay the interest when due, either by a stipulation that in case of such breach he shall be entitled to recover compound interest or by a stipulation that, in such a case, the rate of interest shall be increased. But a condition that, upon failure by the borrower to pay the interest when due, both compound interest and an increased rate shall be payable, amounts to a penalty, inasmuch as the two stipulations together cannot be regarded as a fair agreement with reference to the loss sustained by the lender. In a bond, dated in February 1877, for a sum of money payable in June 1882, it was provided that interest should be paid at the rate of R9 per cent. per annum on the puranmashi of every Jaith, and that, if the interest were not duly paid, the rate should be increased to R15 per cent. per annum, and compound

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

interest should be payable There was no provision for payment of interest from the time when the principal became due In December 1884 the obligee brought a suit on the bond against the obligor, claiming interest from the date of the bond to the date of the institution of the suit at R15 per annum, and compound interest for the same period at the same rate *Held* that the stipulations contained in the bond must be regarded as penal and it was therefore the Court's duty to limit the penalty to what was the real amount of damage sustained by the plaintiff in consequence of the defendant s breach of the contract to pay the interest at the due date *Held* that for this purpose the proper course was to reduce the interest to R9 per cent per annum, reckoned at compound interest with yearly rests to the due date of the bond, and that inasmuch as the plaintiff was to blame for not having enforced his remedy at an earlier date he should only recover simple interest at R9 per cent from the due date of payment, upon the entire sum which was due when the bond became due *i e*, *the principal added to the compound interest* calculated at R9 per cent The same obligee held another bond executed by the same obligors in June 1879 for a sum of money payable in June 1882 with interest at R9 per cent per annum. There was a

[illegible]

annum and the amount shou[illegible] date, on that basis on the whole amount of principal and interest then due on the bond DIP NARAIN RAI *v* DIPAN RAI I L. R, 8 All., 185

226 ——————— *Penalty—Higher rate of interest upon default in payment of instalment*—A decree of which the terms had been arranged by a solenamah between the parties, for payment of money by instalments with interest at six per cent was construed to provide also for three con[illegible] date (*a*) of the [illegible]talments being in [illegible]stalments, other than the first, (*b*) of the [illegible]stalment simply Upon the occurrence of (*a*) or of (*b*) execution might issue for the whole decretal money with interest [illegible] Upon the occurrence of [illegible]

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

were but a reasonable substitution of a higher rate of interest for a lower in a given state of circumstances and were not in the nature of a penalty against which equitable relief might be claimed BALKISHEN DAS *v* RUN BAHADUR SINGH

[I L. R., 10 Calc, 305: 13 C L R., 392 L R., 10 I A, 162

227 ——————— *Penalty—Liquidated damages*—Where a document contains covenants for the performance of several things and then one large sum is stated to be payable in the event of a breach such sum must be considered a penalty but when it is agreed that if a party do [illegible]

[illegible]

on account of the interest [illegible] And in [illegible]

decree for the amount due on the bond with interest as agreed upon BEHARY LALL DAS *v* TEJ NARAIN

[I L. R, 10 Calc., 764

228 ——————— *Agreement for* [illegible]

229 ——————— *Penal clause in contract—Enchanced rate of interest on default of payment of principal on due date—Penalty—Contract Act (IX of 1872), s 74—Act XXVIII of 1855 s 2*—In a suit on a bond, wherein it was stipulated that the loan was to be repaid on a certain date and to bear interest at the rate of 2 per cent per mensem, but that, if the loan were not repaid on the date named the principal was to bear interest at the rate of 4 per mensem from the date of the loan —*Held* on the authority of the decision in *Balkishen Das* v *Run Bahadur Singh, I L R, 10 Calc 305*, that the stipulation as to the payment of interest at the higher rate was not in the nature of a penalty, and that the plaintiff was entitled to a decree for the amount due on the bond with interest at the increased rate from the date of the bond and

[illegible]

loan s. 74 of the Contract Act was not applicable *Mackintosh* v *Crow I L R 9 Calc 689* upon this point dissented from The decision in the

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

case of *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* overrules the decision in the case of *Mathura Persad Singh* v. *Luggun Kooer, I. L. R., 9 Calc., 615,* and all similar cases cited, in *Mackintosh* v. *Crow,* which held that the stipulation for the payment of a higher rate of interest in the event of the non-payment of the debt on the date fixed in the contract, from the commencement of the loan, is in the nature of a penalty. BAIJ NATH SINGH *v.* SHAH ALI HOSAIN [I. L. R., 14 Calc., 248

230. ——— *Contract Act, s. 74—Penalty—Enhanced rate of interest and compound interest.*—A mortgagor agreed that, if any instalment of interest accruing due on the mortgage was not paid, he should pay compound interest and discharge the principal in one year, and further that, if the principal was not so discharged, he should pay interest at an enhanced rate. *Held* that the mortgagee could enforce the agreement. APPA RAU *v.* SURYANARAYANA I. L. R., 10 Mad., 203

231. ——— *Contract Act, s. 74—Penalty—Payment of higher rate of interest from date of bond on breach.*—Where a mortgage-deed provided for repayment of the debt in four instalments with interest at 6 per cent. and in default of payment of any instalment on the due date, for interest at 12 per cent. from the date of the bond,—*Held,* following *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* that the stipulation being reasonable, the plaintiff was entitled on default to recover the higher rate of interest from the date of the bond. BASAVAYYA *v.* SUBBARAZU [I. L. R., 11 Mad., 294

232. ——— *Bond—Stipulation to pay double the amount of debt on default of payment of any instalment.*—A stipulation by which, on default of payment of one instalment, double the entire amount of the debt due under an instalment bond was to become at once payable,—*Held* to be in the nature of a penalty. JOSHI KALIDAS *v.* DADA ABHESANG . . I. L. R., 12 Bom., 555

233. ——— *Contract Act, ss. 63, 74—Penalty—Interest on decree amount up to date of payment—Remission of part performance of contract—Sum accepted on account of interest.*—A hypothecation-bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the bond at the rate of 15 per cent. Default was made when the first and second payment of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum a little more than the arrears calculated at 9 per cent. In a suit by the creditor,—*Held* (1) that the plaintiff had not waived any right under the bond by accepting the payment on account of interest; (2) that the provision for enhanced interest calculated from the date of the bond on default was of the nature of a penalty under s. 74 of the Contract Act; (3) that the plaintiff was entitled to interest on decree amount from date of decree to date of payment at 6 per cent. *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* discussed and distinguished. *Baij Nath Singh* v. *Shah Ali Hosain, I. L. R., 14 Calc., 248,* dissented from. NANJAPPA *v.* NANJAPPA . . I. L. R., 12 Mad., 161

234. ——— *Contract Act, s. 74—Bond—Breach of contract—Penalty.*—A bond by which immoveable property was hypothecated provided for interest at 13½ per cent. and contained a condition that, if the principal with interest were not paid within one year, 27 per cent. should be paid as interest as from the date of the bond: *Held* that the question to be determined with reference to this condition was whether the parties intended to contract that, on failure by the mortgagor to pay within the stipulated time, 27 per cent. should be payable *quâ* interest from the date of the bond or whether they intended that the condition should be regarded merely as providing for a penalty, leaving the amount of compensation for non-payment at the stipulated time to be determined, in case of dispute, by the Court. *Held* that the condition would not in itself be an unreasonable one under the circumstances, that the parties contracted that the 27 per cent. should be payable *quâ* interest, and that interest at that rate must therefore be allowed. *Wallis* v. *Smith, L. R., 21 Ch. D., 243,* referred to. BANWARI DAS *v.* MUHAMMAD MASHIAT . I. L. R., 9 All., 690

235. ——— *Unconscionable bargain—Bond—Compound interest.*—In a suit for the recovery of a principal sum of R99 due upon a bond, with compound interest at two per cent. per mensem, it was found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in the tahsili for immediate payment of revenue due, to induce him to execute the bond charging compound interest at the above-mentioned rate, notwithstanding that ample security was given by mortgage of landed property. It was also found that although, under the terms of the bond, the plaintiff had power to enforce the same at any time by bringing to sale the mortgaged property, he had wilfully allowed the debt to remain unsatisfied, in order that compound interest at a high rate might accumulate. *Held* that the bargain was a hard and unconscionable one, which the Court had undoubted power to refuse to enforce, and which, under all the circumstances, it would be unreasonable and inequitable for a Court of justice to give full effect to; and that, under the circumstances, compound interest should not be allowed. *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose, I. L. R., 12 Calc., 225; Beynon* v. *Cook, L. R., 10 Ch. Ap., 389;* and *Lalli* v. *Ram Prasad, I. L. R., 9 All., 74,* referred to. The Court decreed the principal sum of R99, with simple interest at 9½ per cent. per annum up to the date of institution of the suit. MADHO SINGH *v.* KASHI RAM [I. L. R., 9 All., 228

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

236 ——— *Bond—Failure to pay on due date—Enhanced rate of interest from date of bond till date of realization—Penalty—Contract Act (IX of 1872) s 74—Held* by the Full Bench (BANERJEE J dissenting as to part) —A provision in a bond to the effect that the principal should be repaid with interest on the due date and that on failure thereof interest should be paid at an increased rate from the date of the bond up to the date of realization amounts to a provision

Mackintosh v *Crow* *Balkishen Das* v *Run Baha*

a penalty is correct as to the claim of int est up to the stipulated day of repayment and *Baij Nath Singh* v *Shah Ali Hosain* was wrongly decided as to this point S 74 of the Contract Act applies only to that part of the claim for interest which is in respect of the period from the date of the bond to the due date and has no application to the claim for interest for the period from the due date to the date of realization This view is in accordance with the decision in *Mackintosh* v *Crow* KALACHAND KYAL v SHIB CHUNDER ROY

I L R, 19 Calc, 392

237 ——— *Bond—Default* ... *(IX of 1872)*

pre- ... id at ... pai l

off by a certain day, then future interest *from the date of default* should be paid at R3 per month *Held* that the higher rate of interest was not a penalty and might be enforced DULLABHDAS DEVCHANDSHET v LAKSHMANDAS SWARUPCHAND

I L R, 14 Bom, 200

238 ——— *Stipulation in mortgage bond for enhanced interest in default of payment on a certain day—Contract Act (IX of 1872) s 74*—A mortgage bond provided for repayment of the loan on a certain date with interest at the ... on the ... 37 per ... of the ... was a penalty and not to be enforced BAJAJI PANHAJI v MARUTI

I L R., 14 Bom., 274

239. ——— *Liquidated damages—Contract Act (IX of 1872), s 74*—A proviso for retrospective enhancement of interest in default of payment of the interest at a due date is generally a penalty which should be relieved against, but a proviso for enhanced interest in the future cannot be considered as a penalty unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties UMARKHAN MAHAMADKHAN DESHMUKH v SALEKHAN

I L R, 17 Bom, 103

240. ——— *Contract Act, s 74—Bond—Penalty*—Where in a contract under which interest is payable it is agreed between the parties that if such interest be not paid punctually, the defaulter shall be liable to pay interest at an enhanced rate (whether from the time of default or from the time when interest first became payable under the contract) such agreement does not come within s 74 of the Contract Act and is to be construed according to the intentions of the parties as expressed therein and not as a stipulation for a penalty Such agreement is to be enforced according to its terms unless it be found to have been when made unconscionable or fraudulent The English doctrine of penal stipulations as applied to such agreements considered and not followed *Balkishen Das* v. *Run Bahadur Singh I L R 10 Calc 305; I R 10 I A 162* considered BANKE BEHARI v SUNDAR LAL

I L R., 15 All, 232

241 ——— *Compound interest—Mortgage deed—Penalty*—Where a mortgage deed stipulated for payment of half yearly instalments of interest and in case of default in such payments provided for compound interest,—*Held* that such a provision was not in the nature of a penalty, and there being no question of fraud or oppression improper dealing exorbitant amount, dealing with an ignorant person or any such consideration the stipulation as to interest must be enforced *Mangniram Marwari* v *Rajpati Koeri, I L R, 20 Calc, 366 note* approved SURYA NARAIN SINGH v JOGENDRA NARAIN ROY CHOWDHURY

I L R., 20 Calc, 360

242. ——— *Penalty—Contract Act (IX of 1872), s 74—Precise sum not named, but ascertainable*—A mortgage-bond contained the following stipulations as to interest: "I will pay interest for the said amount at the rate of R1 4 per cent per mensem and at the end of a year from the date of the bond. I will pay the whole

interest (which will be regarded as principal) and upon the principal mentioned in the bond at the rat of R3 2 per cent per mensem from the mortgaged

... is not paid. In default of payment you will act according to the conditions stated above I will repay this money

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

case of *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* overrules the decision in the case of *Mathura Persad Singh* v. *Luggun Kooer, I. L. R., 9 Calc., 615,* and all similar cases cited, in *Mackintosh* v. *Crow,* which held that the stipulation for the payment of a higher rate of interest in the event of the non-payment of the debt on the date fixed in the contract, from the commencement of the loan, is in the nature of a penalty. BAIJ NATH SINGH *v.* SHAH ALI HOSAIN

[I. L. R., 14 Calc., 248

230. ———— *Contract Act, s. 74—Penalty—Enhanced rate of interest and compound interest.*—A mortgagor agreed that, if any instalment of interest accruing due on the mortgage was not paid, he should pay compound interest and discharge the principal in one year, and further that, if the principal was not so discharged, he should pay interest at an enhanced rate. *Held* that the mortgagee could enforce the agreement. APPA RAU *v.* SURYANARAYANA I. L. R., 10 Mad., 203

231. ———— *Contract Act, s. 74—Penalty—Payment of higher rate of interest from date of bond on breach.*—Where a mortgage-deed provided for repayment of the debt in four instalments with interest at 6 per cent. and in default of payment of any instalment on the due date, for interest at 12 per cent. from the date of the bond,—*Held,* following *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* that the stipulation being reasonable, the plaintiff was entitled on default to recover the higher rate of interest from the date of the bond. BASAVAYYA *v.* SUBBARAZU

[I. L. R., 11 Mad., 294

232. ———— *Bond—Stipulation to pay double the amount of debt on default of payment of any instalment.*—A stipulation by which, on default of payment of one instalment, double the entire amount of the debt due under an instalment bond was to become at once payable,—*Held* to be in the nature of a penalty. JOSHI KALIDAS *v.* DADA ABHESANG . . I. L. R., 12 Bom., 555

233. ———— *Contract Act, ss. 63, 74—Penalty—Interest on decree amount up to date of payment—Remission of part performance of contract—Sum accepted on account of interest.*—A hypothecation-bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the bond at the rate of 15 per cent. Default was made when the first and second payment of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum a little more than the arrears calculated at 9 per cent. In a suit by the creditor,—*Held* (1) that the plaintiff had not waived any right under the bond by accepting the payment on account of interest; (2) that the provision for enhanced interest calculated from the date of the bond on default was of the nature of a penalty under s. 74 of the Contract Act; (3) that the plaintiff was entitled to interest on decree amount from date of decree to date of payment at 6 per cent. *Balkishen Das* v. *Run Bahadur Singh, I. L. R., 10 Calc., 305,* discussed and distinguished. *Baij Nath Singh* v. *Shah Ali Hosain, I. L. R., 14 Calc., 248,* dissented from. NANJAPPA *v.* NANJAPPA . . I. L. R., 12 Mad., 161

234. ———— *Contract Act, s. 74—Bond—Breach of contract—Penalty.*—A bond by which immoveable property was hypothecated provided for interest at 13½ per cent. and contained a condition that, if the principal with interest were not paid within one year, 27 per cent. should be paid as interest as from the date of the bond: *Held* that the question to be determined with reference to this condition was whether the parties intended to contract that, on failure by the mortgagor to pay within the stipulated time, 27 per cent. should be payable *quâ* interest from the date of the bond or whether they intended that the condition should be regarded merely as providing for a penalty, leaving the amount of compensation for non-payment at the stipulated time to be determined, in case of dispute, by the Court. *Held* that the condition would not in itself be an unreasonable one under the circumstances, that the parties contracted that the 27 per cent. should be payable *quâ* interest, and that interest at that rate must therefore be allowed. *Wallis* v. *Smith, L. R., 21 Ch. D., 243,* referred to. BANWARI DAS *v.* MUHAMMAD MASHIAT . I. L. R., 9 All., 690

235. ———— *Unconscionable bargain—Bond—Compound interest.*—In a suit for the recovery of a principal sum of R99 due upon a bond, with compound interest at two per cent. per mensem, it was found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in the tahsili for immediate payment of revenue due, to induce him to execute the bond charging compound interest at the above-mentioned rate, notwithstanding that ample security was given by mortgage of landed property. It was also found that although, under the terms of the bond, the plaintiff had power to enforce the same at any time by bringing to sale the mortgaged property, he had wilfully allowed the debt to remain unsatisfied, in order that compound interest at a high rate might accumulate. *Held* that the bargain was a hard and unconscionable one, which the Court had undoubted power to refuse to enforce, and which, under all the circumstances, it would be unreasonable and inequitable for a Court of justice to give full effect to; and that, under the circumstances, compound interest should not be allowed. *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose, I. L. R., 12 Calc., 225; Beynon* v. *Cook, L. R., 10 Ch. Ap., 389;* and *Lalli* v. *Ram Prasad, I. L. R., 9 All., 74,* referred to. The Court decreed the principal sum of R99, with simple interest at 9½ per cent. per annum up to the date of institution of the suit. MADHO SINGH *v.* KASHI RAM

[I. L. R., 9 All., 228

INTEREST—*continued*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

236. ——— *Bond—Failure to pay on due date—Enhanced rate of interest from date of bond till date of realization—Penalty—Contract Act (IX of 1872), s 74—Held* by the Full Bench (BANERJEE, J, dissenting as to part) —A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond up to the date of realization, amounts to a provision for a penalty and s 74 of the Contract Act applies

Panhaji v Maruti I L R, 14 Bom, 274, approved *Baij Nath Singh v Shah Ali Hosain, I L R, 14 Calc, 248,* overruled so far as it dissents from *Mackintosh v Crow Balkishen Das v Run Bahadur Singh, I L R, 10 Calc, 305,* distinguished. BANERJEE, J —The decision in *Mackintosh v Crow,* which regards the interest at the increased rate as a penalty is correct as to the claim of interest up to the stipulated day of repayment and *Baij Nath Singh v Shah Ali Hos in* was wrongly decided as to this point S 74 of the Contract Act applies only to that part of the claim for interest which is in respect of the period from the date of the bond to the due date, and has no application to the claim for interest for the period from the due date to the date of realization This view is in accordance with the decision in *Mackintosh v Crow* KALACHAND KYAL v. SHIB CHUNDER ROY

[I. L. R, 19 Calc, 392

237. ——— *Bond—Default in payment on due date—Contract Act (IX of 1872), s. 74—Breach of contract*—A mortgage-bond provided that interest for the loan should be paid at R2 per month, and that if the loan were not paid off by a certain day, then future interest from the date of default should be paid at R3 per month *Held* that the higher rate of interest was not a penalty and might be enforced DULLABHDAS DEVCHANDSHET v LAKSHMANDAS SWARUPCHAND

[I. L. R, 14 Bom., 200

238 ——— *Stipulation in a mortgage-bond for enhanced interest in default of payment on a certain day—Contract Act (I*

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37 per cent, to be calculated from the commencement of the loan *Held* that the higher rate of interest was a penalty and not to be enforced SAJAJI PANHAJI v MARUTI . I. L. R., 14 Bom., 274

239. ——— *Liquidated damages—Contract Act (IX of 1872), s 74*—A proviso for retrospective enhancement of interest, in default of payment of the interest at a due date, is generally a penalty which should be relieved against, but a proviso for enhanced interest in the future cannot be considered as a penalty unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties UMARKHAN MAHAMADKHAN DESHMUKH v SALEKHAN

[I. L. R, 17 Bom, 103

240. ——— *Contract Act, s 74—Bond—Penalty*—Where in a contract under which interest is payable it is agreed between the parties that if such interest be not paid punctually, the defaulter shall be liable to pay interest at an enhanced rate (whether from the time of default or from the time when interest first became payable under the contract) such agreement does not come within s 74 of the Contract Act, and is to be construed according to the intentions of the parties as expressed therein, and not as a stipulation for a penalty Such agreement is to be enforced according to its terms unless it be found to have been when made unconscionable or fraudulent. The English doctrine of penal stipulations as applied to such agreements considered and not followed *Balkishen Das v. Run Bahadur Singh, I L R 10 Calc, 305; I R, 10 I A, 162* considered BANKE BEHARI v. SUNDAR LAL I. L. R., 15 All, 232

241 ——— *Compound interest—Mortgage-deed—Penalty*—Where a mortgage-deed stipulated for payment of half-yearly instalments of interest, and in case of default in such payments provided for compound interest,—*Held* that such a provision was not in the nature of a penalty, and there being no question of fraud or oppression improper dealing, exorbitant amount,

242. ——— *Penalty—Contract Act (IX of 1872), s 74—Precise sum not named, but ascertainable*—A mortgage-bond contained the following stipulations as to interest: "I will pay interest for the said amount at the rate of R1-4 per cent per mensem, and at the end of a

You will by instituting suit realize interest upon the arrears of interest (which will be regarded as principal) and upon the principal mentioned in the bond at the rat of R3 2 per cent per mensem from the mortgaged property and from me

a bond is not paid. In default of payment, you will act according to the conditions stated above I will repay this money

INTEREST—*continued.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued.*

within three months from date and redeem the mortgage-property and mortgage-bond ..... If I fail to pay up the principal money within the said specified time, I will continue to pay up interest upon the principal at the rate of R1-4 per cent. according to the said stipulation in the bond up to the date of the institution of the suit, and from the date of institution of the suit to that of the decree, and from the date of the decree to that of the realization of the amount." *Held* that the plaintiff was not entitled to the higher rate of interest, it being in the nature of a penalty within the meaning of s. 74 of the Contract Act: *Kala Chand Kyal* v. *Shib Chunder Roy, I. L. R., 19 Calc., 392*, referred to; and this was so, although no sum was named within the meaning of that section, because such sum was at once ascertainable. BAID NATH *v.* SHAMANAND DAS . **I. L. R., 22 Calc., 143**

243. ———— *Contract Act (IX of 1872), s. 74—Penal sum — Mortgage—Construction of covenant to pay.*—In a suit to recover principal and interest due on a mortgage, dated the 19th April 1882, it appeared that the instrument provided that the principal should be repaid with interest at 21 per cent. per annum in two instalments on the 8th May 1883 and the 27th April 1884, respectively, and proceeded as follows: "If the amount of each instalment be not paid on the date of such instalment, we shall make payment with interest at three rupees per cent. per mensem from the date of the bond." No payment had been made on account of principal or interest. *Held* that the enhanced rate of interest was a penalty under s. 74 of the Contract Act, and therefore was not recoverable, but that the plaintiff was entitled to recover the principal, together with interest calculated at 21 per cent. up to the dates when the instalments respectively became due, and at 12 per cent. from those dates to the date of the plaint and at 6 per cent. from that date until payment. *Nanjappa* v. *Nanjappa, I. L. R., 12 Mad., 161; Kalachand Kyal* v. *Shib Chunder Roy, I. L. R., 19 Calc., 392;* and *Umar Khan Mahamad Khan* v. *Sale Khan, I. L. R., 17 Bom., 106,* followed. GOPALUDU *v.* VENKATARATNAM **[I. L. R., 18 Mad., 175**

244. ———— *Interest Act (XXVIII of 1855), s. 2—Contract Act (IX of 1872), s. 74—Equitable relief.*—In a mortgage-bond the interest payable was 2 per cent. per mensem, and there was a stipulation that on default of payment on the due date interest should run "from the date of default of promise" at 6 per cent. per mensem. In a suit upon the bond interest was claimed at the higher rate from the date of default to the date of realization. *Held* that it is open to the Court to decide, notwithstanding the provisions of s. 2, Act XXVIII of 1855, whether the stipulation as to the enhanced interest was agreed upon as interest properly so called, or as a penalty, and whether in the circumstances of the case the debtor was entitled to equitable relief. *Ramendra Roy Chowdhry* v. *Serajuddin Ahamed Chowdhry, 2 C. W. N., 234,* and *Umar Khan* v. *Sale Khan, I. L. R., 17 Bom., 106,* referred to. *Per* GHOSE, *J.*—The case of *Mackintosh* v. *Crow, I. L. R., 9 Calc., 689,* and *Kala Chand Kyal* v. *Shib Chunder Roy, I. L. R., 19 Calc., 392,* do not lay down any rule of law precluding the Court from affording relief to a debtor, independently of s. 74 of the Contract Act (IX of 1872), even when the bond provides for increased rate of interest prospectively and not retrospectively, where a proper ground for such equitable relief is made out. *Per* RAMPINI, *J.*—The stipulation for increased rate of interest may be a penalty, but is not necessarily so merely because the increased rate is an exorbitant one; whether it is a penalty or not is rather a question of fact than one of law, and the Court must consider whether in the circumstances of the case the defendants had made out their claim to equitable relief. *Ramendra Roy Chowdhry* v. *Serajuddin Ahamed Chowdhry, 2 C. W. N., 234,* distinguished. *Pana Nagaji* v. *Gobind Ramji, 10 Bom., A. C., 382; Umar Khan* v. *Sale Khan, I. L. R., 17 Bom., 10; Bichook Nath Panday* v. *Ram Lochun Singh, 11 B. L. R., 135; Magniram Marwari* v. *Rajpati Koeri, I. L. R., 20 Calc., 366 note;* and *Surya Narain Sing* v. *Jogendra Narain Roy Chowdhury, I. L. R., 20 Calc., 360,* explained. PARDHAN BHUKHAN LAL *v.* NARSING DYAL **[I. L. R., 26 Calc., 300**
3 C. W. N., 175

245. ———— *Contract Act (IX of 1872), s. 74—Interest Act (XXVIII of 1855), s. 2.*—*A* borrowed from *B* R500 on a mortgage-bond agreeing that he would pay in return R1,000 by a fixed number of instalments, and that on failure of any one instalment he would pay interest on the defaulted instalment at the rate of one anna per rupee per mensem until the date of realization. *Held* upon a construction of the bond that there was a stipulation to pay the interest on the defaulted instalments from the date of the loan, and it was a penalty falling under s. 74 of the Contract Act, which could not be enforced. *Mackintosh* v. *Crow, I. L. R., 9 Calc., 689; Kalachand Kyal* v. *Shib Chunder Roy, I. L. R., 19 Calc., 392; Baid Nath Das* v. *Shamanand Das, I. L. R., 22 Calc., 143; Nanjappa* v. *Nanjappa, I. L. R., 12 Mad., 161,* referred to. *Held* further that, even if the said stipulation in the bond did not amount to a penalty under s. 74 of the Contract Act, and although under the provisions of s. 2, Act XXVIII of 1855, a man was free to contract interest at any rate that he chose on the borrowed money and nothing prevented him from agreeing to pay it from any time either prospective or retrospective, yet the only question that would arise in a case like the present was whether a Court of equity was precluded by that Act from affording relief independently of s. 74 of the Contract Act, and that, notwithstanding the provisions of Act XXVIII of 1855, a Court of equity could see whether the provision as to enhanced interest was agreed upon as interest, or whether it was intended to be a penalty upon the principles of equity and good conscience, and that in this case the stipulation

INTEREST—*continued*

4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*continued*

cent per annum
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Gobind Ramji,
Sale Khan,
Nath Panday v
Ram Lochan 135, referred to
RAMENDRA ROY CHOWDHURY *v* SERAJUDDIN AHAMED CHOWDHURY 2 C W N, 234

246. ——— *Mortgage-bond—Failure to pay on due date—Stipulation for the payment of enhanced interest from date of default till date of realization—Whether such stipulation is a penalty where a sum is mentioned in the contract as the amount to be paid in case of a breach of the contract—Contract Act (IX of*
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247. ——— *Penalty ensuring payments of instalments at due dates—Interest Act, XXVIII of 1855*—There is nothing in the Interest Act (Act XXVIII of 1855) which takes away the equitable jurisdiction of a Court to relieve
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C W. N, 234,
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v *Sale* *n*, 106, followed
MANOO BEPARI *v* DURGA CHARAN SATI
[2 C. W. N., 333

248 ——— "*Dharta*"—
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unequal and oppressive bargains as no man of ordinary prudence would enter into and which, from their nature and the relative position of the parties, raise the presumption of fraud or undue influence The principles upon which such relief is granted apply to contracts in which exceedingly onerous conditions are imposed by money-lenders upon poor and ignorant persons in rural districts. The exercise of such power has not been affected by the repeal of the usury laws *Chesterfield* v *Janssen*, 2 *Ves*,
2 *App Cas*,
L R, 8 *Ch*
, 15 *Ch D*,
Ap, 389, re-
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the rate of 24 per cent per annum at compound interest He further agreed that "dharta" or a yearly fine, at the rate of one anna per rupee, should be allowed to the mortgagee, to be calculated by yearly rests It was also provided that the interest should be paid from the profits of certain malikana land of the mortgagor, and that, if the interest were not paid for two years, the mortgagee should be put in possession of this land As security for the debt, a six pies zamindari share was mortgaged for a term of eleven years The effect of the stipulation as to "dharta" was that one anna per rupee would be added at the end of every year, not only to the principal mortgage money, but also to the interest due, and the total would be again regarded as the principal sum for the ensuing year Ten years after the date of the mortgage, the mortgagor brought a suit for redemption on payment of only R97 or such sum as the Court might determine as due to the mortgage At that time the accounts made up by the mortgagee showed that the debt of R97 with compound interest had swollen to R873, of which the "dharta" alone amounted to R211 *Held* that the stipulation in the deed as to "dharta" was not of the kind referred to in s. 74 of the Contract Act (IX of 1872), and that there was no question of penalty, but that, looking to the relative positions of the parties and the unconscionable and oppressive nature of the stipulation, the benefit thereof should be disallowed to the mortgagee, and the mortgagor permitted to redeem on payment of the mortgage-money and interest, on appeal having been preferred by him from the decree of the first Court making redemption subject to payment of interest LALLI *v* RAM PRASAD I. L. R., 9 All., 74

249 ——— Award of interest at a
special damage—

sation for special damage on the part of the plaintiff TIKAMDAS JAVAHIRDAS *v* GANGA RAM MATHURADAS [11 Bom, 203

250 ——— Notice of intention to enforce penal rate of interest.—A decree holder

INTEREST—*concluded.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*concluded.*

intending to enforce the penalty for delay in the payment of instalments is bound to tell the judgment-debtor so when the instalments are brought to him. SHAMA CHURN SINGH *v.* PROTAB COOMAR GHOSSAL [20 W. R., 292

INTEREST ACTS (XXXII OF 1839 AND XXVIII OF 1855).

See COMPROMISE—CONSTRUCTION OF, ENFORCING EFFECT OF, AND SETTING ASIDE, COMPROMISES . I. L. R., 26 Calc., 955

See CASES UNDER INTEREST.

———— Act XXXII of 1839—*Certificate of the Administrator General registering a debt—"Written instrument."*—A certificate of the Administrator-General admitting a debt to be due is not such a "written instrument" as is contemplated by the Interest Act (XXXII of 1839), because the amount mentioned therein is not payable by virtue of the certificate which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. OMRITA NATH MITTER *v.* ADMINISTRATOR GENERAL OF BENGAL . . . I. L. R., 25 Calc., 54

INTERLOCUTORY ORDER.

See APPEAL—DECREES. [I. L. R., 24 Calc., 725

See APPEAL—ORDERS . 7 W. R., 222
[5 N. W., 180
I. L. R., 3 Mad., 13
I. L. R., 8 Bom., 260

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

See CASES UNDER LETTERS PATENT, CL. 15.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 9 Mad., 256
I. L. R, 4 All., 91
I. L. R., 14 Calc., 768
I. L. R., 18 Bom., 35

———— Civil Procedure Code, 1882, s. 499, Application for order under.—An application for an order under s. 499 of the Code of Civil Procedure can only be made by a plaintiff after summons has been served, and after reasonable notice of the intention to apply for the order has been given in writing to the defendant. SENGOTHA *v.* RAMASAMI . . . . I. L. R., 7 Mad., 241

INTERPLEADER SUIT.

See BAILMENT . 5 B. L. R., Ap., 31

See COSTS — SPECIAL CASES — INTERPLEADER SUIT . . 1 Mad, 360

INTERPLEADER SUIT—*concluded.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — COMPENSATION FOR ACQUISITION OF LAND.
[I. L. R., 20 Mad., 155

1. ———— Person in position of mere stake-holder—*Procedure.*—Where a party in the position of a mere stake-holder is made a defendant in a suit, his proper course under the Civil Procedure Code is to pay the money into Court and ask that the parties really interested may be substituted for himself as defendants. ASSARAM BURTEAH *v.* COMMERCIAL TRANSPORT ASSOCIATION
[2 Ind. Jur., N. S., 113

2. ———— Defendant not claming whole subject-matter—*Suit irregularly framed.*—An interpleader suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter. *Hoggart* v. *Cutts, Cr. and P.,* 197, observed upon. SECRETARY OF STATE *v.* MOHAMED HOSSAIN . 1 Mad., 360

3. ———— Claims by plaintiff against goods in respect of which suit brought—*Civil Procedure Code (1882), ss. 470 and 473—Costs of plaintiff—Freight—Wharfage—Demurrage.*—In May 1893, *S* (defendant No. 4), a resident at Hissar in the Punjab, consigned 600 bags of rapeseed to *K* of Bombay, and delivered them to the plaintiffs for carriage to Bombay. While the goods were in transit to Bombay, *S*, the consignor, ordered the plaintiffs to deliver them to his agent *F*, instead of to the consignee, and on the 18th May *F* requested delivery from the plaintiffs. Before the goods could be delivered, however, the firm of *E D S & Co.* (defendants Nos. 1, 2, and 3) claimed them, alleging that they had been assigned to them by *K* for valuable consideration. The plaintiffs thereupon filed this suit, praying that the defendants should be required to interplead, and that they should be restrained from suing them (the plaintiffs) in respect of the said goods. The plaintiffs claimed to charge the goods with payment of freight, wharfage, and demurrage, and their costs of suit. *Held* (1) that the suit was properly instituted by the plaintiffs as an interpleader suit so as to entitle them to their costs; (2) that *S*, the fourth defendant, was entitled to the goods, subject to the plaintiffs' charge for freight and costs; (3) that the plaintiffs' charges for wharfage and demurrage could not be allowed. The goods remained in the plaintiffs' possession, not by reason of any neglect or default of the owner to take delivery of them, but by the act of the plaintiffs themselves, who kept and refused to deliver them for their own protection and benefit. All that they could presumably be entitled to was a reasonable warehouse rent, which, however, they had not claimed. BOMBAY, BARODA AND CENTRAL INDIA RAILWAY CO. *v.* SASSOON . . . I. L. R., 18 Bom., 231

INTERPRETER.

———— Sworn interpreter, Necessity for—*Criminal Procedure Code, 1861, s. 198.*—There was no necessity, under s. 198, Code of Criminal Procedure, 1861, for making use of a regularly

INTERPRETER—*concluded*

sworn interpreter to interpret his evidence to a party making a statement QUEEN *v* MADAN MUNDUL [18 W R, Cr, 71

INTERROGATORIES

See CASES UNDER PRACTICE—CIVIL CASES —INTERROGATORIES

———— **Evidence taken on**—

See COMMISSION—CRIMINAL CASES [I L R, 19 Bom, 749

1 ———— **Discovery**—*Fishing questions—Practice—Defective pleadings—Issues—Code of Civil Procedure (Act XIV of 1882), ss 121, 127* — Interrogatories are not in this country to be framed to anticipate or supply defects of pleading or to ascertain the case of the other side Where the pleading of either party is too vague the Court may call for a further or fuller written statement or may frame and record issues until the case raised by the

case, subject to the qualification (*inter alia*) that the interrogatories must be directed to a case on which the plaintiff has already determined, and to which he has committed himself He cannot be allowed to put fishing questions in order to try whether he can discover any flaw in the defendant s case or suggest any answer to it ALI KADER SYUD HOSSAIN ALI *v* GOBIND DASS I L R, 17 Calc, 840

2 ———————— *Production of documents—Code of Civil Procedure (1882), ss 121 125, 129, 130 133 and 134—Definition of term "family"*—To interrogate a party to a suit as to the construction he puts on the meaning of the word "family" is not admissible, although to ask him who the persons are who are living in his household is so The former question if replied to would only be of value as the opinion of a party to suit on what is really a question of law Under the Civil Procedure Code interrogatories for the purpose of eliciting facts bearing upon issues arising in a suit are limited in operation and are not permissible in cases where the procedure provided by s 134 of the Code is applicable *Ali Kader Syud Hossain Ali v Gobind Dass I L R 17 Calc, 840* and *Weideman v Walpole, L R, 24 Q B D, 537*, approved Ss 121 125 129 130 133, and 134 of the Code of Civil Procedure discussed NITTOMOYE DASSEE *v* SOOBUL CHUNDER LAW I L R, 23 Calc, 117

[illegible]

under s 121 of the Civil Procedure Code, does not render the party so omitting to answer liable to have [illegible] *Lalla* [illegible] *10 Calc.,* [illegible] INDRO [illegible] Calc., 420

INTERVENOR

See EJECTMENT, SUIT FOR [1 Agra, Rev, 51

See ESTOPPEL—ESTOPPEL BY CONDUCT [I L R, 4 Calc, 783 9 W R, 338

See CASES UNDER ONUS OF PROOF—INTERVENORS

See CASES UNDER PARTIES—PARTIES TO SUIT—RENT SUITS AND INTERVENORS

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES [I L R, 4 Calc, 650

See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS 3 C W N, 329

See CASES UNDER RES JUDICATA—PARTIES —INTERVENORS

INTESTACY

See MAHOMEDAN LAW—DEBTS [I L R, 4 Calc, 142

See RIGHT OF SUIT—INTESTACY [I L R, 18 Bom, 337

———— **Suit for distributive share under**—

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR 13 B L R, 142

INTOXICATION

1. **Offence committed under** — Intoxication should not be treated as an aggravation of an offence QUEEN *v* ZULFUKAR KHAN [8 B L R, Ap, 21 16 W R, Cr, 30

2 ———— **Palliation of offence** Nor is it any excuse for it QUEEN *v* [illegible] GOSSAIN 5 W R, Cr, 58

QUEEN *v* BODHEE KHAN 5 W R, Cr, 70

3 ———————— *Murder* —In a case of murder committed in a drunken squabble it was [illegible]

INVENTIONS AND DESIGNS ACT (V OF 1888).

1. ———— **ss 4 and 10**—*Invention—Improvement—Combination of known substances to produce a known result—Burden of proof*—*Held* that a combination effected by placing two known materials side by side with are [illegible] own material not involving the exercise of any special inventive power, and ending in a result which differed from previous results only because the materials so placed produced an improved article, did not amount to an

INTEREST—*concluded.*

4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*concluded.*

intending to enforce the penalty for delay in the payment of instalments is bound to tell the judgment-debtor so when the instalments are brought to him. SHAMA CHURN SINGH *v.* PROTAB COOMAR GHOSSAL [20 W. R., 292

INTEREST ACTS (XXXII OF 1839 AND XXVIII OF 1855).

See COMPROMISE—CONSTRUCTION OF, ENFORCING EFFECT OF, AND SETTING ASIDE, COMPROMISES . I. L. R., 26 Calc., 955

See CASES UNDER INTEREST.

———— **Act XXXII of 1839**—*Certificate of the Administrator General registering a debt—"Written instrument."*—A certificate of the Administrator-General admitting a debt to be due is not such a "written instrument" as is contemplated by the Interest Act (XXXII of 1839), because the amount mentioned therein is not payable by virtue of the certificate which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. OMRITA NATH MITTER *v.* ADMINISTRATOR GENERAL OF BENGAL . . . I. L. R., 25 Calc., 54

INTERLOCUTORY ORDER.

See APPEAL—DECREES. [I. L. R., 24 Calc., 725

See APPEAL—ORDERS . 7 W. R., 222
[5 N. W., 180
I. L. R., 3 Mad., 13
I. L. R., 8 Bom., 260

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

See CASES UNDER LETTERS PATENT, CL. 15.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 9 Mad., 256
I. L. R., 4 All., 91
I. L. R., 14 Calc., 768
I. L. R., 18 Bom., 35

———— **Civil Procedure Code, 1882, s. 499, Application for order under.**—An application for an order under s. 499 of the Code of Civil Procedure can only be made by a plaintiff after summons has been served, and after reasonable notice of the intention to apply for the order has been given in writing to the defendant. SENGOTHA *v.* RAMASAMI . . . . I. L. R., 7 Mad., 241

INTERPLEADER SUIT.

See BAILMENT . 5 B. L. R., Ap., 31

See COSTS—SPECIAL CASES—INTERPLEADER SUIT . . 1 Mad, 360

INTERPLEADER SUIT—*concluded.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COMPENSATION FOR ACQUISITION OF LAND.
[I. L. R., 20 Mad., 155

1. ———— **Person in position of mere stake-holder**—*Procedure.*—Where a party in the position of a mere stake-holder is made a defendant in a suit, his proper course under the Civil Procedure Code is to pay the money into Court and ask that the parties really interested may be substituted for himself as defendants. ASSARAM BURTEAH *v.* COMMERCIAL TRANSPORT ASSOCIATION
[2 Ind. Jur., N. S., 113

2. ———— **Defendant not claming whole subject-matter**—*Suit irregularly framed.*—An interpleader suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter. *Hoggart* v. *Cutts, Cr. and P., 197,* observed upon. SECRETARY OF STATE *v.* MOHAMED HOSSAIN . 1 Mad., 360

3. ———— **Claims by plaintiff against goods in respect of which suit brought**—*Civil Procedure Code (1882), ss. 470 and 473—Costs of plaintiff—Freight—Wharfage—Demurrage.*—In May 1893, *S* (defendant No. 4), a resident at Hissar in the Punjab, consigned 600 bags of rapeseed to *K* of Bombay, and delivered them to the plaintiffs for carriage to Bombay. While the goods were in transit to Bombay, *S*, the consignor, ordered the plaintiffs to deliver them to his agent *F*, instead of to the consignee, and on the 18th May *F* requested delivery from the plaintiffs. Before the goods could be delivered, however, the firm of *E D S & Co.* (defendants Nos. 1, 2, and 3) claimed them, alleging that they had been assigned to them by *K* for valuable consideration. The plaintiffs thereupon filed this suit, praying that the defendants should be required to interplead, and that they should be restrained from suing them (the plaintiffs) in respect of the said goods. The plaintiffs claimed to charge the goods with payment of freight, wharfage, and demurrage, and their costs of suit. *Held* (1) that the suit was properly instituted by the plaintiffs as an interpleader suit so as to entitle them to their costs; (2) that *S*, the fourth defendant, was entitled to the goods, subject to the plaintiffs' charge for freight and costs; (3) that the plaintiffs' charges for wharfage and demurrage could not be allowed. The goods remained in the plaintiffs' possession, not by reason of any neglect or default of the owner to take delivery of them, but by the act of the plaintiffs themselves, who kept and refused to deliver them for their own protection and benefit. All that they could presumably be entitled to was a reasonable warehouse rent, which, however, they had not claimed. BOMBAY, BARODA AND CENTRAL INDIA RAILWAY CO. *v.* SASSOON . . . I. L. R., 18 Bom., 231

INTERPRETER.

———— **Sworn interpreter, Necessity for**—*Criminal Procedure Code, 1861, s. 198.*—There was no necessity, under s. 198, Code of Criminal Procedure, 1861, for making use of a regularly

INTERPRETER—*concluded*

sworn interpreter to interpret his evidence to a party making a statement QUEEN v MADAN MUNDUL [16 W. R, Cr., 71

INTERROGATORIES

See CASES UNDER PRACTICE—CIVIL CASES —INTERROGATORIES

———— Evidence taken on—

See COMMISSION—CRIMINAL CASES [I L R, 19 Bom, 749

1 ———— Discovery—*Fishing questions—Practice—Defective pleadings—Issues—Code of Civil Procedure (Act XIV of 1882) ss 121 127*—Interrogatories are not in this country to be framed to anticipate or supply defects of pleading or to ascertain the case of the other side Where the pleading of either party is too vague the Court may call for a further or fuller written statement or may f ame and ... nd ... the case ra sed by the

discover any flaw in the defendant s case or suggest any answer to it ALI KADER SYUD HOSSAIN ALI v GOBIND DASS I L R, 17 Calc, 840

2. ———————— *Production of documents—Code of Civil Procedure (1882) ss 121 125 129 130 133 and 134—Definition of term "family"*—To interrogate a party to a suit as to the construction he puts on the meaning of the word who so of value as the opinion of a party to suit on what is

operation and are not permissible in cases where ... procedure provided by s 134 of the Code is applicable *Ali Kader Syud Hossain Ali* v *Gobind Dass I L R 17 Calc, 840* and *Weideman* v *Walpole L R 24 Q B D 537* approved Ss 121 125 129 130 133, and 134 of the Code of Civil Procedure discussed NITTOMOYE DASSEE v SOOBUL CHUNDER LAW I L R, 23 Calc, 117

INTERVENOR

See EJECTMENT, SUIT FOR [1 Agra, Rev, 51

See ESTOPPEL—ESTOPPEL BY CONDUCT [I L R 4 Calc, 783 9 W R, 338

See CASES UNDER ONUS OF PROOF—INTERVENORS

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INTESTACY

See MAHOMEDAN LAW—DEBTS [I L R, 4 Calc, 142

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———— Suit for distributive share under—

See PARTIES—PARTIES TO SUITS—LEGACY SUIT FOR 13 B L R., 142

INTOXICATION

1 ——— Offence committed under—Intoxication should not be treated as an aggravation of an offence QUEEN v ZULFUKAR KHAN [8 B L R, Ap 21 16 W R., Cr, 36

2 ——— Palliation of offence—Nor is it any excuse for it QUEEN v AKULPUTTEE GOSSAIN 5 W. R, Cr, 58

QUEEN v BODHEE KHAN 5 W R, Cr, 79

3 ——— ——— *Murder*—In a case of murder committed in a drunken squabble it was held that voluntary drunkenness though it does not palliate any offence may be taken into account as throwing light on the question of intention QUEEN v RAM SAHOY BHAR W. R, 1864, Cr, 24

INVENTIONS AND DESIGNS ACT (V OF 1888)

1. ———— ss 4 and 20—*Invention—Improvement—Combination of known substances to produce a known result—Burden of proof*—Held that a combination effected by placing one known material side by side with another known material, not involving the exercise of any special inventive power, and ending in a result which differed from previous results only because the materials so placed produced an improved article, did not amount to an

INVENTIONS AND DESIGNS ACT (V OF 1888)—*concluded.*

"invention" as defined by Act V of 1888. *Held*, further, that it is for the person who claims an exclusive privilege under the Inventions Act to prove that the facts exist which entitle him to the privilege claimed. ELGIN MILLS CO. *v.* MUIR MILLS CO. [I. L. R., 17 All., 490

2. ———— ss. 4, 5, and 30—*New manufacture—"Process," Meaning of.*—In a case where an inventor of a new manufacture or process sold the article produced by the process freely for a large number of years in the open market and then applied for a patent under the Inventions and Designs Act, 1888,—*Held* that, where profit is openly derived from the employment of a secret process, there is a public user of such secret process within the meaning of the Act. The term "invention," having regard to s. 5 of the Act, means new manufacture. *Semble*—The term "new manufacture" or "invention" might be applied to a process only. *Held* also that "assignee" in the Act refers to an assignee of the entire title and interest of the inventor: s. 4, sub-s. (4), of the Act. *Wood* v. *Zimmer, Holt*, 58, followed. IN THE MATTER OF THE INVENTIONS AND DESIGNS ACT, 1888. GALSTAUN *v.* SHORT [I. L. R., 23 Calc., 702

IRONICAL PUBLICATION.

See LIBEL . . 10 B. L. R., 71

IRREGULARITY.

———— affecting or not merits of case.

See CASES UNDER APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

———— in civil case.

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWERS OF COURT . 6 N. W., 69
[I. L. R., 11 Bom., 153, 160 note

See JUDGE—POWER. [I. L. R., 7 Calc., 694

See MADRAS BOUNDARY ACT, ss. 21, 25, 28. [I. L. R., 12 Mad., 1

See PRIVY COUNCIL, PRACTICE OF—REHEARING . 1 W. R., P. C., 51
[8 Moore's I. A., 199

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

———— in criminal case.

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL.

See CASES UNDER CRIMINAL PROCEEDINGS.

See DISCHARGE OF ACCUSED.
[I. L. R., 12 Mad., 35

IRREGULARITY—*concluded.*

See JOINDER OF CHARGES.
[I. L. R., 12 Mad., 273
I. L. R., 14 Calc., 395
I. L. R., 15 Bom., 491
I. L. R., 14 All., 502
I. L. R., 20 Calc., 413
I. L. R., 27 Calc., 839
1 C. W. N., 35

See JUDGE—POWER 21 W. R., Cr., 47
[23 W. R., Cr., 59
I. L. R., 3 Mad., 112

See JUDGMENT—CRIMINAL CASES.
[I. L. R., 20 Calc., 353
I. L. R., 21 Calc., 121
I. L. R., 23 Calc., 502

See REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN.
[I. L. R., 1 All., 680
I. L. R., 13 Calc., 272

———— in sale.

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

IRRIGATION CHANNELS.

See RIGHT TO USE OF WATER.
[I. L. R., 16 Mad., 333

ISAMNAWISI PAPERS.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ISAMNAWISI PAPERS . . 8 B. L. R., 504

ISLAND FORMED IN NAVIGABLE RIVER.

See CASES UNDER ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS.

See ACT IX OF 1847 . 6 B. L. R., 255

ISSUES.

ISSUES—*continued*

—— Determination of—

See CASES UNDER RES JUDICATA—MATTERS IN ISSUE

—— Preliminary issue.

See COSTS—SPECIAL CASES—PRELIMINARY ISSUE . I. L. R., 20 Calc., 762

1. FRAMING AND SETTLING ISSUES

1. —— Mode of framing issues—*Civil Procedure Code, 1859, s 139*—*Semble*—Under s 139 of Act VIII of 1859, the issues ... statements, ... counsel ... , 333

2. —— *Plaint—Written and oral statements*—The issues are to be framed from all questions of law or fact upon which the parties may be at issue, and are to be collected, not merely from the plaint, nor from the written statements, but may also be taken from the oral statements of their pleaders KOWSULLYA DOSSEE *v* RAM JUGGURNATH DEY SIRCAR 8 W. R., 162

MAN GOBIND SIRCAR *v.* UMBIKA MONEE DOSSIA [16 W. R., 218

3. —— *Civil Procedure Code, 1859, s 139—Plaint—Written and oral statements*—Under s 139, Act VIII of 1859, the Court may frame the issues from the oral examination of the parties or their pleaders, notwithstanding any difference between the allegations of ... the allega- ... SHAHEB

... W. R., 512

[4 ... —— *Civil Procedure*

...

5 —— *Civil Procedure Code, 1882, s 147*—A Court in framing issues is not bound down to the language of the plaint and written statement, but may frame them not only from the pleadings, but also from the statements of the parties and their pleaders made before the Court MAHOMED MAHMOOD *v* SAFAR ALI [I. L. R., 11 Calc., 407

6 —— Settlement of issues—*Civil Procedure Code, 1859, s 139*—Issues are to be fixed under s 139, Code of Civil Procedure, when both parties appear, and the Court can ascertain from them what are the points upon which they are at issue The Court is not bound to fix any issue when the defendant does not appear, but ought to proceed

ISSUES—*continued*

1. FRAMING AND SETTLING ISSUES—*continued*

under s 111 to hear the case *ex parte* AMEER ALI SOWDAGUR *v.* IMAMOODEEN 15 W. R., 145

7 —— *Form of issues requisite for trial*—The issues should raise matters fairly in controversy between the parties, even though the pleadings may be defectively drawn CANNAMMAL AYAIR *v* VIJAYA RAGUNADA RANGA SAMY SINGAPULLIAR 8 Mad., 114

8 —— *Nature of issues requisite for trial*—It may be laid down as a general rule that only such averments should be made the subject of issues as are essential to support the cause of action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment, ought not to be made the subject of a separate issue nor should the motives of the plaintiff in bringing the suit be put in issue, for if he have a good cause of action, his motives, as ill-will, pique etc, would not be an answer to it BIRCH *v* FURZUND ALI [3 N. W., 303

9. —— *Duty of Court*—The duty of a Judge in clearly ascertaining the real points in dispute, and framing issues accordingly, pointed out APAYA *v* RAMA [I. L. R., 3 Bom., 310

10 —— *Suit against minor—Issue not founded on plaintiff's affirmative statements*—In a suit by a person claiming as the ... to the estate of a deceased

...

minor to the ... statement made by his guardian. general negative statement made by his guardian. JUGDEEP NARAIN SAHEE *v.* COURT OF WARDS [22 W. R., 469

11. —— *Suit for possession under deed of sale—Issues to be raised—Proof of title*—In a suit to recover possession based on a deed of sale,—*Held* that the Court should have raised issues as to ownership and possession, as, even if the sale-deed were not proved, the plaintiff might have been able to substantiate a title independently of it GOVIND *v.* VITHAL [I. L. R., 20 Bom., 753

12. —— *Raising issue on clear point of law*—There is nothing in the Code of Civil Procedure which imposes upon the Judge the duty of allowing an issue to be raised on a point of law which he considers to be perf ... IMPERIAL BANKING AND TRADING CO ... DAS HARIJVANDAS . 2 Bom.,

ES—*continued.*

ISSU . FRESH OR ADDITIONAL ISSUES —*continued.*

2ly Adawlut, but was restored and affirmed on l by the Judicial Committee In the meantime, Dewarefore the expiry of the lease to *W*, owing to appean fraudulent transactions on the part of *A*, and had got into possession of the estate as the certaiaser of the interests of certain mortgagees of the who h, the property was again put up to sale for purchs of Government revenue, and was purchased by Rajal party to the transactions abovementioned. The arreah, however, succeeded in getting this sale *V*, ased in 1866, and obtained possession of his estate Raja871 In a suit, instituted on the 23rd October rever against the Rajah and certain other parties to in 18h he had granted a patni lease, the plaintiffs 1873ed that the sale of 1837 was set aside by Govern whor as illegal, and that consequently their tenure allegrevived, that the effect of the Principal Sudder menten's decision, confirmed by the Privy Council, had to postpone their right to obtain possession of Amer tenure, until after the expiration of the lease to property was lent character and that their

in rit to sue in the present case consequently arose of v in 1871 The defence was that the plaint righlosed no cause of action, that the cause of action, onlyny, was barred by the law of limitation, and that disc tenure was destroyed by the proceedings connected of ah the sale in 1837, which was never set aside

his obtaining actual possession of the estate; and that therefore the cause of action accrued only in h871. On the part of the defendants it was objected that the plaintiffs had no right to make a new case in appeal, and inasmuch as the equity, which was now

limitation that the case should be remanded to the lower Court for trial RAMDOYAL KHAN *v.* AJODHYA RAM KHAN **I. L. R., 2 Calc., 1: 25 W. R., 425**

exercise of their discretion, under special circumstances, may allow issues to be raised upon matter

ISSUES—*continued*

2 FRESH OR ADDITIONAL ISSUES —*continued.*

which does not strictly come within the proper scope of the pleadings The power to allow such amendments is given by the first part of s 149 of Act X of 1877 corresponding with the first part of s 141 of Act VIII of 1859 NEHORA ROY *v* RADHA PERSHAD SINGH

[I. L. R., 5 Calc., 64: 4 C. L. R., 353

23. ———————— *Issue raised by Court which was not raised by parties*—The plaintiffs in a suit denounced in the plaint their two signatures to a sale deed as forgeries, and never alleged that they witnessed it under pressure The

of the Court below On second appeal to the High Court,—*Held* that Courts are not to raise an important and serious issue in a case for the parties when they have not raised it themselves by their own pleadings in the cause WALIULLAH KHAN *v.* MUHAMMAD ISRARULLAH KHAN

[I. L. R., 10 All., 627

24. ———————— *Civil Procedure*

sued the defendant as a trespasser, claiming damages

was based on the relation of landlord and tenant, and (2) whether the thikans in dispute were let to the defendant, and what rent the plaintiff was entitled to recover in respect of the same The Subordinate Judge found on these issues that the tenancy was still subsisting, and passed a decree for the rent claimed. *Held* that the Subordinate Judge had no authority, under s 149 of the Code of Civil Procedure (Act XIV of 1882), to frame the new issues. NARAYAN GANESH *v* HARI GANESH

[I. L. R., 13 Bom., 664

25. ———————— *Guardian, Power of, to make contract to bind minor—Alteration of case and raising fresh issues on appeal.*—Upon the death of an ijaradar, his mother and widow, as managers under his will, remained in possession of the land leased Subsequently a son was adopted to him by the widow and succeeded to his estate. The lease having expired, a renewal for five years was taken by the managers, but was surrendered before that period

ISSUES—*continued.*

1. FRAMING AND SETTLING ISSUES —*concluded.*

13. ———— Inconsistent issues—*Undue influence—Trial of issues.*—The execution of a hibanama having been denied by the plaintiff, a Mahomedan widow and purda-nashin, in a suit brought by her to have it set aside as fabricated, she also alleged that undue influence had been exercised upon her. It was decided upon the evidence that the instrument was genuine, having been executed by her of own free will. The above questions being inconsistent with one another, the latter should not have been admitted to form part of an issue together with the former. On an issue of undue influence, rightly raised, a Court should consider whether the gift in question (*a*) is one which a right-minded person might be expected to make; (*b*) is or is not an improvident act on the donor's part; (*c*) is such as to have required advice, if not obtained by the donor; and (*d*) whether the intention to make the gift originated with the donor, the principles being always the same, although the circumstances may differ. MAHOMED BUKSH KHAN *v.* HOSSEIN BIBI **I. L. R., 15 Calc., 684**
[L. R., 15 I. A., 81

2. FRESH OR ADDITIONAL ISSUES.

14. ———— Raising issues not raised in pleadings—*Proceedings against policy or morality.*—Although a Court may have the right, and is perhaps even under an obligation, to take cognizance *motu proprio* of any objection manifestly apparent on the face of a proceeding showing that it is against morality or public policy, yet where this is only to be collected from the evidence by inference and is capable of explanation or answer by counter-evidence, it is highly inconvenient, and may lead to the most direct injustice, to enter into the enquiry if the issue has not been presented by the pleadings or the points recorded for proof. FISCHER *v.* KAMALA NAIKER
[3 W. R., P. C., 33: 8 Moore's I. A., 170

15. ———— *Question raised at hearing of suit.*—*Held* that the Court was not on its own motion competent to determine a question which was not alleged, nor raised by the pleadings of the parties. But if the question was raised even on the day of the hearing of the case at any time before the decision of the case, the Court ought not to have rejected it, because it was not raised by the written statement, but ought to have framed issues to determine the question. DYASHUNKER *v.* MAHOMED AMEEN-OOD-DEEN KHAN . . **3 Agra, 246**

16. ———— *Suit for pre-emption.*—When the plaintiff claimed pre-emption on one ground, and the Court raised an issue as to his right on another ground, to which the parties assented, and the case was decided against him as he had not proved his right on that ground,—*Held* the Court would not interfere with the finding on special appeal. SHEW SUKOY LALL *v.* WAJED ALI KHAN
[13 W. R., 205

SHEOJUTTUN ROY *v.* ANWAR ALI
[13 W. R., 189

ISSUES—*continued.*

2. FRESH OR ADDITIONAL ISSUES —*continued.*

17. ———— *Suit on mortgage —Validity of mortgage.*—Where a plaintiff fails to show that a mortgage, created by certain persons as executrix and executors of a Hindu will, has been validly created by them in that capacity, the Court will, unless it is manifestly inequitable to do so, allow him to raise an issue that the mortgage was validly created by the parties in another character. NILKANT CHATTERJEE *v.* PEARI MOHAN DAS
[3 B. L. R., O. C., 7: 11 W. R., O. C., 21

18. ———— *Suit for declaration of title.*—On the evidence, the defendant wished to raise issues as to the unchastity and inability of the plaintiff to succeed, and as to her suing on behalf of another person, not having alleged that she was doing so, neither of which matters were referred to in his written statement; but leave to raise them was refused, and the Court held that the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. SWARNAMAYI RAUR *v.* SRINIBASH KOYAL
[6 B. L. R., 144

19. ———— *Suit as heir of adopted son.*—Where the son of the son first adopted sued as heir of the second adopted son to obtain the property left by him, and the suit throughout was contested with respect to his claim as heir of that second adopted son,—*Held* the plaintiff could not, on appeal, shift his ground and regard the second adopted son as a trespasser, and seek to recover the property on the ground of its having belonged to the ancestor. GOPEE LOLL *v.* CHUNDRAOLEE BUHOOJEE
[11 B. L. R., P. C., 391: 19 W. R., 12
L. R., I. A., Sup. Vol., 131

20. ———— A defendant is not precluded from setting up a defence which does not appear in her written statement where the plaint does not set forth the true facts, and the Court will allow an issue to be raised on it. SOONDER NARAIN PANDAH *v.* NAMDAR . . **21 W. R., 407**

DOORGA NARAIN BOSE *v.* BROJO KISHORE GHOSE
[23 W. R., 172

21. ———— *Amendment of plaint—Civil Procedure Code, 1859, ss. 139-141.*—In 1817, the ancestor of the plaintiffs had obtained from the zamindar a maurasi istemrari lease of a certain portion of his property. In 1837, the entire zamindari was put up to sale for arrears of Government revenue, and was purchased by Government as the highest bidder, who thereupon granted a lease for a term of twenty years to *W.* This revenue sale was never set aside; but in 1842 the Government restored the estate to the Rajah zamindar with all the prior incumbrances, but subject to his confirming the lease to *W.* In 1844, the father of the plaintiffs brought a suit to recover possession of their tenure, but the suit was dismissed by the Principal Sudder Ameen on the ground that the right to sue had not accrued, and could only arise on the expiration of the lease to *W.* This judgment was reversed by the Sudder

ISSUES—*continued*

2. FRESH OR ADDITIONAL ISSUES —*continued.*

Dewany Adawlut, but was restored and affirmed on appeal by the Judicial Committee In the meantime, and before the expiry of the lease to *W*, owing to certain fraudulent transactions on the part of *A*, who had got into possession of the estate as the purchaser of the interests of certain mortgagees of the Rajah, the property was again put up to sale for arrears of Government revenue, and was purchased by *W*, a party to the transactions abovementioned The Rajah, however, succeeded in getting this sale reversed in 1866, and obtained possession of his estate in 1871. In a suit, instituted on the 23rd October 1873, *against the Rajah and certain other parties to*

had revived, that the effect of the Principal Sudder Ameen's decision, confirmed by the Privy Council, was to postpone their right to obtain possession of their tenure, until after the expiration of the lease to *W*, *that when that lease expired, the property was*

only in 1871 The defence was that the plaint disclosed no cause of action, that the cause of action,

action which arose in 1837, and that the suit was

but it was contended that the restoration of the zamindari to the zamindar, "with all the former

appeal, and inasmuch as the equity, which was now

were proved, the suit would not be barred, it was necessary for the determination of the question of limitation that the case should be remanded to the lower Court for trial RAMDOYAL KHAN *v.* AJODHYA RAM KHAN **I. L. R., 2 Calc., 1: 25 W. R., 425**

exercise of their discretion, under special circumstances, may allow issues to be raised upon matter

ISSUES—*continued*

2 FRESH OR ADDITIONAL ISSUES —*continued*

which does not strictly come within the proper scope of the pleadings The power to allow such amendments is given by the first part of s 149 of Act X of 1877 corresponding with the first part of s 141 of Act VIII of 1859 NEHORA ROY *v.* RADHA PERSHAD SINGH

I. L. R., 5 Calc., 64: 4 C. L. R., 353

23. ——————— *Issue raised by Court which was not raised by parties*—The plaintiffs in a suit denounced in the plaint their two signatures to a sale deed as forgeries, and never alleged that they witnessed it under pressure The

of the Court below On second appeal to the High Court,—*Held* that Courts are not to raise an important and serious issue in a case for the parties when they have not raised it themselves by their own pleadings in the cause WALIULLAH KHAN *v.* MUHAMMAD ISRARULLAH KHAN

I. L. R., 10 All., 627

24. ——————— *Civil Procedure Code, 1882, s 149—Court's authority to frame new issues—Amendment of plaint*—A Court is not

Procedure
which have
suit A
co-exten-
d is sub-
originally

defendant, and what rent the plaintiff was entitled to recover in respect of the same The Subordinate Judge found on these issues that the tenancy was still subsisting, and passed a decree for the rent claimed. *Held* that the Subordinate Judge had no authority, under s 149 of the Code of Civil Procedure (Act XIV of 1882), to frame the new issues. NARAYAN GANESH *v.* HARI GANESH

I. L. R., 13 Bom., 684

gers under his will, remained in possession of the land leased. Subsequently a son was adopted to him by the widow and succeeded to his estate. The lease having expired, a renewal for five years was taken by the managers, but was surrendered before that period

ISSUES—*continued.*

2. FRESH OR ADDITIONAL ISSUES —*continued.*

elapsed, during the minority of the son, against whom, on his attaining full age, this suit was brought by the lessor to recover three years' rent of the renewed ijara. The contract of the adoptive mother and guardian was not personally binding upon the adopted son, and had not been ratified by him after attaining full age. It did not purport to deal with the estate to which he afterwards succeeded, but was entered into by the managers in their own names. *Held* that the case, as originally made in the plaint and raised by the issues framed in the Court of first instance, which covered a wider ground, *viz.*, that the son was personally bound by the contract as being beneficial to him, and on the ground that he had ratified it after attaining full age, could not be altered in appeal into what would be a wholly different claim and raise entirely new issues, *viz.*, that the managers, having power under the will, had charged the estate with the rent of the ijara, and that such charge remained upon it in the possession of the heir, who was liable to the extent of the assets received by him. The latter would have been in fact a new suit. *Held* also that the suit, even if treated as one against the respondent in regard to the estate, could not be sustained. The case that arose in *Hanoomanpersaud Panday v. Munraj Koonwaree, 6 Moore's I. A., 393*, distinguished. INDUR CHUNDER SINGH *v.* RADHA KISHORE GHOSE . . . **I. L. R., 19 Calc., 507** **[L. R., 19 I. A., 90**

26. ——————— *Civil Procedure Code, ss. 566, 567—Framing a new issue by the Appellate Court—Evidence recorded in one suit admitted by consent at the hearing of another—Appellate Court, Power of.*—In the Court of first instance the appellant, upon the title of a sister's son, was one of the plaintiffs who obtained a decree for an inheritance, the suit having been heard at the same time with another, in which relations of the deceased owner, alleging themselves to be of the same gotra with him, also obtained a decree as his heirs. Evidence in the latter suit was received in that of the appellant by consent of parties, both suits having been brought against the same defendant, whose title as widow of a son alleged to have been adopted by the last owner was set up in both, but was not proved. Appeals having been filed in both suits, in that brought by the sister's son a new issue was framed by the Appellate Court, under s. 566, Civil Procedure Code, as to whether he was entitled as nearest of kin, or was excluded by the other claimants, whose suit was, at that time, compromised. *Held* that after what had taken place in regard to both suits the Appellate Court could frame this issue, although it was new, and had not been raised by the defendant's written answer. With reference to the evidence in the one suit having been imported as a whole into the other at the first hearing, and the admission of evidence upon the trial of the new issue, it was *held* that the parties intended that the evidence should be admitted and that no irregularity had taken place materially affecting the decree of the High Court, which dismissed the suit of the sister's son on return made under s. 567. CHANDI DIN *v.* NARAINI KUAR . . **I. L. R., 14 All., 366**

27. ——————— **Additional issue**—*Matter not in plaint, but consistent with it.*—It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it) or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons. MOHDE *v.* DONGRE . . **I. L. R., 5 Bom., 609**

28. ——————— *Civil Procedure Code, 1859, s. 141.*—Where a Court shortly before decision recorded a proceeding declaring its intention to frame additional issues, and reserved the actual framing of the issues for the time of giving judgment, its procedure was held not to be warranted by s. 141 of the Code of Civil Procedure. KAMUL KAMINEE DASSEE *v.* OBHOY CHURN GHOSE **[15 W. R., 151**

29. — **Fresh issue**—*Raising fresh issue on alternative plea.*—Where, from the way in which the issues were framed and the pleadings worded, it was clear that there was no contention on the part of the defendant as to whether the terms of the deed on which the suit was based had been strictly complied with or not, but the factum of the deed itself was only put in issue by the defendant,—*Held* that this was not a case in which the defendant was entitled to fall back upon an alternative plea and raise the question of compliance. SHUHOOHUREE DASSEE *v.* SHOWDAMINEE DOSSEE . **7 W. R., 306**

30. ——————— *Raising new issues.*—The Court will not raise an issue so as to raise a wholly different question from that on which the parties have come into Court. BIZJIE BIBEE *v.* MONOHUR DOSS . . **2 Ind. Jur., N. S., 118**

NEHORA ROY *v.* RADHA PERSHAD SING **[I. L. R., 5 Calc., 64**

See OKHOY COOMAR CHATTERJEE *v.* DHIRAJ MAHTAB CHAND . . . **22 W. R., 299**

31. ——————— *Special appeal—Raising new issues.*—A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. SHIUDAS NARAYAN SINGH *v.* BHAGWAN DUTT **[2 B. L. R., Ap., 15 : 11 W. R., 10**

KHOODEE RAM DUTT *v.* KISHEN CHAND GOLEECHA . . . . . **25 W. R., 145**

32. ——————— *Mode of dealing with issues.*—If by inadvertence or other cause the recorded issues do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment for the decision of the real points in issue;

ISSUES—*continued*

2. FRESH OR ADDITIONAL ISSUES—*continued.*

HUNOOMAN PERSHAD PANDEY *v.* MUNDRAJ KOONWEREE [6 Moore's I. A., 393: 18 W. R., 81 note

RAM PERSHAD DUTT *v.* KRISHTO MOHUN SHAH [18 W. R., 297

33. —————— *Civil Procedure Code, 1859, s. 141—Raising fresh issue after hearing the evidence.*—In a case in which, after the evidence of both parties had been taken, the principal defendant asked for permission to file an amended written answer which would in effect raise a new [illegible] part of the defence,—*Held* that, although [illegible]

[illegible] the parties, to [illegible] mination. Whe[illegible] and decreed the case, [illegible] on appeal that the evidence on the record was sufficient to determine the question,—*Held* that the lower Appellate Court was right in giving effect to the defence. BOLYE MEAH *v.* KHETOO GORAI [20 W. R., 208

34. —————— *Civil Procedure Code, 1859, ss. 139, 141—Adding or amending issues.*—All that can be done under s. 139, Act VIII of 1859, must be done at the settlement of issues; s. 141 gave the [illegible] issues only if some[illegible] course of the case [illegible] MAHOMED 2 Ind. Jur., N. S., 305

35. —————— Amendment of issues—*Civil Procedure Code, Act VIII of 1859, s. 141—Civil Procedure Code, Act X of 1877, s. 149.*—A Judge is not bound to make any amendment in the issues of a case, except for the purpose of more effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. NEHORA ROY *v.* RADHA PERSHAD SINGH [I. L. R., 5 Calc., 64: 4 C. L. R., 353

BIZJIE BEBEE *v.* MONOHUR DOSS [2 Ind. Jur., N. S., 118

36. —————— *Amendment of issues at hearing—Practice.*—Although under certain circumstances a Judge at a trial may allow amendments or raise issues other than those settled, yet, when a Judge at the settlement of issues has refused to raise a certain issue, that question ought not to be re-opened at the trial, and the Judge at the trial ought not to modify the issues so as to re-open any question which the Judge settling the issues has decided. BOLYE CHUND SINGH *v.* MOOLCHUND [I. L. R., 4 Calc., 572

37. —————— Varying or raising fresh issues on appe[illegible] on appeal an issu[illegible] of first instance, [illegible] being not to inte[illegible] to rectify a judg[illegible]

the merits whether that error has arisen from a misapprehension of the facts or mistaken view of the law. BROJO SOONDUR MITTER *v.* [illegible] CHUNDER ROY [17 W. R., 407

RAM NARAIN ROY *v.* [illegible] MOHUN [illegible] [23 W. R., 100

MACKINTOSH *v.* LALL CHAND MAHTO [21 W. R., 338

38. —————— *Expression of opinion by Court on issue not formally raised—Refusal to permit additional issue on appeal.*—Parties are not bound by an opinion of the lower Court on a matter not in issue in the same manner as if the Judge had decided an issue formally and properly raised before him; and when a case comes before the High Court on appeal, it should be determined upon the issues and grounds raised in the Court below, except where under Act VIII of 1859, s. 354, the Court would consider it right to frame an additional issue. NAWAB NAZIM OF BENGAL *v.* AMEAH BEGUM [21 W. R., 50

39. —————— *Issue on appeal.*—When a quite new and different issue is raised in the Appellate Court, it ought to be done in such a way as to give the parties [illegible] of the absence of evidence. [illegible] *v.* BHOOBUN MOHUN CHATTERJEE [17 W. R., 301

See FAKAN CHUNDER SEIN *v.* DHONATH [11 W. R., 61

40. —————— *Objection not raised in issues.*—Where no objection was taken in the grounds of [illegible] framed in the [illegible] any such [illegible] High Court [illegible] [illegible] travel [illegible] which they did not make in their [illegible] in the Court [illegible] which was not in issue in that Court. JOYADUSSIKA [illegible] KHADDAN *v.* JHAMAN LALL MISSER [21 W. R., 156

[illegible]

See [illegible] TENANCY ACT, s. 148 [I. C. W. N., 102

41. —————— Procedure [illegible] [illegible]

ISSUES—*continued.*

3. ISSUES IN RENT SUITS—*concluded.*

of hearing, after both parties and several of the witnesses had been examined in respect of the issues originally recorded; and the Collector, without adjourning the case for trial upon such issue, having examined two witnesses who remained for examination, gave judgment in the case. *Held* that, under s. 65 of Act X of 1859, the case ought to have been adjourned, and a convenient day fixed for trial upon the new issue. Case remanded accordingly. SRIHARI MANDAL *v.* JADUNATH GHOSE

[1 B. L. R., A. C., 110 : 10 W. R., 169

42. ———— **Recording issues**—*Collector—Act X of 1859, s. 65.*—Where both parties are at issue on any question upon which it is necessary to hear further evidence, the Collector was bound, under s. 65, Act X of 1859, to declare and record such issues. SHOOKOOMAR SINGH *v.* CRUISE

[6 W. R., Act X, 105

43. ———— **Suit for arrears of rent**—*Intervenor under Civil Procedure Code, s. 73.*—*D C S*, the zamindar, brought a suit against *B*, a raiyat, for recovery of arrears of rent valued below R100. *B* set up in defence that the rent was not payable to *D C S*, but to *N C A*, the mokuraridar. *N C A*, who claimed under a mokurari title, and alleged that he was in receipt of the rents from the raiyats, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff, which, on appeal by *N C A*, was reversed and the suit dismissed. *Held*, on appeal to the High Court, the only issue to be tried was whether the relation of landlord and tenant subsisted between *D C S* and *B*. DAYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI

[8 B. L. R., 180 : 16 W. R., 235

4. EVIDENCE ON SETTLEMENT OF ISSUES.

44. ———— **Summons to witness.**—Act VIII of 1859 conferred no authority on a Judge to issue summonses to witnesses to attend on the settlement of issues. The written statements must be prepared with great care and deliberation so as to dispense altogether with parol evidence at the settlement of issues. ANUND CHUNDER BANERJEE *v.* WOOMES CHUNDER ROY

[1 Ind. Jur., O. S., 15 : 1 Hyde, 147

Evidence, however, might, if necessary, be taken at the settlement of issues, *see* s. 140 of Act VIII of 1859 and s. 148 of the Civil Procedure Code, 1882.

45. ———— **Non-attendance of witnesses**—*Necessary issues—Adjournment for hearing evidence.*—If the parties do not secure the attendance of their witnesses at the first hearing, and there are, on the examination of parties, issues upon which evidence is necessary, the Court is bound to fix a day for the hearing of such evidence. ENAYET HOSSEIN *v.* BIBEE KHOOBUNISSA . . 9 W. R., 246

5. ISSUES IN SPECIAL SUITS.

46. ———— **Suit to be declared proprietors of land and to assess rate of rent**—*Issue in general terms.*—The issues should not be in too general terms, and should, if possible, embrace the whole matter in dispute. The plaintiffs, the cultivators of certain lands yielding rent to a pagoda, of which the first defendant was the recently-appointed dharmakarta, claimed to be declared proprietors of the said lands, to be exempted from the payment of rent, at the rate of two-thirds of the gross produce to be declared liable to pay a certain lower rent set forth in the plaint, and to obtain a refund of the amount paid under an order of the Sub-Collector in 1853 passed without jurisdiction in excess of the rent justly payable. The issue given by the Principal Sudder Ameen was "whether the first defendant is entitled to rent at the rate specified in document A." *Held* that this issue was too general and only embraced a part of the matter in dispute, and the issue "what is a fair and reasonable rate of rent" directed to be sent down to the lower Court. KUTTY SUBBRAMANIYA *v.* CHINNA MUTTEE PILLAI . 3 Mad., 25

47. ———— **Suit by tenant for possession after alleged illegal ejectment**—*Question of right of occupancy.*—The question of a prescriptive right of occupancy cannot arise as an issue in a case where a tenant sues to recover possession of land from which he alleges he has been illegally ejected. The tenant might have been in lawful possession only six weeks, and yet his eviction might have been illegal, and he would be entitled to recover. BAHADOOR ALLY *v.* DOMUN SINGH . 7 W. R., 27

48. ———— **Issue raised between co-defendants**—*Validity of will.*—One of the defendants to a suit having relied on the validity of a hibbanamah and a will, the former of which was alone contested below by the plaintiff, the lower Court was right in not trying the issue as to the will, which was one raised between co-defendants. BHUGWAN CHUNDER BANERJEE *v.* DUKHINA DEBIA 8 W. R., 356

49. ———— **Issues raised in suit for kabuliat with intervenor.**—In a suit for a kabuliat of twenty-five parcels of land, where the defendant alleged that he only held three, and that he was not the tenant of the plaintiff, but of a third party who intervened claiming the land as included in his half share of a part of a talukh as being the person in receipt of the rents, the lower Appellate Court declared that, as neither party had given any conclusive evidence of actual possession and as the raiyat's holding had been found to appertain to the half share of which the intervenor had proved possession, the plaintiff was entitled to a kabuliat for a moiety of the plots held by the defendant. *Held* that the raiyat was entitled to be heard whether he paid the rents to the plaintiff and whether he was bound to give the kabuliat asked for, and plaintiff was entitled to be heard whether the raiyat held three parcels or twenty-five. RADHAKISHORE TALUKHDAR *v.* GOLUCK CHUNDER ROY . 11 W. R., 366

50. ———— **Suit to have right declared to usufruct of property**—*Discretion of Court.*—The mortgage of certain property having been purchased by *S*, he sold it to *G*, who foreclosed, got a

ISSUES—*continued.*

5. ISSUES IN SPECIAL SUITS—*continued.*

decree for possession, and sold to *W*. *W*'s intervention having failed in a suit for arrears of rent by a party setting up a title intermediate between him

mine GOBIND CHUNDER BANERJEE *v* WISE [12 W. R., 19

51. ———— **Suit for land forming endowed property**—*Validity of grant—Limitation*—A suit for a portion of land granted in trust for purposes connected with the preservation of a

had been in possession within time REASUT ALI *v* ABBOTT . . 12 W. R., 132

52. ———— **Suit for damages for ejectment**—In a suit by a lessee to recover a sum on

for the year had been made by the lessors, and that he was entitled to recover those collections—*Held*,

[12 W. R., 198

53. ———— **Suit for ejectment**—*Issue as to wrongful possession of defendants*—Where certain zamindars sued to recover khas possession of certain shares of land alleging that defendants were

in khas possession or not, they had a right to a decision as to the alleged wrongful possession of the defendants JOYKISHTO MOOKERJEE *v* HURREEHUR MOOKERJEE . 12 W. R., 365

54. ———— **Suit for possession**—*Sale of mortgaged under-tenures for arrears of rent.*—

ISSUES—*continued.*

5 ISSUES IN SPECIAL SUITS—*continued.*

tenure was sold subject to previous incumbrances. CHUNDER MONEE DABEE *v* MOHESH CHUNDER BANERJEE . 12 W. R., 460

55 ———— **Suit for possession where defendant turns out to be a mortgagee**—*Procedure*—In a suit for possession of a piece of land where defendant pleads limitation and his witness unexpectedly discloses that his possession is that of

gagee for if the mortgage was found to subsist in defendant, the plaintiff could not in this case recover a decree for possession but should be referred to a suit properly framed for redemption MUZBOOT SINGH *v*. CHUNDER MASHEE KOOER [16 W. R., 44

56. ———— **Suit by patnidars for rent**—*Plea of lakhiraj title*—In a suit by patnidars for rent wh
up long l
issue to
valid or
received rent for the lands in dispute PURROODDEEN MULLICK *v* MOLAEM BIBEE [14 W. R., 149

57. ———— **Suit for damages and injunction for cutting bund**—*Issues of title and cause of action*—In a suit to have the portion of a

as to the property in the bund, because if the bund

the defendant had so used his own property as to injure the property of his neighbour NUND KISHORE SINGH *v*. RAM KISHORE SINGH DEB [17 W. R., 353

58. ———— **Suit by mortgagee for possession without foreclosure**—*Raising issue by Court—Civil Procedure Code, 1859, s 141*—In a suit to recover possession of certain premises on the allegation that defendant had sold them to plaintiff's husband nearly twelve years previously, defendant denied the execution of the deed on which plaintiff relied. The first Court was satisfied as to the fact of

ISSUES—*continued.*

5. ISSUES IN SPECIAL SUITS—*continued.*

execution, but, perceiving that possession had not followed, had some doubt as to the nature of the transaction and examined a witness thereon. The result was that the transaction was found to be not an absolute sale, but a mortgage. As this fact, however, had been neither pleaded nor relied upon, the Munsif gave plaintiff a decree. The lower Appellate Court, finding that the preliminary foreclosure proceedings had not been taken by the plaintiff, reversed the decision. *Held* that it was incumbent on the Court of first instance, under Act VIII of 1859, s. 141, to frame an issue as to the nature of the transaction, and that the suit was properly dismissed by the lower Appellate Court because plaintiff had not foreclosed the mortgage. NUNDO LALL MITTER *v.* PROSUNNO MOYEE DEBIA [19 W. R., 333

59. ———— Suit for possession without demand of possession—*Decision by Appellate Court without raising issue on point not raised.*—A suit to recover possession of land in the wrongful possession of the defendant having been decreed by the first Court, the decision was reversed by the lower Appellate Court because it did not appear that there had been any demand of possession. *Held* that, before deciding the case in this way, the lower Appellate Court ought to have framed an issue as to whether there had been a demand of possession. MAHOMED RASID KHAN CHOWDHRY *v.* JODOO MIRDHA . . . . . 20 W. R., 401

60. ———— Suit for enhancement of rent—*Raising issue as to notice of enhancement—Procedure.*—In a suit for arrears of rent at enhanced rates, where it is found that a single notice has been issued, although there are two holdings at two rents, the Court should frame an issue which will allow the plaintiffs and the defendant, if they wish it, to give evidence—the former to show that the two holdings are now held at one consolidated rent, and it may be enhanced as of one holding—and the latter that he is entitled to have the enhancement made in such a way that he may give up one and retain the other. NIDHOO MONEE JOGINEE *v.* KISHEN NATH BANERJEE . . . . . . 20 W. R., 442

61. ———— Suit for fees for officiating at marriages—*Duty of Judge—Framing issues.*—Plaintiff sued to recover certain fees from defendant, alleging that he had a right to officiate at marriages among the defendant's caste-people, and that, according to this right, he (plaintiff) had officiated at the marriage of the defendant's son at his request. The lower Court raised the issue, whether the plaintiff was entitled to the right alleged by him, and the issue was accepted by the parties without any objection. That Court held that, albeit plaintiff was head or senior of the caste, he could not have any right in that character to any fees at weddings, and accordingly dismissed the suit. In appeal the District Judge found that, if any such right had ever existed in the plaintiff, it had been taken away by Act XIX of 1844; he was also of opinion that the plaintiff had not been invited to assist and did not assist at the marriage ceremony in question, and he affirmed the decree of the Court below. *Held* by the High Court, in reversal of the decrees of the lower Courts, that Act XIX of 1844 did not apply to the case, and that the District Judge was bound to decide the question really involved in the issue, *viz.*, whether, invited or uninvited, plaintiff was entitled by custom to the fees claimed by him. APAYE *v.* RAMA . . . . . I. L. R., 3 Bom., 210

ISSUES—*continued.*

5. ISSUES IN SPECIAL SUITS—*concluded.*

6. OMISSION TO SETTLE ISSUES.

62. ———— Omission to raise proper issues—*Civil Procedure Code, 1859, ss. 139-141—Practice of Privy Council.*—In a suit raising issues of fact it did not appear from the record transmitted from India that the Judge of the Zillah Court had in conformity with the Code of Civil Procedure (VIII of 1859), ss. 139-141, settled or recorded the issues in the suit, although he allowed evidence in the cause to be taken. In such circumstances the Judicial Committee postponed the hearing of the appeal until a certified copy of the proceedings in the cause should be transmitted, and, in the alternative of no such issues being settled, set aside the decree of the Sudder Court at Agra, with directions to that Court to remand the suit to the lower Court to be tried upon issues to be settled and recorded in conformity with the provisions of Act VIII of 1859. REWUN PERSHAD *v.* JANKEE PERSHAD . 11 Moore's I. A., 25

63. ———— Omission to raise issue on point in dispute—*Parties unprejudiced.*—Where the Court found that the defendant was not prejudiced by the fact that no issue was framed on a certain question, it confirmed the decision of the Court below. NATTAM VENKATARATNUM *alias* BALLAKONDA VENKATA NARAYANA ROW *v.* NATTAM RAMAIYA *alias* BALLAKANDA RAMA ROW 2 Mad., 470

64. ———— Omission to frame issues—*Ground for new trial.*—Where, on an appeal, the counsel for the appellant admitted he could not succeed on the merits, as the evidence stood on the record, and their Lordships were of opinion that substantial justice had been done, the mere omission to settle issues by the Court of first instance, which was not made a ground of appeal to the first Court of appeal, but was noticed and commented on by that Court, was held not to constitute a fatal mistrial of the cause so as to render a new trial necessary. *Rewun Pershad* v. *Jankee Pershad, 11 Moore's I. A., 25*, commented on. MITNA *v.* FUZLRUB [6 B. L. R., 148: 15 W. R., P. C., 15
13 Moore's I. A., 573

MAHOMED BASIROOLLAH BHOONIA *v.* AHMED ALI [22 W. R., 448

65. ———— *Insufficient ground for remand.*—Where the lower Court had omitted to frame proper issues, the High Court refused to send the case back with a view to this being done, because the parties had not been prejudiced at all by the omission, both of them having adduced evidence upon all the questions upon which they were at difference. PERLADH SINGH BAHADOOR *v.* BROUGHTON . . . 24 W. R., 275

ISSUES—*continued.*

6. OMISSION TO SETTLE ISSUES —*concluded*

—— *Remand of case*

the Privy Council ... the Courts below,—*Held* that an order of the ... Court, referring the matter to the lower Court for enquiry "to ascertain the amount of maintenance which might appear to be justly and properly payable, with reference to the means of the defendants and the other facts of the case, and to proceed to decision in the manner indicated in s 351 of the Civil Procedure Code," was equivalent to a direction of issues, and rendered any further issues unnecessary KACHEKALYANA RUNGAPPA KALAKKA TOLA UDIAR *v* KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR

[2 B. L. R, P. C, 72 11 W. R, P C, 33 12 Moore's I. A, 495

7 DECISION ON ISSUES

... and has to be adjudicated WISE *v* ... BOSE 12 W. R., 229

68. ———— **Necessity of deciding on all issues raised**—*Remand*—In appealable cases the lower Courts should, as far as is practicable, pronounce their opinions on all the important points, for by forbearing from deciding on all the issues joined, they not unfrequently oblige the Privy Council to remand a case which might otherwise be finally

ISSUES—*concluded*

7. DECISION ON ISSUES—*concluded*

decided on appeal TARAKANT BANERJEA *v.* PUDDOMONEE DASSEE

[5 W. R., P. C., 63: 10 Moore's I. A., 476

69. ———— **Issue, Determination of, when unnecessary**—*Civil Procedure Code (Act XIV of 1882), s 204*—In a suit for ejectment by a ... his tenant, the following amongst ...

... instance dismissed the suit, holding ... was insufficient but ... ted facts tha... also decided ... defendant ... *Held* that ... based upon ... pose of the whole case, ... to determine any other issues raised in the suit BARHAMDEO NARAIN SINGH *v* MACKENZIE

[I L. R, 10 Calc, 1095

70 ———— **Decision of case at settlement of issues**—*Opportunity to produce evidence* ... determine a ... of the matter in dispute, unless ... makes a distinct objection to the Judge proceeding to a decision, and asks for an opportunity to produce evidence in support of his case SOORENDRO PERSHAD DOBEY *v* JUGOBUNDHOO PANDEY

[22 W. R., 426

ISTEMRARI TENURES.

See CASES UNDER LEASE—CONSTRUCTION